

Taxi Non-Cash Payment Surcharge review 2022

Final decision

31 August 2022



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Contents

| | |
|---|-----------|
| Summary | iv |
| 1. Introduction | 1 |
| What are non-cash payment surcharges? | 2 |
| What is the current taxi non-cash payment surcharge and who collects it? | 3 |
| What is our regulatory role? | 6 |
| What was outside the scope of our review? | 7 |
| 2. Our decision | 8 |
| Our approach is similar to our 2019 review | 8 |
| Data shows significant declines due to coronavirus pandemic | 9 |
| We placed less weight on cost data due to coronavirus pandemic | 11 |
| Our decision is to maintain maximum surcharges at four per cent and six per cent | 12 |
| 3. Bottom-up cost assessment | 15 |
| Taxi payment processors provided cost, revenue and asset information | 15 |
| Our revenue and cost data were heavily impacted by the coronavirus pandemic | 16 |
| The coronavirus pandemic significantly impacted the taxi industry | 17 |
| We used a building block method to assess the costs incurred by taxi payment processors | 17 |
| We removed costs that are not associated with processing non-cash payments | 19 |
| Reasonable, efficient and actual costs may differ | 20 |
| 4. Benchmarking analysis | 22 |
| Our benchmarking analysis reflects coronavirus pandemic impacts | 22 |
| The range of processing costs we benchmarked expanded | 23 |
| We used EFTPOS offers and revenue data to perform our benchmarking review | 24 |
| Unlike other small businesses, taxis often use multiple terminals | 25 |
| There are no relevant benchmarks for taxi specific payment instruments | 27 |
| Appendix A: The non-cash payment supply chain | 29 |
| Appendix B: Our bottom-up cost assessment | 41 |
| Appendix C: Our benchmarking assessment | 49 |
| Appendix D: Our approach to reviewing the maximum surcharge | 64 |
| Appendix E: Legislative considerations | 70 |
| Appendix F: Origin of the non-cash payment surcharge for taxis in Victoria | 74 |
| Appendix G: Legislative framework | 76 |
| Appendix H: Records to be kept on non-cash payment surcharges | 90 |
| Appendix I: Stakeholder submissions | 92 |
| Glossary | 94 |

Summary

We are required to conduct a review of the current maximum non-cash payment surcharge price determination that applies to taxis in Victoria no later than two years after it is made.¹ To inform this review, we requested information from taxi payment processors in Victoria.² We used this information to perform a cost assessment and benchmark analysis.

Our decision is that the maximum non-cash payment surcharge for taxi services in Victoria will remain at:

- four per cent (including GST) for all non-cash payment methods, except commercial passenger vehicle specific payment instruments
- six per cent (no GST payable) for commercial passenger vehicle specific payment instruments (such as Cabcharge payment instruments).³

The new price determination will come into effect on 15 September 2022.

In line with our legislative objectives, we expect the surcharges we set will allow taxi payment processors to recover their reasonable costs over the next two years.⁴

We had regard to information collected from payment processors from 2019–20 and 2020–21 in reaching our decision and found the cost data was heavily impacted by the coronavirus pandemic.

This means, however, that data collected is not likely to represent ongoing or likely future market conditions. Our decision is discussed further in chapter 2.

We performed a bottom-up cost assessment using information provided to us by taxi payment processors. Our analysis shows that the cost of accepting and processing non-cash payments in 2019–20 and 2020–21 ranged from 3.3 per cent to 11.9 per cent for each year, respectively. The result of the assessment reflects the impacts of the coronavirus pandemic. Our cost assessment is discussed in more detail in chapter 3 and appendix B.

Our benchmarking analysis suggests comparable costs of accepting and processing non-cash payments for similar sized businesses could range from 1.2 per cent to 5.7 per cent. For the

¹ *Commercial Passenger Vehicle Industry Act 2017* (Vic) s 124(4).

² Compulsory information requests issued via information gathering powers under section 36 of the *Essential Services Commission Act 2001* (Vic).

³ Essential Services Commission 2020, *Determination of maximum non-cash payment surcharges for taxis* (from 1 July 2020), 24 March

⁴ *Commercial Passenger Vehicle Industry Act 2017* (Vic) s 122.

purposes of this benchmarking analysis, we continued to assume that two terminals are used in most taxis. This is consistent with our previous review. This is discussed in more detail in chapter 4 and appendix C.

1. Introduction

When a customer uses a non-cash payment method to make a purchase, the seller incurs a cost in accepting and processing the payment. The seller may choose to apply an extra charge – a surcharge – to cover the cost of this non-cash payment.

We review and set the maximum non-cash payment surcharge applied to taxi services in Victoria.

Our objectives are to:

- Promote efficiency.⁵ In seeking to achieve this objective, we must ensure taxi payment processors are able to recover the reasonable cost of accepting and processing non-cash payment transactions.⁶
- Promote the long-term interests of Victorian consumers.⁷ In seeking to achieve this objective, we must have regard to the price, quality, and reliability of essential services.⁸

Since 1 February 2021, the maximum non-cash payment surcharge has been:

- four per cent (including GST) for all non-cash payment methods, except commercial passenger vehicle specific payment instruments
- six per cent (no GST payable) for commercial passenger vehicle specific payment instruments (such as Cabcharge payment instruments).⁹

This chapter provides an overview of non-cash payments and our role in reviewing and setting the maximum non-cash payment surcharge for taxis in Victoria.

Appendix A outlines the non-cash payments supply chain and explains how these payments are applied in the taxi industry.

⁵ Commercial Passenger Vehicle Industry Act 2017 (Vic), s 122(1).

⁶ Commercial Passenger Vehicle Industry Act 2017 (Vic), s 122(2).

⁷ Essential Services Commission Act 2001 (Vic), s 8(1).

⁸ Essential Services Commission Act 2001 (Vic), s 8(2).

⁹ Essential Services Commission 2020, Determination of maximum non-cash payment surcharges for taxis (from 1 July 2020), 24 March

What are non-cash payment surcharges?

Many different forms of payment are used to buy and sell goods and services in Australia. This includes cash transactions and non-cash transactions, in which payment is made by other (non-cash) means such as by cheque or electronic funds transfer. The most common form of non-cash transactions are made via credit and debit cards.

Cash transactions each involve two distinct parties, a buyer and seller – also known as a ‘merchant’. Non-cash transactions involve three or more parties. The additional party or parties are known as ‘payment intermediaries’. They enable non-cash transactions by authorising and settling payments between the banks or financial institutions of the buyer and merchant.

When a buyer uses a non-cash payment to make a purchase, the merchant incurs a cost for accepting and processing the payment. This cost may vary, depending on the size of the merchant’s business and the type of payment method used. The merchant may choose to apply an extra charge, to cover the cost of accepting and processing the payment. This allows the merchant to pass on the cost of accepting a non-cash payment to the buyer. This extra charge is called a non-cash payment surcharge.

The Reserve Bank of Australia (RBA) regulates non-cash payment surcharges in Australia. It does not, however, regulate surcharges made by merchants for accepting non-cash payment of taxi fares.¹⁰

The RBA does not permit the surcharge for non-cash payment transactions to exceed the average cost of acceptance over a recent 12-month period.¹¹ For example, if the average cost to accept Visa credit cards had been one per cent, then the merchant could only apply a one per cent surcharge on Visa credit card payments.

The Australian Competition and Consumer Commission (ACCC) can take enforcement action where it finds non-cash payment surcharges to be excessive (excluding in relation to taxis). The

¹⁰ Reserve Bank of Australia 2016, *Standard no. 3 of 2016: Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions*, section 2.7, 1 Sep 2016 as varied with effect from 1 Jan 2022, <https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/pdf/standard-no-3-of-2016-scheme-rules-relating-to-merchant-pricing-2021-11-18.pdf>, accessed 3 August 2022.

¹¹ Reserve Bank of Australia 2016, *Standard no. 3 of 2016: Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions*, section 4, 1 Sep 2016 as varied with effect from 1 Jan 2022, <https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/pdf/standard-no-3-of-2016-scheme-rules-relating-to-merchant-pricing-2021-11-18.pdf>, accessed 3 August 2022.

ACCC considers surcharges that range from 0.5 to 2 per cent to be typical for debit and credit cards.¹²

We set the maximum non-cash payment surcharge for taxi services in Victoria.¹³ This maximum surcharge applies to both booked and unbooked taxi services paid by credit card, debit card or charge card.

What is the current taxi non-cash payment surcharge and who collects it?

The current maximum non-cash payment surcharge for most taxi fares is four per cent

We made a determination on 7 September 2020 that, effective from 1 February 2021, set the maximum non-cash payment surcharge for taxi services in Victoria at:¹⁴

- four per cent (including GST) for most non-cash payment methods
- six per cent (no GST payable) for commercial passenger vehicle specific payment instruments.¹⁵

This means, for example the maximum surcharge for most non-cash payments that can be applied to a taxi fare of \$28 in Metropolitan Melbourne is \$1.12.

The maximum non-cash payment surcharge for all payment methods was initially set by legislation in 2014 at five per cent,¹⁶ until the Commission made its first determination regarding the maximum amount of the non-cash payment surcharge in July 2020.¹⁷

Prior to this, the non-cash payment surcharge was unregulated, but it was standard industry practice to apply a surcharge of 10 per cent (excluding GST).

¹² Australian Competition and Consumer Commission 2022, <https://www.accc.gov.au/consumers/prices-surcharges-receipts/credit-debit-prepaid-card-surcharges#typical-surcharge-costs>, accessed 3 August 2022.

The ACCC note that businesses can have different costs and that smaller merchants' costs may be higher than the 0.5 to 2 per cent guide.

¹³ Commercial Passenger Vehicle Industry Act 2017, s. 122 and s. 124
Note, Commercial Passenger Vehicle Industry Act 2017 s. 112(2)(b) excludes non-cash payment surcharges regulated by the RBA.

¹⁴ Essential Services Commission 2020, Taxi non-cash payment surcharge review 2019 – Further Determination Amendment, 8 September 2020.

¹⁵ 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 that is subject to GST on inputs <https://www.cabcharge.com.au/understanding-your-statement> (last accessed 19 August 2022).

¹⁶ Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013, s. 23.

¹⁷ Essential Services Commission 2020, Determination of maximum non-cash payment surcharges for taxis (from 1 July 2020), 24 March

Taxi payment processors usually collect the non-cash payment surcharge

A non-cash payment surcharge may be collected by a taxi payment processor, booking service provider, taxi driver or taxi operator. While it may be collected by any of these parties, it is most often collected by taxi payment processors. Which party collects the surcharge depends on the type of payment and terminal used to make the transaction.

Taxi payment processors

Taxi payment processors facilitate payments between merchants (that is, taxi drivers or taxi operators) and buyers (that is, taxi customers). They are known as ‘merchant aggregators’ as they process transactions for multiple merchants through a single account. This means taxi drivers or taxi operators can accept non-cash payments without requiring their own individual merchant accounts.

Taxi payment processors provide taxi drivers and operators with payment terminals and equipment to process payments. The payment services they provide may differ in terms of their relationship with financial institutions, owners, drivers and types of payment (such as Visa and Mastercard).

There are several different taxi payment processors including A2B Australia, Cabfare, GM Cabs, Ingogo, Live Taxi and Oiii.

Other services provided by taxi payment processors

The terminals provided by taxi payment processors may perform other functions besides payment processing. This can include:

- calculation of the non-cash payment surcharge
- integration with the taxi meter
- integration with the taxi dispatch system
- calculation of Multi Purpose Taxi Program (MPTP) member subsidies
- printing tax invoices with pick-up and drop-off locations.

How taxi payment processors collect the surcharge

When a taxi non-cash payment is made via a terminal, the taxi payment processor collects both the taxi fare and the associated surcharge. The taxi payment processor keeps the surcharge and transfers the taxi fare to the driver, operator or booking network. Some taxi payment processors also transfer a share of the surcharge to drivers, owners and/or networks.

How taxi payment processors compete

Taxi drivers and operators can choose between different payment processing options.¹⁸ This means taxi payment processors compete for drivers and operators to steer payments to their terminals. As a result, taxi payment processors usually do not charge for accepting non-cash payments, but often provide incentives to attract more drivers and operators to use their terminals.¹⁹ These incentives may include driver commissions²⁰ or redeemable cash.²¹

Taxis often use secondary terminals

As a condition of their vehicle registration, all taxis must be fitted with an electronic transaction terminal to process Multi Purpose Taxi Program (MPTP) transactions.²² By default, this has been a terminal provided by A2B Australia, which was the only type of terminal that could process these subsidies. However, a second taxi payment processor, Oiii now offers terminals that can process MPTP subsidies.²³

Many drivers also have a secondary terminal. This is often to access better terms, incentives and commissions offered by other taxi payment processors. Drivers may have a secondary terminal as a backup in case there is some problem with the primary terminal. Some drivers also use a secondary terminal to control their cash flows, as payment through primary terminals may take longer to arrive in drivers' bank accounts.

Booking service providers

Booking service providers take booking requests from passengers and allocate jobs to drivers. Traditionally, bookings have been taken by telephone, but increasingly passengers are booking taxis using smartphone apps.

When a passenger books a taxi, in some cases, the booking service provider will take payment for the trip. This is most likely to occur when booking using an app. If the booking service provider

¹⁸ Cabcharge-branded cards can only be processed by Cabcharge capable terminals. We understand another party is interested to process Cabcharge-branded cards.

¹⁹ Taxi payment processors often charge a fixed fee if drivers do not process over a certain threshold each month.

²⁰ <https://www.ingogo.com.au/driver>, accessed 19 August 2022.

²¹ <https://gmcabs.com.au/drivers/>, accessed 19 August 2022.

²² Safe Transport Victoria, 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 17 August 2022).

²³ Safe Transport Victoria, Passengers Multi Purpose Taxi Program, available at: <https://cpv.vic.gov.au/passengers/mptp> (last accessed 17 August 2022).

takes payment, it may charge up to the maximum surcharge. We note some booking service providers choose not to impose any surcharge.

Taxi drivers and operators

In a small number of cases, taxi drivers and operators may use non-taxi payment terminals (for example, Square terminals). In such cases, the driver manually adds the surcharge, up to the maximum of four per cent, when inputting payment into the terminal at the end of the trip. The fare and surcharge are then deposited into the driver's account (less any fees from their financial institution).

What is our regulatory role?

Our role is to review and determine the maximum non-cash payment surcharge applied to taxi services in Victoria.

Our objectives, in setting the maximum non-cash payment surcharge, are to:

- Promote efficiency.²⁴ In seeking to achieve this, we must ensure taxi payment processors are able to recover the reasonable cost of processing non-cash payments.²⁵
- Promote the long-term interests of Victorian consumers.²⁶ In seeking to achieve this, we must have regard to the price, quality, and reliability of essential services.²⁷

We must also have regard to a range of other matters, such as:

- the financial viability of the industry
- the degree of and scope for competition within the industry.²⁸

In making our determination, we must ensure that:

- the expected costs of the proposed regulation do not exceed the expected benefits

²⁴ Commercial Passenger Vehicle Industry Act 2017, s. 122(1).

²⁵ Commercial Passenger Vehicle Industry Act 2017, s. 122(2).

²⁶ Essential Services Commission Act 2001, s. 8(1).

²⁷ Essential Services Commission Act 2001, s. 8(2).

²⁸ Section 10(i) of the Essential Services Commission Act 2001 (Vic) (the Act) vests powers in the commission to perform functions conferred on it by the Commercial Passenger Vehicle Industry Act 2017 (Vic) (CPVI Act). Section 121 to 124 of the CPVI Act confers powers on the commission to determine maximum surcharges for Victoria's non-cash payment transaction industry. These sections together also provide for any determination made by the commission to be a determination made under Part 3 of the Act. Section 8 of the Act sets out the objectives the commission when performing its functions or exercising its powers. These are in addition to the objectives the commission must have regard to as specified in section 122 of the CPVI Act. Section 8A of the Act sets out matters the commission must have regard to, to the extent they are relevant in any particular case, in seeking to achieve its objectives under section 8 of the Act.

- the determination takes into account and clearly articulates any trade-offs between costs and service standards.²⁹

We must also adopt an approach and methodology which we consider best meets our legislative objectives.³⁰ See chapters 3 and 4 for an explanation of our approach to this review.

See appendix D and E for a full description of our role under the *Commercial Passenger Vehicle Industry Act 2017* (Vic) (CPVI Act), the *Essential Services Commission Act 2001* (Vic) (the Act) and the *Transport Integration Act 2010* (Vic).

The timing of our review and determination requirements

Under section 124(4) of the CPVI Act, we are required to complete a review of the current taxi non-cash payment maximum surcharge determination by 7 September 2022. The release of this decision paper completes our review.

We have issued a new determination with this decision paper. We will then be required to complete our next review within two years.³¹

What was outside the scope of our review?

We do not set or determine non-cash payment surcharges for rideshare and hire car services, which are instead regulated by the RBA.³² This meant we excluded Didi, Uber and other such rideshare services from our review.

We cannot make changes to the legislative environment regulating the maximum surcharge. This is a policy matter for the Victorian government. We also had no role in reviewing, assessing, or setting any surcharges covered by the RBA.

We did not consider maximum fares for unbooked taxi services as part of this non-cash payment surcharge review. We considered these separately in our Unbooked taxi fare review 2022.

²⁹ Essential Services Commission Act 2001 (Vic) s. 33(4).

³⁰ Essential Services Commission Act 2001 (Vic) s. 33(2).

³¹ Commercial Passenger Vehicle Industry Act 2017 (Vic), s 124(4).

³² Reserve Bank of Australia 2016, *Standard no. 3 of 2016: Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions*, section 2.7, 1 Sep 2016 as varied with effect from 1 Jan 2022, <https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/pdf/standard-no-3-of-2016-scheme-rules-relating-to-merchant-pricing-2021-11-18.pdf>, accessed 3 August 2022.

While the definition of a non-cash payment surcharge Commercial Passenger Vehicle Industry Act 2017, s. 112(1) refers to all commercial passenger vehicles, s. 112(2)(b) excludes non-cash payment surcharges regulated by the RBA. Therefore, rideshare and hire car surcharges are excluded as they are regulated by the RBA.

2. Our decision

Our decision is for the maximum non-cash payment surcharge for taxi services in Victoria to remain at:

- four per cent (including GST) for all non-cash payment methods, except commercial passenger vehicle specific payment instruments
- six per cent (no GST payable) for commercial passenger vehicle specific payment instruments (such as Cabcharge payment instruments).

Like our previous 2019 review, we considered stakeholder views, taxi payment processor costs and industry benchmarks in framing our decision for this review.

While we had regard to cost data collected from taxi payment processors for 2019–2020 and 2020–2021, we gave it less weight in reaching our decision. The impacts of the coronavirus pandemic during the period meant the data we collected was not likely to represent ongoing or likely future market conditions.

We also took into consideration the results of benchmarking EFTPOS offers in the rest of the economy.

We expect the surcharges we set will allow taxi payment processors to recover their reasonable costs over the next two years.

This chapter outlines our approach and explains the basis for our decision. See appendix D for further details on our approach for this review.

Our approach is similar to our 2019 review

This was our second review of the maximum non-cash payment surcharge for taxi services in Victoria. Like our previous 2019 review, we considered stakeholder views, taxi payment processor costs and industry benchmarks in framing our decision for this review.³³

Throughout our review, we sought stakeholders' views to inform our decision. We released a consultation paper in June 2022 seeking feedback on our planned approach. Ten stakeholders made submissions in response. We also met with several stakeholders to hear their views directly.

³³ We refer to our first review, 'The taxi non-cash payment surcharge 2019', as the '2019 review' throughout this paper. We commenced this review with a consultation paper in December 2018, then released a draft decision paper in May 2019 and a further draft decision paper in November 2019. We concluded our review with the release of the final decision paper in March 2020.

We consulted with taxi payment processors on an ongoing basis during our review. Initially, we met to understand their views on business conditions and to explain their role in our review. Taxi payment processors then provided us their revenue and cost data as well as asset information in August 2022 through compulsory information notices issued under section 36 of the *Essential Services Commission Act 2001* (Vic). We followed-up with them to clarify any issues or points of detail.

We used the data and information we collected to develop ‘building block’ models of taxi payment processors’ costs.³⁴ Building block models provide for the recovery of all relevant economics costs, which includes a return on capital invested in service supply, a return of that capital (in the form of depreciation) and operating expenditure. For each taxi payment processor, we removed costs that were not incurred in processing non-cash payments (the same types of costs we removed in our 2019 review). This resulted in ‘building block costs’ which we compared with taxi payment processors’ revenue collected to generate an implied surcharge for each. By implied surcharge, we mean a surcharge amount that may allow taxi payment processors to earn revenue sufficient to recover their relevant economic costs.

The implied surcharges for 2019–20 and 2020–21 was markedly different from those we calculated in our 2019 review. This likely reflects the impacts of the coronavirus pandemic. It is unlikely to represent ongoing market conditions or be a reliable guide to prospects for the taxi payments industry. This meant that, while we had regard to our cost assessment for 2019–20 and 2020–21, we gave it less weight given its unreliability as a future guide.

Data shows significant declines due to coronavirus pandemic

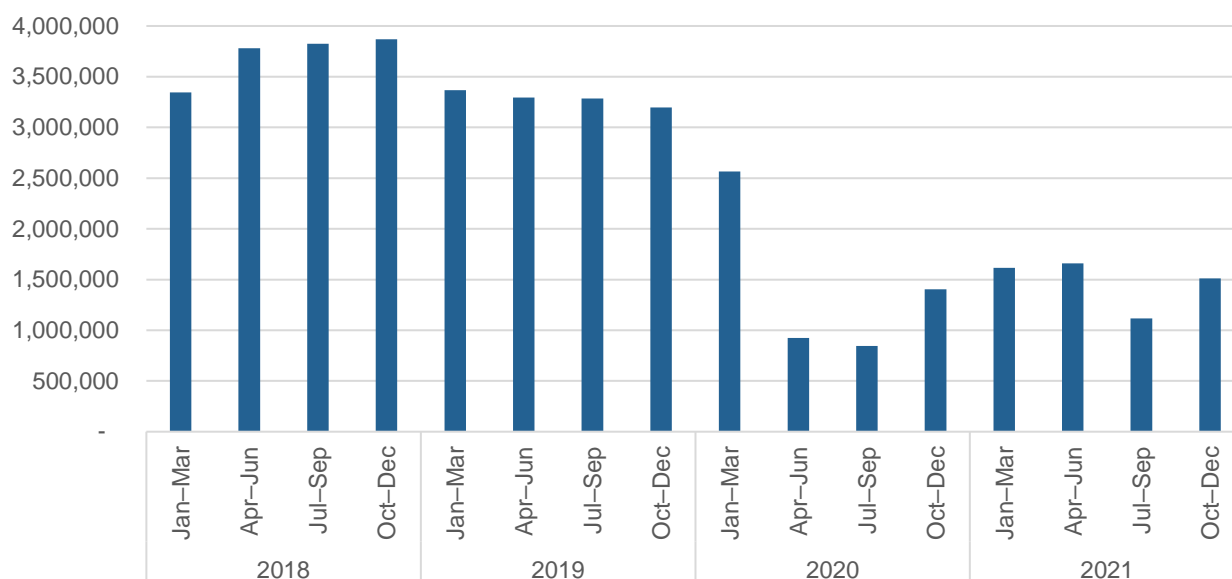
We observed significant changes in much of the data we collected for 2019–20 and 2020–21. This is due, in large part, to the impacts of the coronavirus pandemic. As shown in figure 2.1, there was a significant decline in taxi trips, with ‘stay at home’ and other restrictions in place during much of this period. Consequently, the number of non-cash payments processed by taxi payment processors also fell. This was despite a continuing trend away from cash towards non-cash transactions in Australia.³⁵

³⁴ Building block models are widely used by Australian economic regulators. The model we used for this review is comparable to those we use in other regulated sectors such as energy retailing (for the Victorian Default Offer) and the water sector.

³⁵ Reserve Bank of Australia 2021, *Bulletin – March 2021: Cash demand during COVID-19*, <https://www.rba.gov.au/publications/bulletin/2021/mar/pdf/cash-demand-during-covid-19.pdf>, page 2-3, 8, accessed 3 August 2022.

The RBA notes the share of total retail payments made in cash in Australia fell from 69 per cent in 2007 to 27 per cent in 2019, with the coronavirus pandemic accelerating this trend.

Figure 2.1 Booked and unbooked taxi trips in the Melbourne metropolitan, urban and large regional zones, per quarter: 2018 to 2021



Note: The chart does not show all booked and unbooked taxi trips that occurred in the Melbourne metropolitan, urban and large regional zones. This chart only includes trip data that is comparable over the 2018 to 2021 period.

The fall in taxi trips and non-cash payments was reflected in the data we collected from taxi payment processors. Revenue from non-cash payments decreased by 69 per cent during the two-year data period. Taxi payment processors' costs also fell, though the rate of decrease, 43 per cent, was not as pronounced as their revenue. This is due to a proportion of their total costs being relatively fixed and incurred regardless of usage.

Cost data unlikely to represent ongoing conditions

Taking the revenue and cost decreases at face value might imply a significant change in the non-cash payment surcharge is warranted. This might be the case if these decreases were expected to be sustained over the longer term. However, we do not think it would be appropriate to adjust the non-cash payment surcharge if these decreases were expected to be temporary. We consider that the long-term interests of customers and taxi payment processors are best served if the non-cash payment surcharge is relatively stable over time.

We are unable to ascertain what the revenue and cost decreases of taxi payment processors in 2019–20 and 2020–21 will mean for the industry in the future. These decreases might be temporary, and the regular pattern of taxi trips and non-cash payments may eventually resume. Alternatively, it might be an indication of a new trend in which customers take relatively fewer taxi trips than in the past.

We heard anecdotally from taxi payment processors that taxi trips and revenue increased in 2022 but are not back to the levels prior to the coronavirus pandemic.³⁶ In its submission, A2B Australia stated that:

‘Although A2B expects that demand for taxi services will increase above levels experienced over the last two financial years, it does not anticipate a complete recovery in demand in 2022 and 2023.’³⁷

A2B Australia also noted that:

‘... neither the number nor the value of taxi trips processed by A2B in Victoria in FY22 have fully recovered to levels experienced in 2019.’³⁸

At the present time, it is not possible to know whether taxi revenue and costs will revert to trend or forge a new trend in the future. Some costs that are fixed in the short term will become more variable over a longer period. An example is payment terminals, which are a fixed cost for a period of three years but then become variable. A sustained reduction in demand would result in fewer terminals being acquired and lower costs over time. We may only be able to make such assessments once forward years data becomes available in the future.

We placed less weight on cost data due to coronavirus pandemic

The coronavirus pandemic impacts changed the way we utilised the cost data for our review. While we had regard to the cost data for 2019–20 and 2020–21, we gave it less weight as it did not provide a reliable guide to ongoing or likely future market conditions.

Our benchmarks are still broadly comparable with other industries

We updated the benchmarks we compiled for our 2019 review. This provided a useful crosscheck on current surcharges in other industries. Our benchmarks included surcharges on credit, debit and EFTPOS transactions imposed by banks, other financial institutions and card schemes for goods and services in the broader economy. These benchmarks confirmed that the maximum taxi non-cash payment surcharges we set in the September 2020 determination are still broadly in line with other jurisdictions and industries.

Benchmarking analysis is discussed further in chapter 4.

³⁶ We held meetings with the A2B Australia, Cabfare, GM Cabs, Ingogo, and Live Taxi in June 2022.

³⁷ A2B Australia submission received 2 August 2022, p.3

³⁸ A2B Australia submission received 2 August 2022, p.3

Unbooked taxi fare rise likely to increase taxi payment processors' revenue

In a separate decision, we have decided to raise maximum fares for unbooked taxi services by 11.2 per cent for conventional taxis, with effect from 15 September 2022. Our decision applies to unbooked taxis only.

Many taxi operators may raise their fares in line with the maximum for both unbooked trips and booked trips (which are not subject to fare regulation). This should, in turn, mean taxi payment processors' revenue will begin to recover in future years when customers pay for their taxi trip via credit, debit, or charge cards.³⁹

We have taken this fare increase into account in reaching our decision to maintain the current maximum surcharges for non-cash payments.

Our decision is to maintain maximum surcharges at four per cent and six per cent

Our decision is for the maximum non-cash payment surcharge for taxi services in Victoria to remain at:

- **four per cent** (including GST) for all non-cash payment methods, except commercial passenger vehicle specific payment instruments
- **six per cent** (no GST payable) for commercial passenger vehicle specific payment instruments (such as Cabcharge payment instruments).

Our decision maintains two separate surcharges. The difference between the two relates to additional issuing costs associated with the Cabcharge payment instrument, for which the six per cent surcharge applies.⁴⁰ A2B Australia is still the only taxi payment processor we are aware of that issues a commercial passenger vehicle specific payment instrument. This surcharge would also apply to any other future commercial passenger vehicle specific payment instruments that taxi payment processors may develop.

We will implement our decision by issuing a new determination. The new determination will be effective from 15 September 2022, notice of which will be published in the Government Gazette.⁴¹

³⁹ Some of processors' costs are variable, such as merchant fees, but the presence of some fixed costs will mean that margins earned by payments processors should increase.

⁴⁰ A2B avoids the payment of merchant service fees on Cabcharge transactions but incurs issuing costs. In total, this increases the costs of this specific payment instrument.

⁴¹ Essential Services Commission Act 2001 (Vic), s 35(5).

We expect surcharges will continue to match the bounds of reasonable costs

We expect taxi payment processors will be able to recover their reasonable costs. We set the non-cash payment surcharges in relation to the bounds of reasonable costs in our 2019 review. We found taxi payment processors required a surcharge of between 3.5 per cent and 3.9 per cent to recover their reasonable costs. A2B Australia required a surcharge of six per cent for its commercial passenger vehicle specific payment instrument, namely Cabcharge. That is because Cabcharge incurred issuing costs which other payment processors do not incur.

Given the limitations of the cost data we received (as noted above), and the uncertainties about likely future market conditions, we do not see any basis for altering the views reached previously about the level of surcharge necessary to enable taxi payment processors to recover their reasonable costs.

The existing surcharges would seem to be sufficient as the taxi payment processors who provided us data continue to be financially viable,⁴² even with the significant challenges presented by the coronavirus pandemic during the 2019–20 and 2020–21 period.

We also observed, in our 2019 review, scope for taxi payment processors' costs to decrease over time. This would lower the bounds of reasonable costs and lead to lower non-cash payment surcharges.

While such observations were not possible with the cost data of this review, we expect there may be further scope for cost decreases in the longer term. Particularly given the recent uptake of new app-based technologies by new and existing taxi payment processors, which in the longer term, may lower the cost of processing non-cash payments considerably.⁴³

See chapter 3 for information on how reasonable and efficient costs differ.

Our surcharges are not set to compensate for individual losses

We expect there could be under-recovery of costs for some taxi payment processors in 2019–20 and 2020–21. This would mean these taxi payment processors costs were greater than the revenue they earned via the non-cash payment surcharge during these periods.

⁴² Taxi.Plus, submission received 13 July 2022. Aside from existing taxi payment processors, Taxi.Plus, which is planning to commence operations beyond New South Wales in 2023, indicated they are prepared to accept a four per cent surcharge.

⁴³ Taxi.Plus, submission received 13 July 2022. Taxi.Plus provides an example of how the costs for a new taxi payment processor (in Victoria) might be structured differently and could be potentially lower, by utilising new technology. We also heard of similar potential cost reductions with new technology, from an existing taxi payment processor.

Though it may seem unlikely during the coronavirus pandemic, the opposite case may also occur in the future, in which there may be some over-recovery of costs. This would mean the very efficient taxi payment processors would earn more than their costs.

We set the maximum non-cash payment surcharge to match the bounds of reasonable costs for the taxi payment processing industry. We have not set it to compensate (or claw back) the losses (or profits) that individual taxi payment processors may have incurred in any given period. We consider the current maximum non-cash surcharge allows for taxi payment processors to recover their reasonable costs, in line with our legislative requirement.⁴⁴

⁴⁴ Commercial Passenger Vehicle Industry Act 2017 (Vic) s 122(2).

2. Our decision

3. Bottom-up cost assessment

Our bottom-up cost assessment shows that the cost of accepting and processing non-cash payments in 2019-20 and 2020-21 ranged from 3.3 per cent to 11.9 per cent.

The data we received was heavily impacted by restrictions in response to the coronavirus pandemic. We do not consider it to be a reliable guide to the likely costs in the forthcoming two-year period. As a result, although we have had regard to this cost data, we have given it less weight.

Our previous review suggested that the cost of accepting, and processing non-cash payments ranged between 3.5 per cent and 3.9 per cent for most payment methods. We consider this to be a reasonably reliable guide to likely future costs.

We used information provided to us by taxi payment processors to conduct this analysis.

This chapter summarises how we carried out our bottom-up cost assessment. We also consider the impact of the coronavirus pandemic on the data for the 2019–20 and 2020–21 period. While we had regard to cost data from these periods, the impact of the coronavirus pandemic in that period meant that the data was not a reliable guide to likely future market conditions.

See appendix B for further details on our bottom-up cost assessment.

Taxi payment processors provided cost, revenue and asset information

We obtained the information for our cost assessment via compulsory information gathering notices, which we issued to the five main taxi payment processors. We requested information regarding their revenues, costs and assets that relate to accepting and processing non-cash payments for taxi services in Victoria.⁴⁵ This information reflected the period beginning 1 July 2019 and ending 30 June 2021.

To minimise the potential administrative burden on taxi payment processors, our information requests were similar to those we issued in our previous 2019 review. We requested financial information relating to taxi payment processors':

- revenue streams

⁴⁵ Essential Services Commission Act 2001 (Vic) s. 36. We requested information from the same taxi payment processors assessed during our 2019 review. While there may be other payment processing businesses in the taxi industry, the information we received largely reflects the vast majority of the taxi payment industry. We may issue information requests to different and/or additional entities in the future.

- expenses
- depreciation
- working capital
- assets related to accepting and processing non-cash payments for taxi services in Victoria.

As was the case in our 2019 review, some taxi payment processors had difficulty separating out regulated from unregulated costs and expenses. Where possible, we isolated unregulated revenue and expenses and removed these from our cost assessment. However, in some cases, this was not possible and, as a result, our cost assessment may include some unregulated costs.

Our revenue and cost data were heavily impacted by the coronavirus pandemic

We observed a significant decrease in taxi payment processors' revenue and costs during the 2019–20 to 2020–21 period. Based on the information we received, we observed a 69 per cent reduction in taxi payment processors revenue and a 43 per cent reduction in their costs during the reporting period.⁴⁶

The level of taxi payment processors' assets also decreased during this period. We heard that this was due to either taxi drivers returning their payment terminals or taxi payment processors retrieving them to preserve their business.⁴⁷

The significant changes we observed in much of the data collected for the 2019–20 and 2020–21 period was likely due to the impacts of the coronavirus pandemic. Our analysis of reasonable costs showed a range of implied surcharges for the years 2019–20 and 2020–21 (see table 3.1).

Table 3.1: Range of implied surcharges observed over the reporting period

| Implied surcharge type | 2019–20 | 2020–21 |
|---|-------------|--------------|
| All card types except Cabcharge (including GST) | 3.3% – 4.8% | 5.2% – 11.9% |

This range of implied surcharges is much higher than our previous review, especially for 2020–21. We consider that these implied surcharges do not reliably reflect the reasonable costs of accepting and processing non-cash payment transactions. Our previous review suggested that the cost of

⁴⁶ One payment processor's revenue, costs and terminal asset numbers were excluded from our analysis because we found it to be a substantial outlier that was very heavily impacted by the coronavirus pandemic.

⁴⁷ We held meetings with the A2B Australia, Cabfare, GM Cabs, Ingogo, and Live Taxi in June 2022.

accepting, and processing non-cash payments ranged between 3.5 per cent and 3.9 per cent for most payment methods. We consider this to be a reasonably reliable guide to likely future costs.

The coronavirus pandemic significantly impacted the taxi industry

Many stakeholders we heard from in our review were concerned with the impact that the ‘stay at home’ orders and other restrictions had on the demand for, and supply of, taxis and the impact this had on the volume of transactions. Taxi payment processors explained that they attempted to reduce their costs in response. However, this would likely have been difficult, given some of their costs were fixed with respect to volumes of transactions and so could not be reduced.

Most, if not all, taxi payment processors told us that the 2019–20 and 2020–21 period did not reflect current conditions for taxis and the non-cash payments industry. Rather, we heard that the data from this period was reflective of market conditions during the coronavirus pandemic.⁴⁸

We also heard from one taxi payment processor that the demand for taxis has been impacted by other factors. In their view, this included population movement away from Victoria, a decline in tourism due to border closures, and labour shortages due to taxi drivers and operators leaving the market.⁴⁹ We also heard that demand for taxis continues to be impacted with changes to work and travel behaviours.⁵⁰

We used a building block method to assess the costs incurred by taxi payment processors

Like our 2019 review, we used a ‘building block’ model to perform a bottom-up cost assessment. The building block model is widely used by economic regulators in Australia. This enables us to assess the implied surcharge using revenue, expense and asset information provided by taxi payment processors.

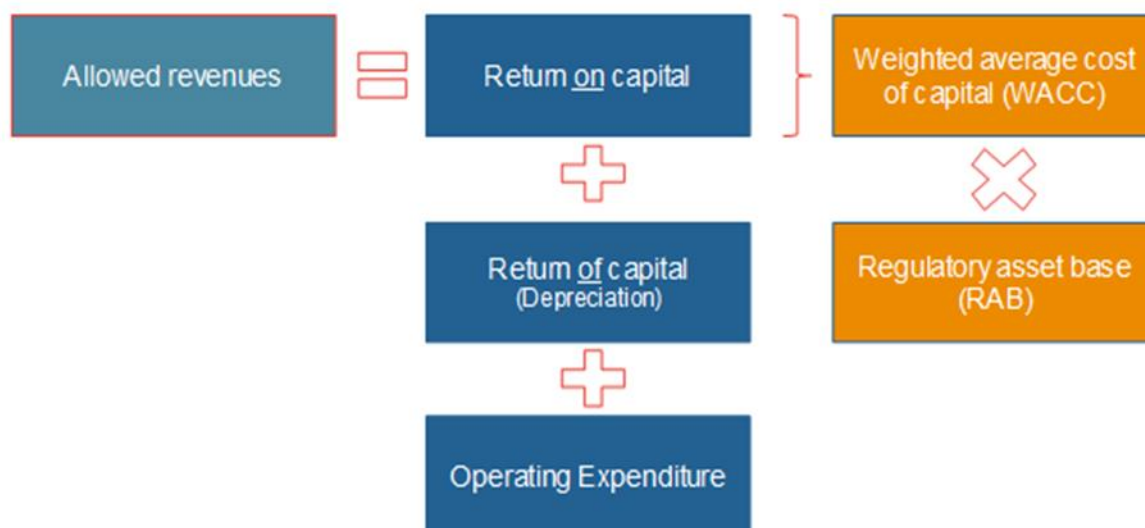
Our building block model approach included an assessment of allowed revenue, which is calculated by reference to the sum of a firm’s operating expenditure, return on capital (or rate of return) and return of capital (or depreciation). The building block model is illustrated in figure 3.1.

⁴⁸ Anonymous 1 received 22 June 2022, Anonymous 2 received 22 June 2022, Michael Telleson received 22 June 2022, A2B Australia received 2 August 2022.

⁴⁹ A2B Australia received 2 August 2022.

⁵⁰ A2B Australia received 2 August 2022.

Figure 3.1: Pre-tax⁵¹ building block model



- **Return on capital:** This is the regulated businesses' allowed earnings that reflect the opportunity cost of its fixed and working capital. 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 (pre-tax) 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. Operating expenditure is often recurrent in nature.

After removing costs that are not incurred by taxi payment processors with respect to accepting and processing non-cash payments (for example, driver commissions), we used the remaining costs to estimate the actual building block costs for each firm by summing up all the building blocks. By dividing the building block costs for that firm by the total dollar value of fares it accepts and processes, we established the implied surcharge required by each firm to recover the reasonable costs of accepting and processing non-cash payments.

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

⁵¹ A pre-tax model uses a pre-tax weighted-average cost of capital in the calculation on capital, which allows for sufficient cash flows to pay corporate income tax.

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

As in our 2019 review, where possible, we removed costs that were not associated with accepting and processing non-cash payments for taxis in Victoria. These costs were removed from the cost build up because they do not form part of the expenditures a taxi payment processor incurs in providing regulated services.

Including costs not associated with regulated services to determine the maximum surcharge could result in double payments or over recovery to the service provider. In fact, in some cases, we considered these costs were recouped from customers via other means. For example, we removed the cost of processing the Multi Purpose Taxi Program (MPTP) transactions.

Only A2B Australia, Oiii and Uber have commercial agreements with the Victorian Government for the supply of MPTP services.⁵² To the extent that A2B Australia, Oiii and Uber incur costs in processing MPTP subsidies, these costs should be covered by the amount agreed with the Victorian Government.

Some taxi payment processors were able to isolate the revenue from unregulated revenue streams, such as providing booking services or rental income from terminals. The non-cash payment surcharge should not be used to recover the costs associated with these unregulated activities.

Where possible, we have deducted unregulated revenue from the allowed revenue in our cost assessment. In some cases, taxi payment processors did not provide cost information for unregulated services included in their costs, but included the revenues associated with those services. Where this was the case, we subtracted those revenues from their total costs.

The following items were considered not to be reasonable costs of accepting and processing non-cash payments and were, therefore, removed from our cost assessment:

- commission paid to drivers
- commission paid to booking service providers
- vouchers, fuel discounts, refuelling and car wash stations, driver lounge and fast-food facilities
- docket cashing
- booking services
- taxi meter and dispatch function costs
- technology refresh costs.

⁵² Parliament of Victoria (2022), [Inquiry into the Multi Purpose Taxi Program](https://cpv.vic.gov.au/passengers/mptp), page 12. Safe Transport Victoria, Multi Purpose Taxi Program, available at: <https://cpv.vic.gov.au/passengers/mptp> (last accessed 24 August 2022).

These costs were also removed during our 2019 review. See appendix B for more information on our approach to the bottom-up cost assessment.

Reasonable, efficient and actual costs may differ

Our legislative requirement is to promote efficiency and ensure reasonable costs are able to be recovered

Section 122 of the CPVI Act provides:

(1) The objective of the ESC 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.

(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.

We define 'reasonable cost' to mean 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.

Our legislative requirement is to promote efficiency and ensure that taxi payment processors are able to recover the reasonable cost of accepting and processing non-cash payments. This does not necessarily require that the surcharge be set so that all processors recover their actual costs regardless of the level of those costs. It requires us to assess reasonable costs and ensure that processors are able to recover those costs. Doing so is consistent with the notion of promoting efficiency and having regard to efficient costs, without having to determine an efficient cost level.

We heard mixed views from stakeholders

One stakeholder did not consider that allowing for the recovery of reasonable costs was in the long-term interests of Victorian consumers and did not promote efficiency in the taxi payment industry. This stakeholder considered that the focus of our review should be on efficient costs.⁵³ They believe a cost assessment approach builds up inefficiencies in the industry. They argued that consumers would expect, and deem it reasonable, that only efficient costs are reflected in the maximum non-cash payment surcharge.

⁵³ Consumer Action Law Centre received 18 July 2022.

As discussed above, we consider that reasonable and efficient costs, although related, are different concepts. We note that our objective in relation to the non-cash payment transaction industry under the CPVI Act is to promote efficiency by regulating the amount that may be imposed by way of a non-cash payment surcharge.⁵⁴ In seeking to achieve this objective we are required to ensure that payment processors are able to recover their reasonable costs.⁵⁵

Another stakeholder expressed the view that the surcharge for taxis should be treated like surcharges in other industries and be subject to the Reserve Bank of Australia's (RBA) surcharging standards.⁵⁶

We understand the maximum surcharge that applies to non-cash payments for taxis is typically higher than the surcharges levied in other industries.

This difference reflects the specific legislative regime that applies to non-cash payment surcharges for taxis in Victoria. The RBA applies a different regulatory regime.⁵⁷ It also reflects the specific circumstances of the taxi non-cash payment surcharges industry, including the fact that taxis commonly have two or more payment terminals for accepting card payments. This is not the case in other industries.

⁵⁴ Commercial Passenger Vehicle Industry Act 2001 (Vic), s. 122(1)

⁵⁵ Commercial Passenger Vehicle Industry Act 2001 (Vic), s. 122(2).

⁵⁶ Visa received 22 July 2022.

⁵⁷ Reserve Bank of Australia, Approach to Regulation, available at: <https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/approach-to-regulation.html> (last accessed 18 August 2022).

4. Benchmarking analysis

Our benchmarking analysis suggests comparable costs of accepting and processing non-cash payments for similar sized businesses could range from 1.2 per cent to 5.7 per cent.

For the purposes of this benchmarking analysis, we have continued to assume that two terminals are used in most taxis. This is consistent with our previous 2019 review.

Our analysis of costs in other industries also suggests that using multiple payment terminals does not reduce the cost of processing non-cash payments. A single payment terminal could be a lower cost option.

This chapter sets out our approach and summarises the main results of our benchmarking analysis. Appendix C provides further detail on the process and calculations we used in our benchmarking analysis.

Our benchmarking analysis reflects coronavirus pandemic impacts

As in our 2019 review, we compiled benchmarks to compare the costs of accepting and processing non-cash payments for small businesses with the respective costs for taxis. Given costs can vary according to the amount and value of transactions processed, we used the average revenue taxis received during 2019–20 and 2020–21 as the basis for the benchmarks we compiled. We assumed the revenue of taxis to be similar to small businesses for the purposes of our cost benchmarks.

Taxi revenue declined significantly during 2019–20 and 2020–21 as a result of the coronavirus pandemic. The number of terminals in use over the reporting period decreased by around 50 per cent and taxi revenue fell by approximately 69 per cent.⁵⁸ These decreases align with our observations in our cost analysis in chapter 3, which indicated that revenue decreased due to a major decline in demand for taxi services during this period. As both revenue and terminal numbers are primary inputs, our benchmarking analysis has also been affected.

Despite the impacts of the coronavirus pandemic, our benchmarks are still broadly in line with other jurisdictions and industries.

⁵⁸ One payment processor's revenue and terminal asset numbers were excluded from our analysis because we found it to be a substantial outlier that was very heavily impacted by the coronavirus pandemic.

The range of processing costs we benchmarked expanded

In compiling our benchmarks, we used prices for processing non-cash payments that were available to small businesses. We collected available information across 14 banks or merchant aggregators. This information was then compared with revenue information collected from taxi payment processors to calculate an average monthly revenue processed by taxis over the reporting period (1 July 2019 and 30 June 2021).

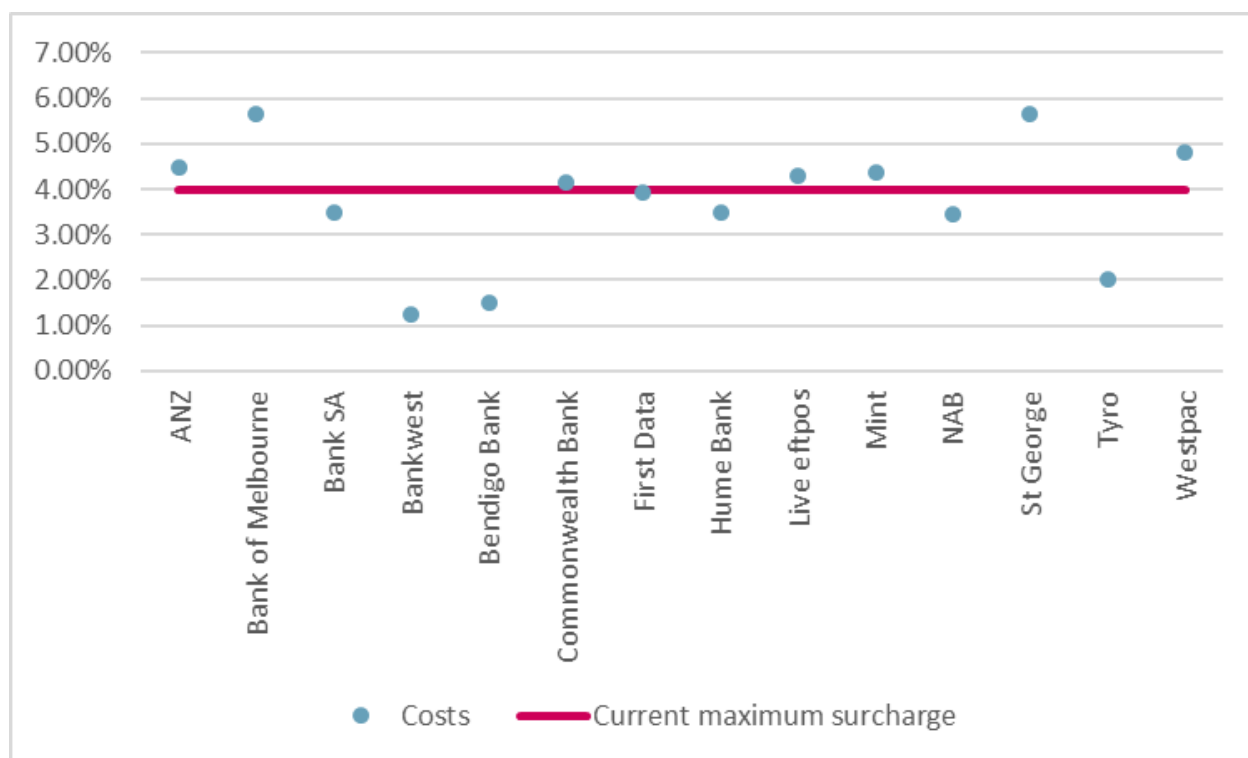
Our benchmarking analysis showed a range in the costs of accepting and processing non-cash payments, which is somewhat similar to our 2019 review. We found that the cost of processing non-cash payments could range from 1.2 per cent to 5.7 per cent, assuming two EFTPOS payment terminals per taxi (which we also assumed in our 2019 review). In our 2019 review, the cost range of accepting and processing non-cash payment was between 1.9 per cent and 3.4 per cent.⁵⁹

The significant decrease in average monthly taxi revenue, between our 2019 review and this review, from around \$4,400 to \$2,300 meant the range in processing costs we benchmarked expanded.

Figure 4.1 shows the range in the cost of processing and accepting non-cash payments for our review, compared to the current maximum non-cash payment surcharge applied in taxis for most payment methods.

⁵⁹ Essential Services Commission, Taxi Non-Cash Payment Surcharge review 2019: Final Decision, March 2020, page 19.

Figure 4.1 EFTPOS offers compared to maximum tax non-cash payment surcharge, two terminal costs



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

We used EFTPOS offers and revenue data to perform our benchmarking review

We used the prices available to small businesses on EFTPOS terminals for our benchmarking analysis as these terminals provide the same service as the terminals currently used by taxi service providers. EFTPOS payment devices can print customer receipts and have mobile connectivity that enable taxis and small businesses to accept payments remotely.

We also considered the prices available for mobile point of sale (mPOS) devices. However, we do not regard these to be suitable benchmarks as they do not provide the same functionality that taxi service providers require from EFTPOS. This is consistent with our approach in our 2019 review. See appendix C for our mPOS results.

As a result, we have used EFTPOS offers across small business industries to estimate a monthly cost for processing payments.

The prices available to small businesses on EFTPOS terminals are comprised of separate fees and charges. These can include monthly fees, merchant service fees, business account fees and card reader fees where applicable. We found that it is common for small businesses to pay fixed monthly fees for payment processing. That is, merchants pay a monthly fee to process a certain

amount of revenue. If this amount is exceeded, then additional charges are applied per transaction above the included monthly value.

We used revenue information and payment terminal numbers we received from payment processors to calculate an average monthly revenue per taxi.⁶⁰ This included the value of payments processed through EFTPOS, Visa, Mastercard, American Express and Diners Club. We used this revenue information to calculate a total monthly average revenue for taxis across 2019–20 and 2020–21. We also calculated an average number of payment terminals for the period.

With the average monthly revenue and the average number of terminals, we calculated the average revenue per terminal. We then multiplied this value by two to account for our assumption that taxi drivers use two payment terminals (as discussed further below). This provided the average monthly revenue per taxi.

By dividing the monthly cost of payment processing by the average monthly revenue per taxi, we calculated the share of monthly revenue needed to be spent on processing non-cash payments. This equation is summarised as:

$$\text{Share of non-cash payment revenue} = \frac{\text{Monthly non-cash payment processing costs}}{\text{Monthly non-cash payment revenue}}$$

Further details on our approach to estimating monthly revenue and assessing EFTPOS offers is provided in appendix C.

Unlike other small businesses, taxis often use multiple terminals

The prices available to small businesses for non-cash payment processing are, in our view, suitable for benchmarking with the taxi payment processing industry. However, there are differences between the two, which we have made adjustments for. The main difference being that unlike many small businesses, taxis often use two or more payment terminals

As a condition of their vehicle registration, all taxis must be fitted with an electronic transaction terminal to process Multi Purpose Taxi Program (MPTP) transactions (see appendix C for further details).⁶¹ This creates a primary terminal that is often provided by the taxi's booking service

⁶⁰ Information gathering notices are issued under section 36 of the Essential Services Commission Act 2001 (Vic). One payment processor's revenue and terminal asset numbers were excluded from our analysis because we found it to be a substantial outlier that was very heavily impacted by the coronavirus pandemic.

⁶¹ Safe Transport Victoria, 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 17 August 2022).

provider. A2B Australia's terminal was previously the only terminals that could process MPTP transactions. However, Oiii terminals now also provide this facility. This effectively positions these payment processors as the primary payment terminal providers for taxis in Victoria.

We understand it is common for taxi drivers to use a secondary payment terminal.⁶² They may do so to access the better terms and incentives (such as control of their cash flow) that may be offered by other taxi payment processors. We have, therefore, adjusted our calculations to account for multiple terminals in our benchmarking analysis.

Multiple terminals mean costs of accepting and process non-cash payments are higher

We received mixed views on the number of payment terminals used per taxi. Some stakeholders disagreed with our two terminal assumption, claiming technology is reducing the need for multiple terminals.⁶³ In contrast, one stakeholder noted an increase in payment options due to technology, which in its view is increasing the number of payment terminals.⁶⁴ Four stakeholders agreed that two payment terminals per taxi represents the taxi industry currently, with there being various views on why this is the case.⁶⁵ We also heard from taxi payment processors directly, who considered it common for taxis to have more than one payment terminal per taxi.⁶⁶

We accept that multiple terminals are used in most taxis, and it is therefore reasonable to account for this in our benchmarking approach. This assumption is consistent with our 2019 review.

As a result of multiple terminals being used in each taxi, fewer transactions are processed per terminal, which increases the costs of accepting and processing non-cash payments as costs are being recovered through a smaller amount of transactions. Our benchmarking analysis showed that if one EFTPOS payment terminal per taxi was assumed instead of two, the costs of accepting and processing non-cash payments could range from 1.20 per cent to 3.07 per cent. The range would, therefore, be less than the 1.23 per cent to 5.67 per cent range that resulted with the assumption that two EFTPOS payment terminals were used. Ultimately, therefore, processing all payments through one payment terminal per taxi would be the lowest cost option.

Figure 4.2 illustrates the cost difference between one and two payment terminals processing the average monthly revenue for taxis.

⁶² Essential Services Commission, Taxi Non-Cash Payment Surcharge review 2019: Final Decision, March 2020 p. 20; see also feedback received as part of this review, summarised below.

⁶³ Michael Telleson received 22 June 2022, Felicity Crombach received 23 June 2022, Visa received 22 July 2022, Annabel Richards received 24 June 2022.

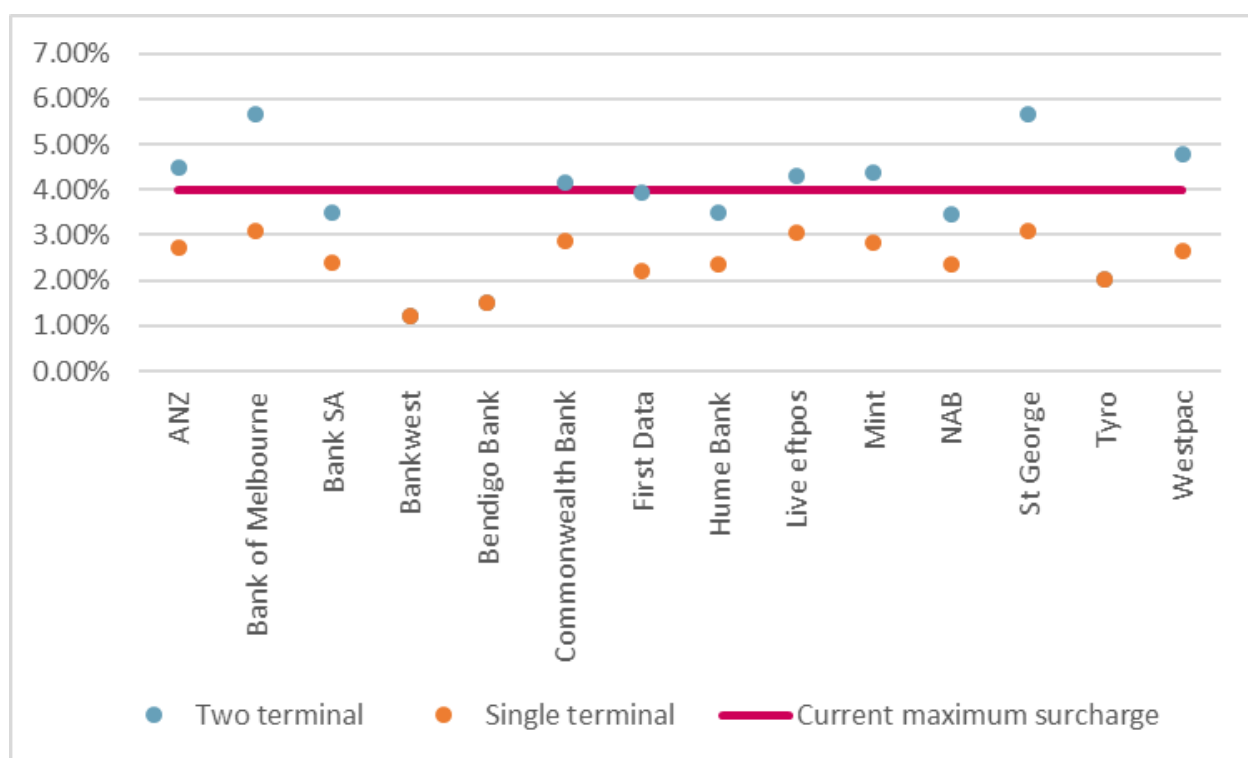
⁶⁴ A2B Australia received 2 August 2022.

⁶⁵ Anonymous 1 received 22 June 2022, Anonymous 2 received 22 June 2022, Consumer Action Law Centre received 18 July 2022, A2B Australia received 2 August 2022.

⁶⁶ We held meetings with the A2B Australia, Cabfare, GM Cabs, Ingogo and Live Taxi in June 2022..

4. Benchmarking analysis

Figure 4.2 EFTPOS costs of processing average monthly tax revenue - single and two payment terminals



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

Multiple terminals might not be an appropriate assumption in the future

While we have continued to assume two terminals for this review, it may not be appropriate to do so in the future. Unlike in the past, a second taxi payment processor, Oiii, now facilitates MPTP transactions. It is also possible that other taxi payment processors may do so in the future. This could increase competition between taxi payment processors and reduce the need for both a primary (that processes MPTP transactions) and secondary payment terminal in taxis.

In performing our benchmarking analysis in future reviews, we may revisit the reasonableness of any assumption, to ensure the methodology is appropriate for informing a decision that allows the recovery of reasonable costs. We may reconsider the need for our two terminal assumption in future reviews as it may no longer be reasonable or appropriate.

There are no relevant benchmarks for taxi specific payment instruments

We did not identify any benchmark services that are directly comparable to taxi specific payment instruments (like Cabcharge payment instruments). Cabcharge payment instruments provide a service like charge cards such as American Express and Diners Club, but they also provide account holders with additional services.

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 those reasons, our estimate of the reasonable costs for accepting and processing non-cash payments using Cabcharge payment instruments is based mainly on our bottom-up cost assessment from our 2019 review.

Appendix A: The non-cash payment supply chain

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

Non-cash payment products

Non-cash payment products 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 products:

- the payment instruments consumers use, like 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 2010 and 2019 the proportion of non-cash payments of all transactions in Australia increased from 38 per cent to 70 per cent.⁶⁷

Payment instruments

There are three types of non-cash payment products:

- Payment cards – credit cards, charge cards, debit cards, store cards, prepaid cards.
- Paper products – personal cheques, bank cheques, travellers' cheques, and money orders.
- Electronic products – direct debit, direct credit, BPAY, POSTbillpay, New Payments Platform, Real Time Gross Settlements.

A payment product can be comprised of a payment method, a payment interface, or a combination of the two. For example, a mobile wallet (payment interface) can be combined with many payment products (credit card, debit card or new payments platform). While payment cards are now the most used payment product on mobile wallets, this may not be the case into the future (a mobile wallet could utilise the new payments platform to perform an account-to-account two party payment).

⁶⁷ RBA (2019), Consumer Payment Behaviour in Australia: Evidence from the 2019 Consumer Payments Survey, Research Discussion Paper 2020-06, June, p.3.

The most used form of non-cash payment in Australia is payment cards. In 2019, credit and debit card payments made up 63 per cent of all payments.⁶⁸ Some of the most 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, such as online transactions.

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 networks are accessed most by payment cards.

A cash transaction involves two parties, non-cash payments usually involve at least three parties, and sometimes can involve more. These additional parties are known as payment intermediaries, and their role is primarily to undertake payment authorisation and payment clearing, and to provide settlement.

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

Key players

There are five main groups of participants in the payments card network.⁶⁹ 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

⁶⁸ RBA (2019), Consumer Payment Behaviour in Australia: Evidence from the 2019 Consumer Payments Survey, Research Discussion Paper 2020-06, June, p.3.

⁶⁹ RBA (2005), Review of RBA and Payment Systems Board Annual Reports 2005 (First Report), June, p.25.

- **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

There are two main stages of the payment process:

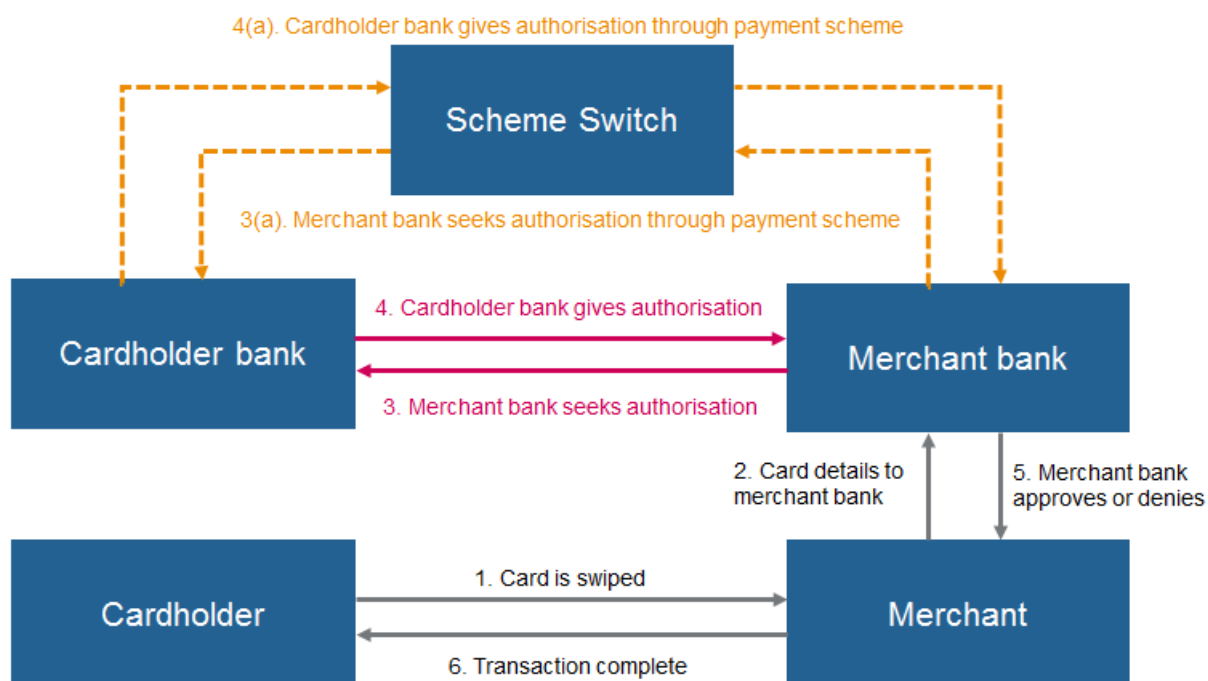
- clearing (information flow), the process of transmitting, reconciling and, in some cases, confirming transfer orders prior to settlement.
- settlement (money flow), the completion of a transaction with the aim of discharging participants’ obligations through the transfer of funds.

Figures A.1, A.2 and A.3 in this appendix describe the clearing (information flow) and associated payment fees.

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 describes the flow of information in a typical four-party scheme transaction.

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



Notes:

1. Card is swiped through the payment terminal.
2. Transaction and cardholder details are sent to the merchant's bank. If the merchant's bank is also the cardholder's bank the transaction can be authorised internally and the authorisation returned to the merchant (Step 5).
3. 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 the 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: House of Representatives, Standing Committee on Economics, Finance and Public Administration (2006), Review of RBA and Payment Systems Board Annual Reports 2005 (First Report), June, p.26.

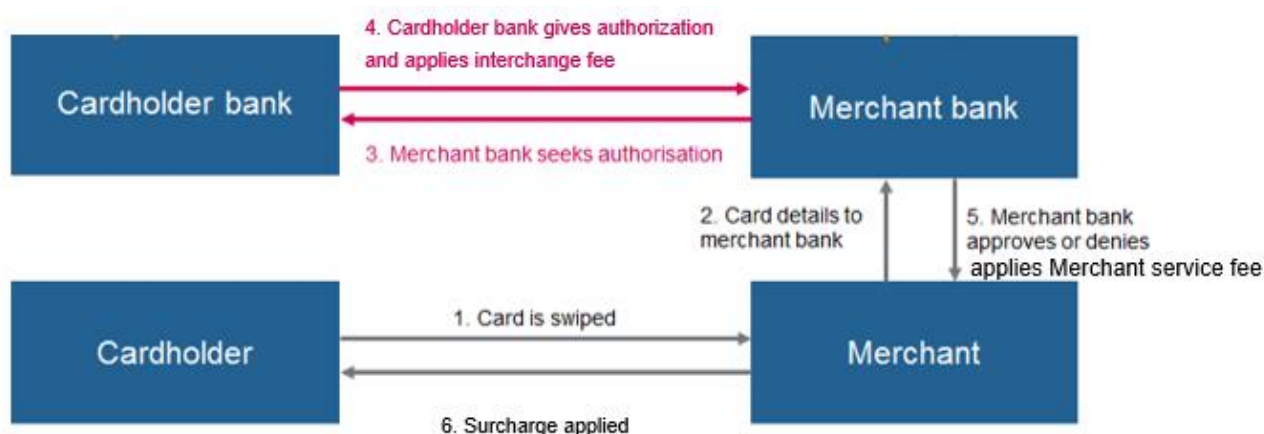
Fees paid in a four-party scheme transaction generally include an interchange fee, a merchant service fee, and a surcharge.

- 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. 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.

Figure A.2 shows the four-party scheme transaction including a surcharge, a merchant service fee and interchange fees between the four parties.

Figure A.2: Four party scheme transaction surcharge and fee model

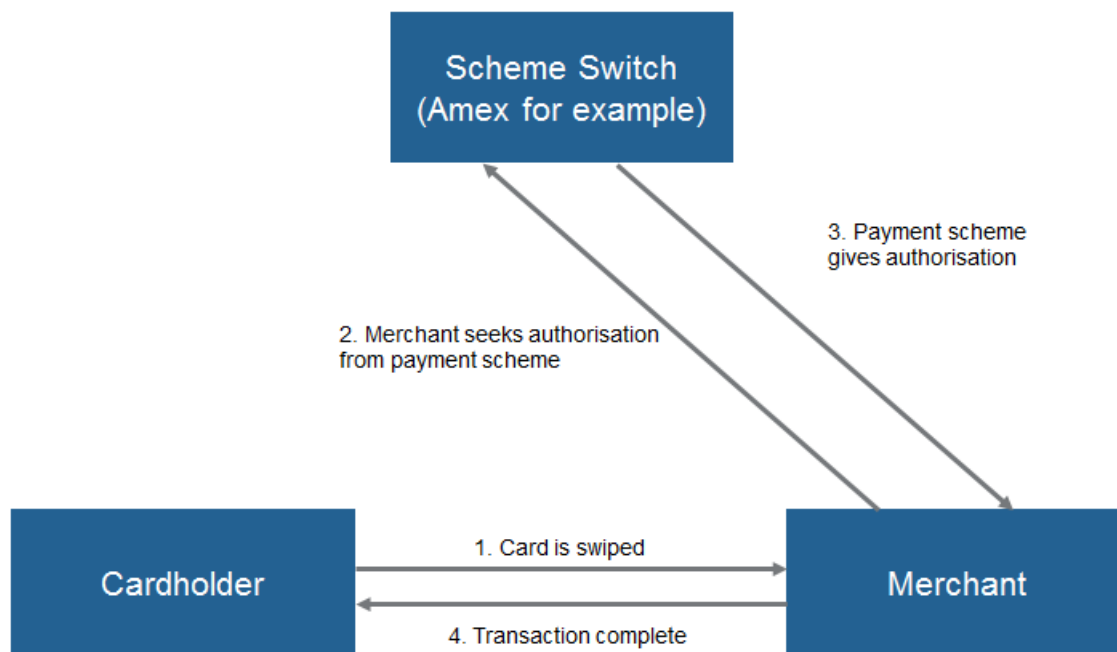


Flow of information and relevant charges: three-party scheme

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 around eight per cent of the number of all card transactions in 2022.⁷⁰ Figure A.3 shows a typical three-party scheme transaction.

⁷⁰ RBA, Payments Data, C1.3: Credit and Charge Cards – Market Share of Card Schemes, available at: <https://www.rba.gov.au/payments-and-infrastructure/resources/payments-data.html> (last accessed 13 August 2022)

Figure A.3: Information flow for three-party scheme transaction



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.

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.⁷¹ 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.⁷²

⁷¹ RBA (2021), Review of Card Payments Regulation Conclusions Paper, October 2021, p.12.

⁷² RBA (2021), Review of Card Payments Regulation Conclusions Paper, October 2021, p.47.

Non-cash payments in the taxi payments industry

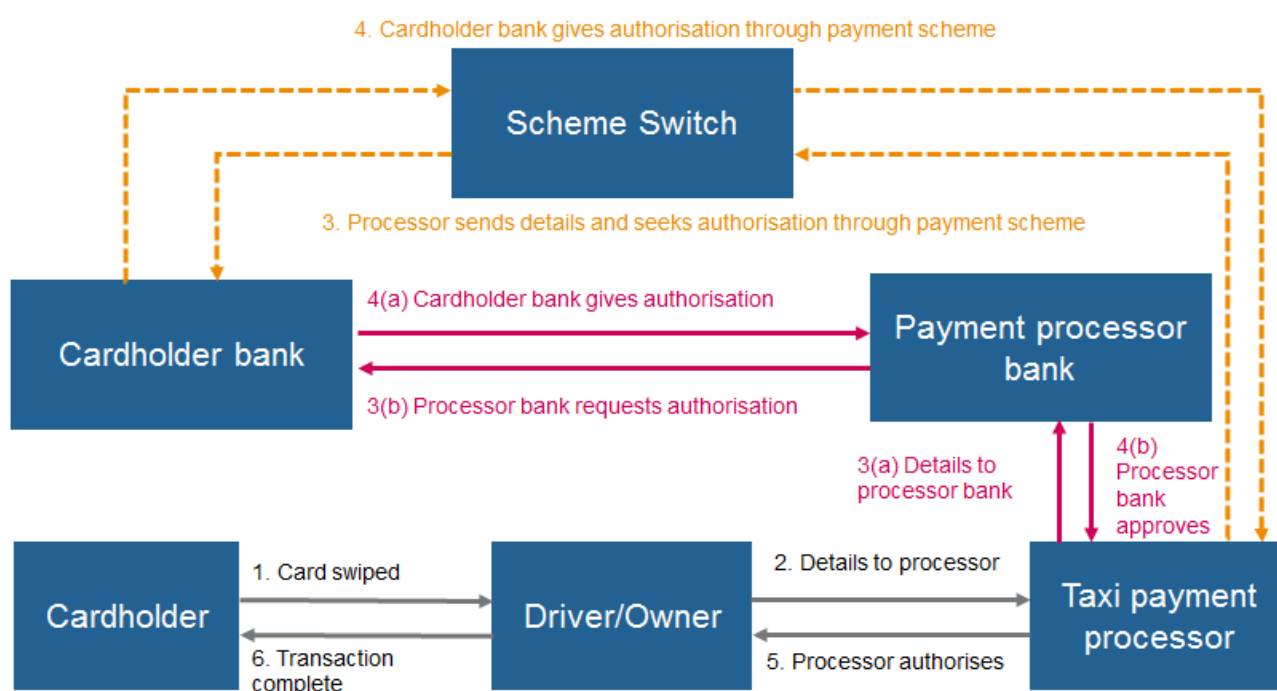
Payment instrument cards

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 larger market share of non-cash payments in the Victorian taxi payments industry. This is due to the widespread use of commercial passenger vehicle specific payment instruments (such as Cabcharge).

Four-party schemes

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 (see figure A.4). 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.

Figure A.4: 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 four or six per cent may be collected from cardholders depending on the payment instrument used.

Cabcharge

Cabcharge is a three-party scheme similar to that shown in figure A.3. As an issuer, A2B Australia has a relationship with Cabcharge account holders. It issues Cabcharge cards to account holders and can charge them a maximum surcharge of six per cent on all payments made 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 previously that taxi payment processors provide a unique service, and therefore 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 similar services to taxi payment processors, at lower cost. For example, Square charges 1.9 per cent per transaction for card-present transactions and 2.2 per cent for card on file or manual transactions.⁷³

Benefits of non-cash payments in taxis

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

- increased security and confidentiality for consumers including fraud alert functions⁷⁴
- assisting the taxi industry to participate in a highly digital 'new normal'⁷⁵
- reducing administrative burden of cash payments.⁷⁶

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.⁷⁷ 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, Oiii, Ingogo and

⁷³ Square Pricing 2022, available at: <https://squareup.com/au/pricing> (last accessed 13 August 2022)

⁷⁴ Visa, submission received 22 July 2022.

⁷⁵ Visa, submission received 22 July 2022.

⁷⁶ Visa, submission received 22 July 2022.

⁷⁷ Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p. 208.

others. A2B Australia continues to be the largest provider of taxi non-cash payment transaction services.

A2B Australia's competitors provide mobile payment terminals to taxi drivers. To steer payments to their payment devices, taxi payment processors may provide drivers different forms of incentives to encourage use of their payment terminals. Some taxi payment processors offer drivers incentives such as commissions⁷⁸ or redeemable credits.⁷⁹

Another key benefit for many taxi drivers of using a payment terminal provided by a secondary payment processor is cashflow control. If a driver uses the payment terminal provided by their booking service provider, their booking service provider 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 to pay their booking service provider or operator.

While there are a number of taxi payment processors competing to process payment methods in general use throughout the economy, most of A2B Australia's competitors cannot accept Cabcharge or process Multi Purpose Taxi Program (MPTP) transactions. Cabcharge is a form of payment for business and government travellers, and under state government regulation, taxis are required to have a terminal that can process MPTP subsidies.⁸⁰

Oiii now provides taxi services to MPTP customers through their own technology, meaning MPTP customers have an option to use an Oiii vehicle and an A2B vehicle.⁸¹

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.

⁷⁸ <https://www.ingogo.com.au/driver> (accessed on 27 July 2022).

⁷⁹ <https://gmcabs.com.au/drivers/> (accessed on 27 July 2022).

⁸⁰ Safe Transport Victoria, 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#> (accessed 27 July 2022).

⁸¹ Safe Transport Victoria, Multi Purpose Taxi Program, available at: <https://cpv.vic.gov.au/passengers/mptp> (last accessed on 27 July 2022).

Table A.1 Non-cash payment surcharges in 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 | | |
| Singapore | | | | | X |
| United Kingdom | X | | | | |
| Boston | X | | | | |
| Chicago | X | | | | |
| Las Vegas | | X | | | |
| New York | X | | | | |
| San Francisco | X | | | | |
| Quebec | X | | | | |

Sources: Australian Capital Territory,⁸² New South Wales,⁸³ Queensland,⁸⁴ Northern Territory,⁸⁵ South Australia,⁸⁶ Tasmania,⁸⁷ Western Australia,⁸⁸ Singapore,⁸⁹ United Kingdom,⁹⁰ Boston,⁹¹ Chicago,⁹² Las Vegas,⁹³ New York,⁹⁴ San Francisco,⁹⁵ Quebec⁹⁶

⁸² <https://www.canberratimes.com.au/story/6045011/canberra-taxi-surcharges-to-be-capped-to-curb-exorbitant-card-fees/> (last accessed 13 August 2022)

⁸³ <https://transportnsw.info/travel-info/ways-to-get-around/taxi-hire-vehicle/pre-paid-taxi-fares#:~:text=A%20maximum%205%25%20surcharge%20may,paying%20by%20card%20or%20Cabcharge.&text=If%20a%20taxi%20driver%20requests,will%20estimate%20the%20likely%20fare.> (last accessed 13 August 2022)

⁸⁴ <https://www.qld.gov.au/transport/public/operators/information-for-passengers/passenger-rights-and-fares/taxi-service-standards#:~:text=Credit%20card%20transaction%20surcharge%20is,as%20of%201%20July%202022> (last accessed 13 August 2022)

⁸⁵ <https://nt.gov.au/driving/industry/taxi-areas-meters-and-fares#:~:text=Taxi%20drivers%20may%20add%20a,a%20debit%20or%20credit%20card> (last accessed 13 August 2022)

⁸⁶ <https://www.sa.gov.au/topics/driving-and-transport/industry-services/taxi-and-passenger-transport/taxis#:~:text=Payment%20options,by%20debit%20or%20credit%20card> (last accessed 13 August 2022)

Mandatory acceptance of non-cash payments

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

- London⁹⁷
- Barcelona⁹⁸
- France⁹⁹
- European Union¹⁰⁰
- Madrid¹⁰¹
- Boston¹⁰²
- Chicago¹⁰³

⁸⁷https://www.transport.tas.gov.au/public_transport/taxis_and_ride_sourcing/calculating_your_fare/accordion/what_other_fees_and_charges_apply_to_taxis (last accessed 13 August 2022)

⁸⁸ <https://www.transport.wa.gov.au/On-demandTransport/on-demand-rank-or-hail-taxi-fares.asp> (last accessed 13 August 2022)

⁸⁹ <https://www.cdgtaxi.com.sg/ride-with-us/fares/#:-:text=A%2010%25%20administrative%20charge%20on%20top%20of%20the%20total%20taxi,chargeable%20on%20the%20administrative%20charge> (last accessed 13 August 2022)

⁹⁰ <https://tfl.gov.uk/modes/taxis-and-minicabs/taxi-fares?intcmp=4223> (last accessed 13 August 2022)

⁹¹ http://archive.boston.com/news/local/massachusetts/articles/2011/05/16/credit_card_use_frustrates_cabdrivers/#:-:text=Drivers%20absorb%20a%205%20or,which%20card%20payments%20are%20deposited (last accessed 13 August 2022)

⁹² https://311.chicago.gov/s/article/Paying-for-a-cab-with-a-credit-or-debit-card-brochure?language=en_US (last accessed 13 August 2022)

⁹³ https://taxi.nv.gov/Rider_Info/Approximate_Fare_Information/ (last accessed 13 August 2022)

⁹⁴ <https://www1.nyc.gov/site/tlc/passengers/taxi-fare.page> (last accessed 13 August 2022)

⁹⁵ <https://www.sfmta.com/getting-around/taxi/taxi-fares> (last accessed 13 August 2022)

⁹⁶ <https://www.opc.gouv.qc.ca/en/consumer/topic/price-discount/advertised-price/debit-card/> (last accessed 13 August 2022)

⁹⁷ <https://tfl.gov.uk/info-for/taxis-and-private-hire/accepting-card-payments> (last accessed 13 August 2022).

⁹⁸ <http://taxi.amb.cat/s/en/usuari/formes-de-pagament.html> (last accessed 13 August 2022).

⁹⁹ <https://www.service-public.fr/professionnels-entreprises/vosdroits/F22127> (last accessed 13 August 2022).

¹⁰⁰ https://europa.eu/youreurope/business/finance-funding/making-receiving-payments/electronic-cash-payments/index_en.htm (last accessed 13 August 2022)

¹⁰¹ <https://www.madrid.es/portales/munimadrid/es/Inicio/Movilidad-y-transportes/Taxi/?vgnextfmt=default&vgnextoid=4813dc0bffa41110VgnVCM1000000b205a0aRCRD&vgnnextchannel=220e31d3b28fe410VgnVCM1000000b205a0aRCRD&idCapitulo=10558389> (last accessed 13 August 2022).

¹⁰² https://www.cityofboston.gov/news/uploads/6033_4_24_27.pdf (last accessed 13 August 2022).

- New York¹⁰⁴
- Saskatoon¹⁰⁵
- Seoul¹⁰⁶.

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:

- 1) acceptance of non-cash payments is mandatory and non-cash payment surcharging is not allowed
- 2) 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 taxi fares were paid by credit card from 2016 to 2018.¹⁰⁷ 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 2015.¹⁰⁸

¹⁰³ <https://www.chicago.gov/content/dam/city/depts/bacp/publicvehicleinfo/medallionowners/approvecreditcardprocessingequipmenttaxi03142014.pdf> (last accessed 13 August 2022).

¹⁰⁴ <https://www1.nyc.gov/site/tlc/passengers/passenger-frequently-asked-questions.page> (last accessed 13 August 2022).

¹⁰⁵ <https://www.saskatoon.ca/sites/default/files/documents/9070.pdf> (last accessed 13 August 2022).

¹⁰⁶ <https://www.legco.gov.hk/research-publications/english/1415in13-taxi-service-in-selected-places-20150612-e.pdf> (last accessed 13 August 2022).

¹⁰⁷ https://www1.nyc.gov/assets/tlc/downloads/pdf/2018_tlc_factbook.pdf (last accessed 13 August 2022).

¹⁰⁸ <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/9916> (last accessed 13 August 2022).

Appendix B: Our bottom-up cost assessment

We used a bottom-up cost assessment to frame our decision for this review. With the exception of A2B Australia, we conducted a single bottom-up assessment of taxi payment processors costs and methods of processing non-cash payments. For A2B Australia, we separately examined the costs for:

- all payment methods, except Cabcharge payment instruments
- Cabcharge payment instruments.

Our bottom cost assessment was heavily impacted by the coronavirus pandemic

We observed a significant decrease in taxi payment processors' revenue and costs during the 2019–20 and 2020–21 period. Based on the information we received, we observed a 69 per cent reduction in taxi payment processors' revenue and a 43 per cent reduction in their costs during the reporting period.¹⁰⁹

The level of taxi payment processors' assets also decreased during this period. We heard that this was due to either taxi drivers returning their payment terminals or taxi payment processors retrieving them to preserve their business.¹¹⁰

The significant changes we observed in much of the data collected for the 2019–20 and 2020–21 period was likely due to the impacts of the coronavirus pandemic. Our analysis of reasonable costs showed a range of implied surcharges for the years 2019–20 and 2020–21 (see table B.1).

Table B.1: Range of implied surcharges observed over the reporting period

| Implied surcharge type | 2019–20 | 2020–21 |
|---|-------------|--------------|
| All card types except Cabcharge (including GST) | 3.3% – 4.8% | 5.2% – 11.9% |

This range of implied surcharges is much higher than our previous review, especially for the year 2020–21. We consider that these implied surcharges do not reliably reflect the reasonable costs of processing non-cash payment transactions. Our previous review suggested that the cost of

¹⁰⁹ One payment processor's revenue, costs and terminal asset numbers were excluded from our analysis because we found it to be a substantial outlier that was very heavily impacted by the coronavirus pandemic.

¹¹⁰ We held meetings with the A2B Australia, Cabfare, GM Cabs, Ingogo, and Live Taxi in June 2022.

accepting, and processing non-cash payments ranged between 3.5 per cent and 3.9 per cent for most payment methods. We consider this as likely to be a reasonably reliable guide to likely future costs.

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 3.

Operating expenditure

Operating expenditure averaged around 49 and 78 per cent of taxi payment processors' total regulatory costs for the two years 2019–20 and 2020–21, respectively.

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 3 and 38 per cent of the total regulatory costs for the two years 2019–20 and 2020–21, respectively.

Wages

Wages or employee costs are another key cost item for taxi payment processors. They account for about 14 to 61 per cent of total regulatory costs for the two years 2019–20 and 2020–21, respectively. 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.

For taxi payment processors that clearly separated these costs from their other costs, they accounted for around two to 10 per cent of total regulatory costs for the two years 2019–20 and 2020–21, respectively.

Fraud and fraud prevention

Payment processors' fraud related costs include the costs associated with preventing fraud and chargebacks. Fraud costs account for, on average, about two per cent of processors' regulatory costs for the two years 2019–20 and 2020–21, respectively.

There are different types of fraud associated with using cards but previously taxi payment processors suggested that chargebacks are the most common in taxis.¹¹¹ A chargeback happens when a passenger contests or denies the fare or the trip.¹¹² The fare may be reversed, and the passenger may 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.

Administration, office rental, marketing, and advertising

Taxi payment processors identified other operating costs necessary for processing non-cash payments in taxis. These include administration expenses, office and warehouse rental and marketing and advertising expenses. These costs account for up to 18 per cent of the total regulatory costs for the two years 2019–20 and 2020–21 respectively.

Return of capital (depreciation)

We included an allowance for taxi payment processors to recover the purchase price of their non-cash payment assets. Depreciation costs for taxi payment processors accounted for up to 16 per cent of their total regulatory costs for the two years 2019–20 and 2020–21 respectively.

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:

1. **payment equipment:** which includes payment terminals and associated assets and
2. **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.

Return on capital

The return on capital accounted for up to 11 per cent of taxi payment processors' total regulatory costs for the two years, 2019–20 and 2020–21. This is low compared to most other regulated

¹¹¹ 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 (https://www.merchants.cabcharge.com.au/_files/ugd/d826de_70762cda2e784615b9249397771ba7d1.pdf).

¹¹² Cabcharge, Fraud protection training. (Source: https://www.merchants.cabcharge.com.au/_files/ugd/d826de_70762cda2e784615b9249397771ba7d1.pdf)

industries as taxi payments processing is less capital intensive than other regulated industries (for example, water or electricity networks).

Using available information for A2B Australia and information from our previous decision, we have applied a standard weighted-average cost of capital framework to derive an estimate of 14.7 per cent (pre-tax, nominal) at the current time. This estimate is derived from:

- A risk free rate of 3.8 per cent, based on 10-year Commonwealth Government securities
- A market risk premium of 6.5 per cent
- An equity beta of between 0.95 and 1.56, with the range depending on whether it is calculated on a weekly or monthly basis
- 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 2.93 per cent, based on BBB rated bonds.

Combining these inputs produces a pre-tax WACC of between 12.4 and 17.1 per cent. We adopted the midpoint of these estimates 14.7 per cent to calculate the return on capital building block for our bottom-up cost assessment of taxi payment processors.

As in 2019 review, we estimated A2B Australia's beta directly from market information. We again note that this not a common regulatory approach, but we adopted it for two reasons:

- To best meet our legislative requirement of allowing taxi payment processors to recover the reasonable costs of processing non-cash payments.
- Using a comparator set consisting of benchmark firms would be small and the extent of additional statistical precision gained in using a comparator approach would be unclear.

In this case, it was more appropriate in our view, to use the actual historic returns and estimated beta for A2B Australia. We consider this approach and methodology best meets our legislative objectives.

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 0.95 and 1.55. We note this range is considerably wider and higher than the range we estimated in 2019. The primary reason for this higher estimate is the impact of the coronavirus pandemic, which produced considerably higher results in certain months in 2020, particularly in estimations that used monthly data. This larger estimates for monthly data are likely to be evidence of small daily and weekly trading volumes, which would make these estimates less reliable. We therefore preferred weekly and monthly estimates that consider a longer (10 year) period for estimation.

We performed a separate bottom-up cost assessment for Cabcharge

A2B Australia issues its own payment instrument: Cabcharge. Historically, A2B Australia has recovered the costs of issuing this payment instrument primarily via surcharges¹¹³ 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 the treatment of taxi specific payment instruments from our 2019 review remained sufficient and appropriate. We have performed the same assessment in this review.

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

We removed costs that are not reasonable costs

Some of the costs submitted to us by taxi payment processors were not associated with processing non-cash payments. Where possible, we removed these from our bottom-up cost analysis. However, it was not possible to exclude all these costs given the nature of the records that taxi payment processors' keep. We used the same approach to removing costs not related to the cost of accepting and processing non-cash payments that we used in our 2019 review.¹¹⁴

Commissions paid to drivers

Some taxi payment processors provide commissions or rebates to drivers around 1.25 per cent of transactions.¹¹⁵ Commissions are provided to attract more drivers 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.

¹¹³ A2B Australia describes these as service fees.

¹¹⁴ Essential Services Commission, Taxi Non-Cash Payment Surcharge review 2019: Final Decision, March 2020, pp. 45-58.

¹¹⁵ <https://www.ingogo.com.au/driver> (accessed on 23 August 2022).

Incentives provided to drivers

Some taxi payment processors also provide other incentives to drivers such as food vouchers, fuel discounts, refuelling stations, driver lounges, car wash facilities, and taxi meters. These incentives are effectively the same as commissions paid to drivers. These are not reasonable costs of processing non-cash payments.

Fees paid to booking service providers

We did not include in our bottom-up cost assessment, an allowance for fees paid to booking service providers (BSPs) and agents. However, we included an allowance for the cost of terminal installation costs as we consider this to be a reasonable cost of processing non-cash payments.

Taxi meter and dispatch function costs

We removed taxi meter and dispatch function costs from our bottom-up cost assessment. Taxi drivers, operators and booking service providers should be compensated for the costs of these functions through taxi fares.

Cashing booths, driver centres and lounges

Some taxi payment processors also provide services which allow drivers to withdraw their non-cash payment takings immediately, in cash. This is so they do not need to wait until the next business day to receive their funds in their bank account. Taxi payment processors sometimes charge drivers a fee for these expedited withdrawals.

We removed 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 our 2019 review, we noted some taxi payment processors used cashing centres and lounges for driver sign ups and queries.¹¹⁶ We observed similar costs reported to us in this review. We continue to consider these administration costs as reasonable costs of accepting and processing non-cash payments, but cashing receipts are 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. Where those facilities were only used to provide cash for fares through terminals and account work, we removed all of the costs associated with cashing centres. However, we were not able to make similar adjustments for payment processors who do not separately record these costs. This means that in those cases

¹¹⁶ Essential Services Commission, Taxi Non-Cash Payment Surcharge review 2019: Final Decision, March 2020, pages 56-57.

all costs associated with the relevant payment processors' centres and lounges have been included in our bottom-up cost assessment.

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.

Technology refresh costs

We have removed specific technology refresh costs where appropriate. We acknowledge that asset costs are covered via return on capital, and depreciation.

We heard from some taxi payment processors that they needed an allowance for technology refresh costs.¹¹⁷ They claimed they were given short notice of the network changes. They also noted large costs they incurred over a short period of time, as a result of past upgrades to their terminals.

Taxi payment processors had reasonable notice of the shutdown of cellular networks to plan how best to manage their assets. As cellular network shutdowns happen every five or six years (roughly twice the length of the average lifecycle of payment terminals), we consider that taxi payment processors have adequate time to plan and execute the renewal of technology to adjust for the planned shutdown of cellular networks.

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.

¹¹⁷ We held meetings with the A2B Australia, Cabfare, GM Cabs, Ingogo, and Live Taxi in June 2022.

We also note that Telstra has announced that it will close its 3G network in June 2024.¹¹⁸

The accounting life of an EFTPOS terminal is typically three years. As a result, the current terminal fleet will have been fully depreciated by June 2024 (when the 3G network closes). In addition, 4G terminals have been available for some time, so it is feasible the vast majority of terminals will have been lifecycle replaced with 4G capable units by June 2024.

Revenue from non-regulated services

Most payment processors were able to isolate their unregulated revenue streams in the information requests. Where possible, we removed unregulated revenue from the revenue included in our cost assessment. In some cases, taxi payment processors did not provide cost information for unregulated services that are included in their costs, but included the revenues associated with those services. Where this was the case, we subtracted those revenues from their total costs. If we were to include the costs without subtracting the associated revenues taxi payment processors would be compensated for unregulated services through the surcharge as well as through the unregulated revenue stream.

Tax

We used a pre-tax weighted average cost of capital when determining the return on capital for payment processors. This means we did not need to include a separate amount for tax in the revenue requirement.

¹¹⁸ Telstra, Plan your migration roll out now. 3G network shutdown is June 2024, available at: <https://www.telstra.com.au/business-enterprise/support/3g-service-closure> (last accessed 17 August 2022).

Appendix C: Our benchmarking assessment

In our consultation paper for this review, we said we would use a similar benchmarking methodology to that was adopted in our 2019 review, 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 of processing non-cash payments. 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 (except for Cabcharge payment instruments) the same kinds of payment instruments are used in taxis as for other small businesses. For example, the need for mobile connectivity within the payment terminal to process payments remotely is needed for both taxis and 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 taxi merchants. We have used those costs as our benchmarks.

Our benchmarking does not include the costs of issuing payment instruments.

Our analysis shows that the benchmarking range covers the current maximum surcharge rate when the benchmarking is adjusted to consider matters specific to accepting and processing non-cash payments for taxis. This suggests that the current maximum surcharge is still largely comparable between the taxi industry and other industries. To promote efficiency and to ensure that persons facilitating the making of non-cash payment transactions are able to recover reasonable costs, we compared the costs in industries other than the taxi industry and found the surcharge could range from 1.2 per cent to 5.7 per cent.

We estimated benchmarks for EFTPOS and mobile point of sale (mPOS) terminals generally available to small businesses. 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. Some mPOS terminals cannot automatically calculate surcharges and some cannot

print receipts, but these features are important in the taxi industry.¹¹⁹ We consider the costs of EFTPOS terminals to be more comparable to the terminals used in the taxi payments industry, and so have used them for our benchmarks.

All payment terminals included in our benchmarks have 3G mobile connectivity and could be used in a taxi.

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 covered in our benchmarking range

Our benchmarking indicates that the reasonable cost of processing non-cash payments for taxis could range from 1.2 per cent to 5.7 per cent.

Our benchmark charges include the supply of multiple terminals. In our 2019 review, we had discussions with drivers, booking service providers and taxi payment processors, and 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 Multi Purpose Taxi Program (MPTP) subsidies.¹²⁰ These primary terminals are provided by the taxi's booking service provider. 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 may have a secondary terminal as a backup in case there is some problem with the primary terminal. Some drivers also choose to use a secondary terminal so they can control their cash flows. Taxi booking service providers 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 a benchmark for 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

¹¹⁹ NAB mPOS fact sheet, available at: <https://www.nab.com.au/content/dam/nabrwd/documents/guides/payment-and-merchants/nab-mpos-fact-sheet.pdf> (last accessed 23 August 2022).

¹²⁰ Safe Transport Victoria, 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 13 August 2022).

of mPOS terminals do not allow automatic surcharging.¹²¹ 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 increases the costs of the taxi payments industry. If we allowed for a single terminal in our benchmarking, then the benchmark costs overall would be 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 an average surcharge of 2.4 per cent compared to an average surcharge of 3.8 per cent needed for multiple terminals.

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 (Vic), 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 a potential consequence might be to limit taxi drivers to using only the terminals provided by their booking service providers, which by default would be a terminal capable of processing MPTP subsidies. Taxis must have a payment terminal that can process MPTP subsidies under their registration conditions.¹²² A2B Australia provides MPTP enabled payment terminals to most taxis in Victoria.

As mentioned in chapter 4, we are aware that more than two payment 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, smartphones 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.

Our benchmarking is based on actual monthly turnover per terminal as provided by taxi payment processors. This means that 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

¹²¹ NAB mPOS fact sheet, available at: <https://www.nab.com.au/content/dam/nabrwd/documents/guides/payment-and-merchants/nab-mpos-fact-sheet.pdf> (last accessed 23 August 2022).

¹²² Safe Transport Victoria, 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 13 August 2022).

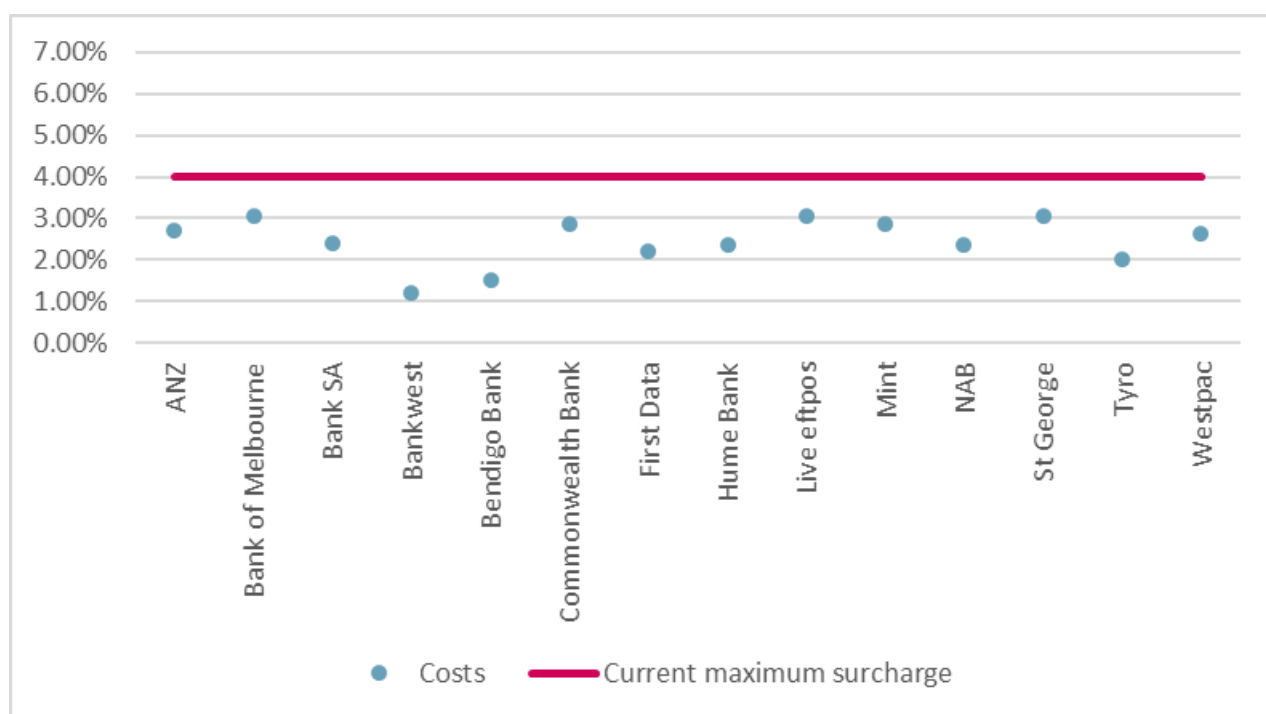
be higher which would reduce the implied surcharge for our single terminal benchmarking (see figure C.1).

The current maximum surcharge is broadly comparable to multiple payment terminal EFTPOS costs

Our analysis shows that, if there is one EFTPOS terminal per taxi, the cost of processing non-cash payments (for a small business processing \$2,294 a month) ranges from 1.20 to 3.07 per cent. If there are multiple terminals per taxi costs range from 1.23 to 5.67 per cent.

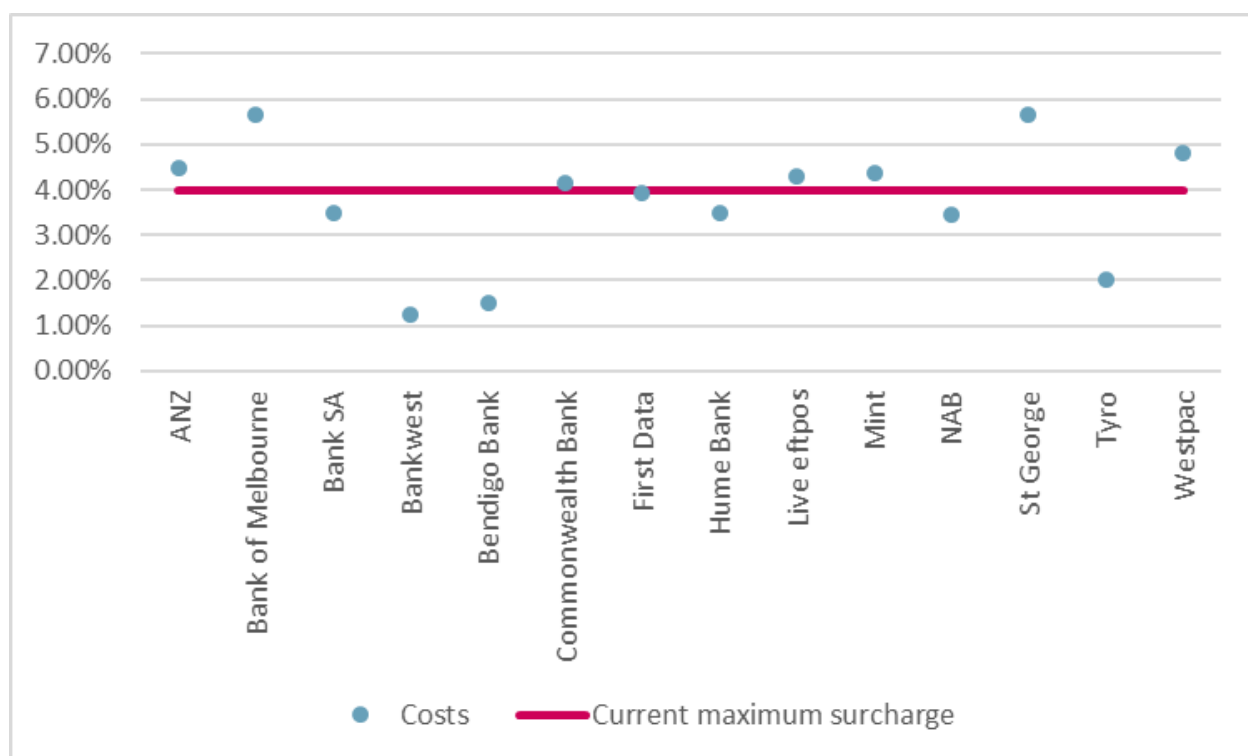
Figures C.1 and C.2 show a comparison of the current maximum surcharge and offers for EFTPOS terminals available to small businesses assuming one and multiple terminals per taxi, respectively.

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



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

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



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

The current maximum surcharge is higher compared to mPOS costs

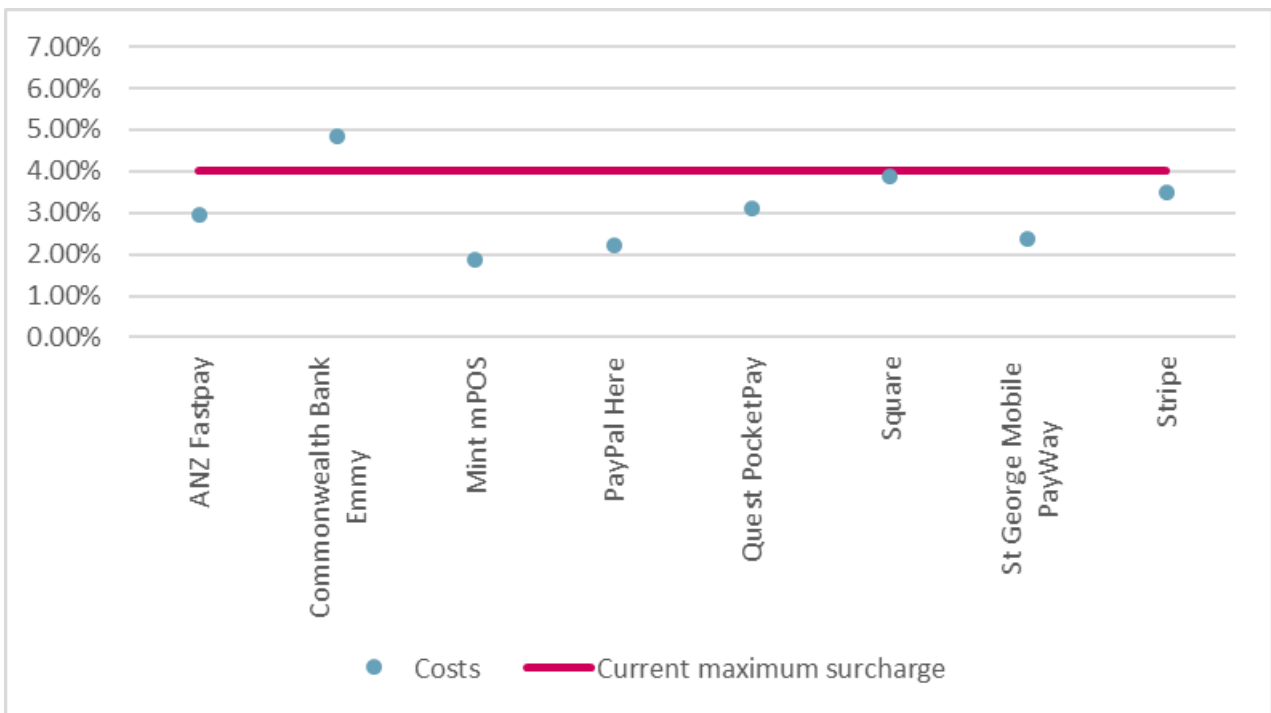
A mobile point-of-sale (mPOS) terminal is a card reader which connects to a smartphone or tablet to process non-cash payments. The merchant downloads an app on their smartphone or tablet, which may be used to manage transactions and receipts. The merchant may also send receipts via email or SMS or print 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 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 small business processing \$2,294 a month) ranges from 1.86 per cent to 4.86 per cent. If there are multiple terminals per taxi, the cost ranges from 1.86 per cent to 4.32 per cent.

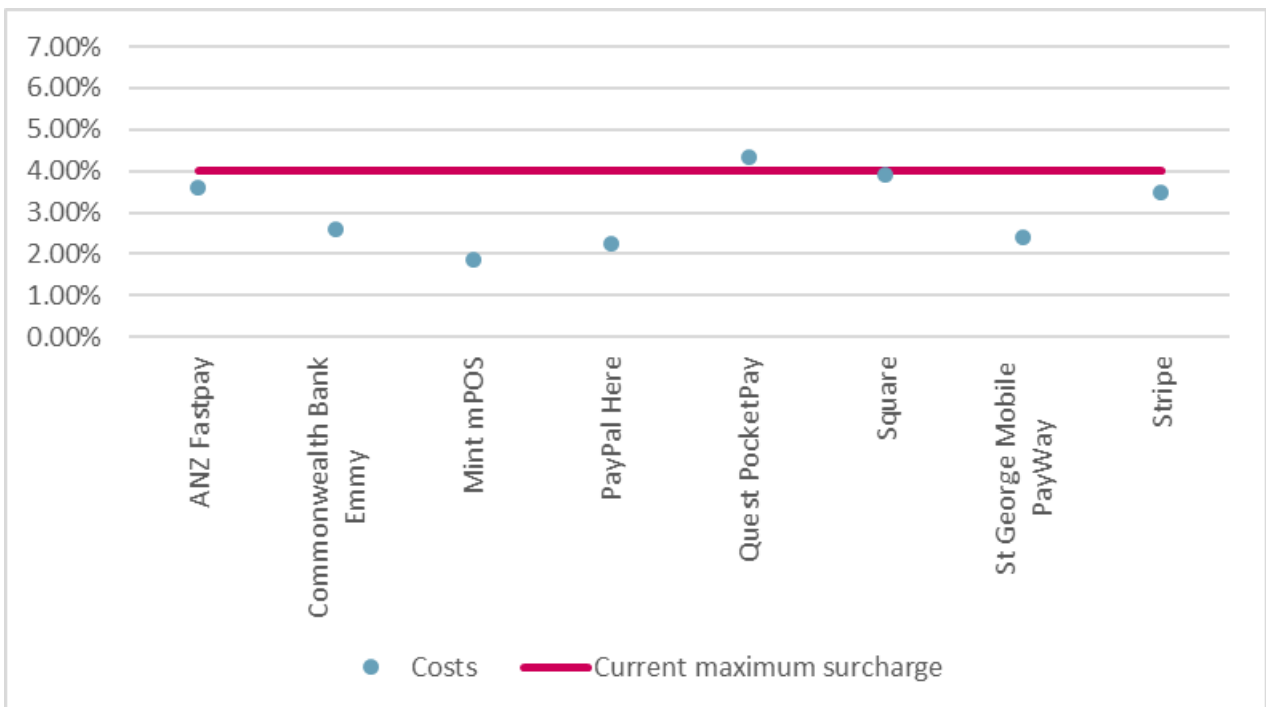
Figures C.3 and C.4 show a comparison of the current maximum surcharge and offers for mPOS terminals based on one terminal per taxi and multiple terminals per taxi, respectively.

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



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

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



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

We used EFTPOS offers and taxi revenue data in our benchmarking

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 (both fixed and variable costs per transaction) 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 \$2,294 of non-cash payments per month, and
- information on their fees and charges is publicly available on their websites.¹²³

Some of the costs associated with processing non-cash payments vary according to the value of transactions processed (that is, 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.

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 monthly revenue divided by the average number of terminals over the reporting period as 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 for a particular taxi merchant is higher or lower than what we have used, the monthly cost as a percentage of the monthly revenue may be different from our benchmarks.

We understand the level of revenue for the typical taxi has decreased since we performed this benchmarking in our 2019 review, and as such the result of the benchmarking has changed.

This is reflected in our sensitivity analysis which suggests that the impact of the reduction in revenue on the average benchmark is material. For example, if the monthly revenue were 10 per

¹²³ The only exception to this was ANZ and Tyro. We used quotes provided over the phone. We included ANZ and Tyro in our sample as we know that ANZ and Tyro provide EFTPOS terminals to some taxi operators.

cent lower than our estimate, the average benchmark cost (assuming two EFTPOS terminals) would increase to 6.1 per cent.

We also note that there is a trend of increasing use of non-cash payments and decreasing cash payments.¹²⁴ We expect this trend to continue.

We estimated the monthly cost for a typical taxi

When performing the benchmarking analysis, we estimated the monthly cost of processing non-cash payments for the typical taxi by using the following information from EFTPOS terminal contracts:

- monthly fee
- merchant service fee
- business account fee
- card reader fee.

We included these fees as we consider that they are the main costs of processing non-cash payments.

We removed 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 relatively small compared to their other costs. Therefore, even if we could, including these costs would not affect the outcome of our analysis.

Our 2019 review addressed that some stakeholders had 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.

¹²⁴ RBA, Payments Systems, available at: <https://www.rba.gov.au/payments-and-infrastructure/payments-system.html> (last accessed 13 August 2022).

Nonetheless we acknowledge and have taken into consideration the fact that if the above matters were taken into account, our benchmarking would slightly underestimate the charges associated with EFTPOS terminals in that regard. Our approach to performing this benchmarking analysis for this review has been similar to the approach in 2019 and, as such, included these costs where possible.

Monthly fees

The monthly fee is a flat fee charged per month. It covers the terminal rental¹²⁵ and administrative costs of providing the EFTPOS terminal. In some cases, the monthly fee also covers the costs of processing a certain included 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 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 all card payments included in the monthly fee. This means that if the total dollar value of EFTPOS, Visa, Mastercard, American Express and Diners Club 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, Mastercard, American Express and Diners Club 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.¹²⁶ 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.

¹²⁵ 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.

¹²⁶ There are some exceptions. For example, Commonwealth Bank, Square and Live eftpos includes American Express in its flat fee.

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 approximately:

- eftpos: three per cent
- Visa/Mastercard: 88 per cent
- American Express: 9 per cent
- Diners Club: one per cent.¹²⁷

Our calculations vary slightly depending on whether the payment processor charges a flat fee or percentage fee per transaction, and whether the payment processor offers an included value.

Table C.1 shows the calculations.¹²⁸

Table C.1: Calculations on merchant service fees

| Merchant Service Fee type | Method of calculation |
|---|---|
| <ul style="list-style-type: none"> • The merchant service fee is a percentage fee for eftpos, Visa, Mastercard, American Express and Diners Club transactions, and • There is included value. | <p>=</p> <p>If $a > b$</p> <p>Then = 0</p> <p>If $a < b$</p> <p>Then</p> $(((b - a) \times c) \times d) + (((b - a) \times e) \times f) + (((b - a) \times g) \times h) + (((b - a) \times i) \times j) + (((b - a) \times k) \times l)$ <p>Where</p> <p>a = included value</p> <p>b = monthly revenue from all payment cards</p> <p>c = share of EFTPOS transactions</p> <p>d = merchant service fee for EFTPOS</p> <p>e = share of Visa transactions</p> <p>f = Visa merchant service fee</p> |

¹²⁷ Numbers may not add up due to rounding.

¹²⁸ 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.

| Merchant Service Fee type | Method of calculation |
|--|---|
| | <p>g = share of Mastercard transactions</p> <p>h = Mastercard merchant service fee</p> <p>i = share of American Express transactions</p> <p>j = American Express merchant service fee</p> <p>k = share of Diners Club transactions</p> <p>l = Diners Club merchant service fee</p> |
| <ul style="list-style-type: none"> The merchant service fee is a percentage fee for eftpos, Visa, Mastercard, American Express and Diners Club transactions, and There is no included value. | <p>= (m x n) + (o x p) + (q x r) + (s x t) + (u x v)</p> <p>where</p> <p>m = monthly revenue from EFTPOS</p> <p>n = EFTPOS merchant service fee</p> <p>o = monthly revenue from Visa</p> <p>p = Visa merchant service fee</p> <p>q = monthly revenue from Mastercard</p> <p>r = Mastercard merchant service fee</p> <p>s = monthly revenue from American Express</p> <p>t = American Express merchant service fee</p> <p>u = monthly revenue from Diners Club</p> <p>v = Diners Club merchant service fee</p> |
| <ul style="list-style-type: none"> The merchant service fee for EFTPOS transactions is a flat fee per transaction The merchant service fee for Visa, Mastercard, American Express and Diners Club transactions is a percentage fee, and There is no included value. | <p>= (x x n) + (o x p) + (q x r) + (s x t) + (u x v)</p> <p>where</p> <p>x = number of EFTPOS trips</p> <p>n = EFTPOS merchant service fee</p> <p>o = monthly revenue from Visa</p> <p>p = Visa merchant service fee</p> |

| Merchant Service Fee type | Method of calculation |
|---------------------------|---|
| | q = monthly revenue from Mastercard |
| | r = Mastercard merchant service fee |
| | s = monthly revenue from American Express |
| | t = American Express merchant service fee |
| | u = monthly revenue from Diners Club |
| | v = Diners Club merchant service fee |

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. We requested the number and value of transactions by payment method from the taxi payment processors and have used this information in our analysis.

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 were 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 offered 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 usually three years (that is, 36 months).

Table C.2: Calculations on card reader fees

$$\text{Card reader fees} = \frac{\text{Upfront card reader fee}}{36}$$

Monthly cost of processing non-cash payments for a 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.

Table C.3: Calculating monthly cost for a typical taxi

$$\text{Monthly cost of processing non-cash payments for the typical taxi} = \begin{aligned} & \text{Monthly fee} \\ & + \text{merchant service fees} \\ & + \text{business account fee} \\ & + \text{card reader fee}^{129} \end{aligned}$$

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.

Table C.4: Monthly cost of non-cash payment processing as a share of monthly revenue

$$\text{Monthly cost of non-cash payment processing as a per cent} = \frac{(\text{Monthly cost of non-cash payment processing} + \text{monthly revenue from non-cash payment transactions})}{\text{monthly revenue from non-cash payment transactions} - 1}$$

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.

¹²⁹ Card reader fees applies to mPOS terminals only

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

Throughout our 2019 review 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 that taxi payment processors submitted that they did incur that appeared unusual. These costs included:

- Multiple payment terminals
- Mobile payment processing
- Taxi non-cash payment surcharge record keeping requirements¹³⁰
- Taxi receipt requirements¹³¹
- Integration of payment terminal and taxi meter¹³²
- Multi Purpose Taxi Program subsidy processing¹³³
- Providing passenger credit
- High rate of fraud in the taxi payments industry¹³⁴
- High transaction costs of dealing with taxi drivers¹³⁵
- 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.

We consider the differences between the costs incurred by payment processors in the taxi industry and the broader economy, raised in our 2019 review, to be adequately addressed. We have adopted the same considerations for this review.¹³⁶

¹³⁰ CabFare, submission received 1 February 2019, p. 13.

¹³¹ CabFare, submission received 1 February 2019, p. 13.

¹³² Commercial Passenger Vehicle Association of Australia, submission received 4 February 2019.

¹³³ A2B Australia, submission received 1 March 2019, p. 16.

¹³⁴ CabFare, submission received 1 February 2019.

¹³⁵ A2B Australia, submission received 1 March 2019, p. 5.

¹³⁶ Essential Services Commission, Taxi Non-Cash Payment Surcharge review 2019: Final Decision, March 2020 pp. 70-77.

We have included an adjustment for multiple payment terminals

As discussed at the beginning of this appendix and in chapter 4, it is common practice in the taxi payments industry for taxi drivers to have two payment terminals. For the reasons set out in those earlier sections 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 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 mobile connectivity costs.

We addressed these differences in our 2019 final decision paper, and we have applied the same consideration of these matters in this review. We have not made any additional adjustments to our benchmarking analysis as a result.

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.

Appendix D: Our approach to reviewing the maximum surcharge

Our approach to this review

The commission is required to complete a review within two years of making a determination on the maximum non-cash payment surcharge to apply to taxis in Victoria.¹³⁷ To conduct a review of the current surcharges, 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.¹³⁸ We consider this approach best meets our legislative objectives.

Benchmarking and bottom-up cost assessments helped us establish the maximum surcharges that best meets our legislative objectives, including our obligation to ensure that persons facilitating the making of non-cash payment transactions are able recover the reasonable cost of accepting and processing such transactions,¹³⁹ in the light of the matters we are required to ensure and have regard to (see appendix E for details).

As set out in our 2019 final decision paper, we consider the term 'reasonable cost' to mean costs 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.¹⁴⁰

We analysed the costs of taxi payment processors

Through notices issued via our compulsory information gathering powers,¹⁴¹ we collected information from taxi payment processors about their services, assets, costs, and revenues. This information allowed us to review the types of costs taxi payment processors incurred over the reporting period, 1 July 2019 to 30 June 2021, to assess what the reasonable cost of accepting and processing non-cash payment transactions might be.

For our bottom-up cost assessment, we calculated taxi payment processors' reasonable costs using the building block methodology. This methodology allows for operating costs, depreciation costs and a return on investment.

¹³⁷ Commercial Passenger Vehicle Industry Act 2017 (Vic), s. 124(4).

¹³⁸ Essential Services Commission, Non-cash payment surcharge review 2022: consultation paper, June 2022, pp.13-16.

¹³⁹ Commercial Passenger Vehicle Industry Act 2017 (Vic), s. 122(2).

¹⁴⁰ Essential Services Commission, Taxi non-cash payment surcharge review 2019: final decision, March 2020, p.30.

¹⁴¹ Issued per Essential Services Commission Act 2001 (Vic), s. 36.

We observed significant reduction in taxi payment processors revenue, expenses, and assets over the reporting period as a result of the decline in demand for taxis and supply of drivers because of the coronavirus pandemic. We do not consider the information we received from taxi payment processors to reflect the revenue and expense trends for the taxi industry into the future.

Information from 2019–20 and 2020–21 has helped us to determine that the current maximum surcharge for taxis in Victoria remains appropriate. See chapter 2 and appendix B for more details on this decision.

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

In our benchmarking analysis, we looked at updated charges from payment processors to small businesses for processing non-cash payments. Our benchmarking provided us some insight into the current maximum surcharge by having regard to costs in the broader economy. See appendix C for details.

Our assessment approach helps us meet our legislated requirements

Our objectives

In setting the maximum non-cash payment surcharges (maximum surcharges) 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.¹⁴² In seeking to achieve this objective, we 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.¹⁴³
- Promote the long term interests of Victorian consumers.¹⁴⁴ In seeking to achieve this objective we must have regard to the price, quality and reliability of essential services.¹⁴⁵

Promoting efficiency

As explained in our 2019 review efficiency requires that:

- the right amount of non-cash payment services is provided to consumers (that is, there is no excess demand or excess supply),

¹⁴² Commercial Passenger Vehicle Industry Act 2017 (Vic), s. 122(1).

¹⁴³ Commercial Passenger Vehicle Industry Act 2017 (Vic) s.122(2).

¹⁴⁴ Essential Services Commission Act 2001 (Vic), s. 8(1).

¹⁴⁵ Essential Services Commission Act 2001 (Vic), s. 8(2).

- there are the right incentives for investment and innovation by non-cash payment service providers, and
- unnecessary costs are not incurred by customers when making non-cash payments.¹⁴⁶

To promote these outcomes the maximum surcharges should not be set too low or too high. If the maximum surcharges are set too low then taxi payment processors will not be able to recover their reasonable costs, including a reasonable return on their investment. This could lead to under-investment in non-cash 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). If the maximum surcharges are set too high, customers may pay more than would otherwise be necessary. Further, it could lead to over-investment in non-cash payment processing (excess supply) which might eventually be ‘stranded’ if the recoverable value of the surcharge falls through regulation or competition.

The bottom-up cost assessment performed in 2019 showed that a surcharge of four per cent (including GST) should ensure that taxi payment processors would be able to recover the reasonable cost of processing non-cash payments.

For the purpose of this review, taxi payment processors have provided information for the 1 July 2019 to 30 June 2021 reporting period. The taxi industry and the financial performance of taxi payment processors in that period were very significantly impacted by the coronavirus pandemic. We observed large reductions in payments processed and the subsequent revenue. We observed that costs reduced, but by less than revenue. This period of time made for an unstable operating environment that cannot be considered a true reflection of normal business and operating conditions over the longer term. As a result, our bottom-up cost assessment, based on information in that period, is not a reliable guide to the likely position in the next two year period. In these circumstances, it is appropriate to maintain the current maximum surcharges. Our benchmarking confirms that a surcharge of four per cent (including GST) is appropriate.

Our review of payment processors’ costs indicated the surcharge of six per cent (no GST payable) for commercial passenger vehicle specific payment instruments (such as Cabcharge) is also appropriate.

Promoting efficiency and the long term interests of Victorian consumers

Maximum surcharges that promote efficiency in the non-cash payment transaction industry will also promote the long term interests of Victorian consumers.¹⁴⁷ Surcharges that promote the

¹⁴⁶ Essential Services Commission, Taxi Non-Cash Payment Surcharge Review 2019: final decision, March 2020 p.17.

¹⁴⁷ Essential Services Commission Act 2001 (Vic), s. 8(1).

efficient provision of non-cash payment services will provide the financial incentives taxi payment processors require for long-term investment to provide an affordable service at the level of quality and reliability that consumers expect.¹⁴⁸

Considering other relevant matters

We must also have regard to a range of other matters including the financial viability of the industry, the degree of, and scope for, competition within the industry, the relevant health, safety, environmental and social legislation applying to the industry, the benefits and costs of regulation for consumers and regulated entities, and consistency in regulation between States and on a national basis.¹⁴⁹

We must also, in making a determination, have regard to the particular circumstances of the regulated industry and the prescribed services, the efficient costs of supplying the regulated services and complying with relevant legislation, the return on assets in the industry, any relevant interstate and international benchmark for prices, costs and return on assets in comparable industries, and any other factors that the Commission considers relevant.¹⁵⁰

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.¹⁵¹

Efficiency in the industry and incentives for long term investment: We consider that maximum surcharges of six per cent for commercial passenger vehicle specific payment instruments (such as Cabcharge) and four per cent for all other payment instruments would promote efficiency, while continuing to ensure that taxi payment processors are able to recover the reasonable cost of processing non-cash payments. As taxi payment processors will be able to recover their reasonable costs (including a return on and of capital) there will be appropriate incentives for long term investment.

Financial viability of the industry: After taking into account revenue and costs for 2019-20 and 2020-21 (noting their unreliability as a guide to likely future revenue and costs), revenue and cost information from our previous review, the proposed increase in unbooked taxi fares and our benchmarking exercise, we are satisfied that the taxi non-cash payment industry will be financially viable under our decision to maintain the maximum surcharge at four per cent.

¹⁴⁸ Essential Services Commission Act 2001 (Vic), s. 8(1)(a).

¹⁴⁹ Essential Services Commission Act 2001 (Vic), s. 8A(1).

¹⁵⁰ Essential Services Commission Act 2001, s. 33(3).

¹⁵¹ Essential Services Commission Act 2001 (Vic), s. 33(4).

We are also satisfied a maximum surcharge of six per cent should allow A2B Australia to continue to recover the reasonable cost of issuing, accepting, and processing Cabcharge payment instruments.

Degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries: 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 and reduced demand for and supply of taxis as a result of the coronavirus pandemic, and the increased competition between commercial passenger vehicle services, were accounted for in our benchmarking and bottom-up cost assessment.

Also, including two payment terminals in our benchmarking was a result of our consideration of the degree of and scope for competition within the taxi non-cash payment transaction industry., whilst ensuring that taxi payment processors are able to recover the reasonable cost of accepting and processing non-cash payment transactions. If we did not allow for multiple terminals in our benchmarking, taxi drivers may be placed in a position where they have no choice but to use the terminals provided by their booking service providers. Taxi drivers must have a payment terminal that can process Multi Purpose Taxi Program subsidies.¹⁵² A2B Australia provide Multi Purpose Taxi Program enabled payment terminals to almost all taxis in Victoria. See appendix A for details.

Maintaining a separate maximum surcharge for Cabcharge payment instruments will allow A2B Australia to compete with other three-party payment schemes. It will give A2B Australia choice on how to balance its charges between account fees and the non-cash payment 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 For example, appendix H discusses how we have had regard to the regulations that outline the records required to be kept on non-cash payment transactions.

The benefits and costs of regulation for consumers and users of the services and regulated entities: Overall our decision to maintain two maximum surcharges will provide certainty to passengers regarding non-cash payment surcharges, noting these are existing surcharges that have been in place since February 2021.

¹⁵² Safe Transport Victoria, 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 14 August 2022).

We consider the information received from payment processors from 2019–20 and 2020–21 does not reflect the reasonable costs and revenue for the taxi industry and, therefore, it cannot be relied upon. We also consider that the certainty, provided to passengers and the taxi industry, as a result of maintaining the current surcharge will outweigh any costs associated with changing the maximum surcharge. For that reason, we consider that the expected costs of the proposed regulation do not exceed the expected benefits.

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, they 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 in 2014.

The particular circumstances of the regulated industry and the prescribed goods or services for which the determination is being made: Our benchmarking and bottom-up cost assessment both take into consideration the particular circumstances of the regulated industry. 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 relevant legislation: Our benchmarking and bottom-up cost analysis consider the reasonable cost of providing the regulated service and of complying with the relevant legislation. Further detail can be found in chapters 3 and 4, and appendix B and C.

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

Trade-offs between costs and service standards: Maintaining the current surcharges should allow taxi payment processors to recover the reasonable cost of processing non-cash payments through the maximum surcharges. As the surcharge is unchanged, it is unlikely that service standards will change as a result of this decision.

Appendix E: 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) (the Act) and the Commercial Passenger Vehicle Industry Act 2017 (Vic) (CPVI Act).

Section 32 of the 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 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 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 complete a review of a price determination no later than two years after it is made.¹⁵⁴ The previous determination on the maximum surcharges to apply to taxi fares in Victoria was made on 8 September 2020.

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.¹⁵⁵ In seeking to achieve this objective, the commission must ensure that persons facilitating the making of non-cash payment transactions are able to recover

¹⁵⁴ Commercial Passenger Vehicle Industry Act 2017 (Vic), s. 124(4).

¹⁵⁵ Commercial Passenger Vehicle Industry Act 2017 (Vic), s. 122(1).

the reasonable cost of accepting and processing such transactions.¹⁵⁶ 'Reasonable cost' for the purposes of section 122 of the CPVI Act is defined to include 'any fees payable for the acquisition of transactions involving the use of debit, credit or charge cards'.¹⁵⁷

The 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.¹⁵⁸ 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.¹⁵⁹

Without derogating from this obligation and the requirements under section 8A of the 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.¹⁶⁰

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 Act and any relevant legislation.¹⁶¹ Section 33(5) of the 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 persons facilitating the making of non-cash payment transactions are able to recover the reasonable cost of accepting and processing such transactions.

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

¹⁵⁶ Commercial Passenger Vehicle Industry Act 2017 (Vic), s.122(2).

¹⁵⁷ Commercial Passenger Vehicle Industry Act 2017 (Vic), s.122(3).

¹⁵⁸ Essential Services Commission Act 2001 (Vic), s. 8(1).

¹⁵⁹ Essential Services Commission Act 2001 (Vic), s. 8(2).

¹⁶⁰ Essential Services Commission Act 2001 (Vic), s. 8A(2).

¹⁶¹ Essential Services Commission Act 2001 (Vic), s. 33(2).

- 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
- 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 (that is, the CPVI Act).

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

- the particular circumstances of the regulated industry (that is, the non-cash payment transaction industry) and the prescribed goods and services (that is, 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 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
- 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.¹⁶² Rideshare and hire car non-cash payment surcharges are regulated by the Reserve Bank of Australia under the national payment systems framework.¹⁶³

¹⁶² Commercial Passenger Vehicle Industry Act 2017 (Vic), s. 112(2).

¹⁶³ Reserve Bank of Australia 2016, *Standard no. 3 of 2016: Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions*, section 2.7, 1 Sep 2016 varied with effect from 1 Jan 2022, <https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/pdf/standard-no-3-of-2016-scheme-rules-relating-to-merchant-pricing-2021-11-18.pdf>, accessed 3 August 2022.

Appendix F: Origin of the non-cash payment surcharge for taxis in Victoria

Prior to the Victorian Taxi Industry Inquiry (the inquiry), the non-cash payment surcharge was unregulated. Standard industry practice for taxis in Australia was to add a 10 per cent surcharge (excluding GST) for non-cash payments. The inquiry completed in 2012 and as a result the surcharge was to be regulated by the commission and the maximum non-cash payment surcharge amount was set at five per cent (including GST).¹⁶⁴

Reforms to the CPVI Act in 2017 required the commission to make a price determination in 2019, setting the maximum surcharge for non-cash payment transactions for taxi services in Victoria.¹⁶⁵

On 8 September 2020, the commission set the maximum surcharge for non-cash payments for taxi services in Victoria, to apply from 1 February 2021 at:

- four per cent (inclusive of GST) for all non-cash payment transactions (non-cash payments)
- six per cent (no GST payable) for commercial passenger vehicle specific payment instruments (such as Cabcharge).¹⁶⁶

The surcharge was first introduced for processing paper docket

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 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 booking service providers.

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.¹⁶⁷ This 10 per cent surcharge became a standard industry practice.

¹⁶⁴ Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p.209.

¹⁶⁵ Commercial Passenger Vehicle Industry Act (Vic) 2017, s. 124(3).

¹⁶⁶ Essential Services Commission

¹⁶⁷ Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Draft Report, May 2012, p.252.

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.¹⁶⁸ 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.¹⁶⁹ The inquiry recommended that the surcharge be set at a maximum fee that reflected the resource costs of providing that service, and recommended the maximum surcharge be set at five per cent of transaction value until subject to further evaluation by the Essential Services Commission.¹⁷⁰

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 CPVI Act.

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. Other states and territories have a regulated five per cent maximum.

¹⁶⁸ Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p.208.

¹⁶⁹ Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Draft Report, May 2012, pp 258-9.

¹⁷⁰ Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p.217.

Appendix G: Legislative framework

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.

Table G.1: Relevant sections of the Commercial Passenger Vehicle Industry Act 2017 (Vic)

| Section number | Section detail |
|----------------|---|
| s. 3 | <p>Definitions</p> <p>non-cash payment processing device means a device—</p> <ul style="list-style-type: none">(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; <p>Examples EFTPOS machine, smartphone, computer tablet.</p> <p>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—</p> <ul style="list-style-type: none">(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; <p>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;</p> <p>prescribed amount of a non-cash payment surcharge is—</p> <ul style="list-style-type: none">(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; |
| s.112 | <p>Meaning of non-cash payment surcharge</p> <ul style="list-style-type: none">(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—

(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.

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

| Section number | Section detail |
|----------------|----------------|
|----------------|----------------|

(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

| Section number | Section detail |
|----------------|--|
| | <p>documents in a proceeding against the person under section 115; and</p> <p>(b) the conduct alleged to constitute the offence is substantially the same as the conduct to which the proceeding under that section related.</p> <p>(6) Subsection (5) does not apply to a criminal proceeding in respect of the falsity of evidence given in a proceeding under section 115.</p> |
| s.118 | <p>Non-cash payment surcharge may be recovered as a debt</p> <p>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.</p> |
| s.119 | <p>Proceeding for damages</p> <p>(1) This section applies if a person suffers loss or damage because of—</p> <p>(a) conduct engaged in by another person in contravention of section 113(3); or</p> <p>(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).</p> <p>(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.</p> <p>(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.</p> |
| s.120 | <p>Compensation orders</p> <p>(1) This section applies if a person (the injured person) suffers, or is likely to suffer, loss or damage because of—</p> <p>(a) conduct engaged in by another person in contravention of section 113(3); or</p> <p>(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).</p> <p>(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—</p> |

| Section number | Section detail |
|----------------|----------------|
|----------------|----------------|

(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.

(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) Despite section 5(1) of the **Essential Services Commission Act 2001**, 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 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.

(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

| Section number | Section detail |
|----------------|---|
| s. 123 | <p>transactions involving the use of debit, credit or charge cards.</p> <p>Powers in relation to non-cash payment service regulation</p> <p>For the purposes of Part 3 of the Essential Services Commission Act 2001—</p> <p>(a) non-cash payment transactions are prescribed services; and</p> <p>(b) the maximum amounts of non-cash payment surcharges are prescribed prices.</p> |
| s. 124 | <p>Exercise of regulatory functions</p> <p>(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).</p> <p>(2) Subsection (1) does not limit section 33(5) of the Essential Services Commission Act 2001.</p> <p>(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.</p> <p>(4) The ESC must complete a review of a price determination no later than 2 years after it is made.</p> |
| Schedule 2 | <p>Subject matter for regulations</p> <p><i>Non-cash payment surcharges</i></p> |
| s.25 | <p>The keeping by persons who provide services for processing non-cash payment surcharges of records of, or relating to, the following—</p> <p>(a) non-cash payment surcharges charged or collected by persons using the services;</p> <p>(b) the operation and programming of equipment that enables non-cash payment transactions to be made;</p> <p>(c) the retention and storage of information, data and electronic communications relating to non-cash payment surcharges;</p> <p>(d) the structure of, setting of and receipt of non-cash payment surcharges;</p> <p>(e) commercial arrangements supporting non-cash payment surcharges.</p> |

Table G.2: Relevant sections of the Essential Services Commission Act 2001 (Vic)

| Section number | Section detail |
|----------------|--|
| | Objective of the Commission |
| s. 8 (1) | 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. |
| | Matters the Commission must have regard to |
| s. 8A (1) | 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— |
| | <ul style="list-style-type: none"> <li data-bbox="639 949 1422 1014">(a) efficiency in the industry and incentives for long term investment; <li data-bbox="639 1048 1198 1077">(b) the financial viability of the industry; <li data-bbox="639 1115 1406 1211">(c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries; <li data-bbox="639 1249 1422 1314">(d) the relevant health, safety, environmental and social legislation applying to the industry; <li data-bbox="639 1352 1406 1449">(e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for— <ul style="list-style-type: none"> <li data-bbox="735 1487 1422 1552">(i) consumers and users of products or services (including low income and vulnerable consumers); <li data-bbox="735 1585 1066 1615">(ii) regulated entities; <li data-bbox="639 1653 1398 1718">(f) consistency in regulation between States and on a national basis; <li data-bbox="639 1756 1422 1785">(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 |

| Section number | Section detail |
|----------------|---|
| | empowering instrument. |
| | Part 3 – Specific powers |
| | Definitions |
| | In this Part— |
| s. 31A | <p><i>prescribed goods and services</i> 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;</p> <p><i>prescribed price</i> 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.</p> |
| | Price Regulation |
| s.32(1) | The Commission may regulate prescribed prices for or in respect of prescribed goods and services supplied by or within a regulated industry. |
| s.33 | Price determinations |
| s.33(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) | <p>In making a determination under this section, the Commission must have regard to—</p> <p>(a) the particular circumstances of the regulated industry and the prescribed goods and services for which the determination is being made;</p> |

| Section number | Section detail |
|----------------|--|
| s. 33(4) | <p>(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;</p> <p>(c) the return on assets in the regulated industry;</p> <p>(d) any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries;</p> <p>(e) any other factors that the Commission considers relevant.</p> <p>In making a determination under this section, the Commission must ensure that—</p> |
| s. 33(5) | <p>(a) the expected costs of the proposed regulation do not exceed the expected benefits; and</p> <p>(b) the determination takes into account and clearly articulates any trade-offs between costs and service standards</p> <p>A price determination by the Commission may regulate a prescribed price for prescribed goods and services in any manner the Commission considers appropriate.</p> |
| s. 33(6) | <p>Without limiting the generality of subsection (5), the manner may include—</p> <p>(a) fixing the price or the rate of increase or decrease in the price;</p> <p>(b) fixing a maximum price or maximum rate of increase or minimum rate of decrease in the maximum price;</p> <p>(c) fixing an average price for specified goods or services or an average rate of increase or decrease in the average price;</p> <p>(d) specifying pricing policies or principles;</p> <p>(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;</p> <p>(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;</p> <p>(g) fixing a maximum average revenue or maximum rate of increase or minimum rate of decrease in the maximum average</p> |

| Section number | Section detail |
|----------------|--|
| | <p>revenue in relation to specified goods or services;</p> <p>(h) monitoring the price levels of specified goods and services.</p> |
| | <p>Part 4—Information gathering notices</p> <p>Division 1—Information gathering notices</p> <p>Information gathering notices—performing functions or exercising powers</p> |
| s. 36(1) | <p>If the Commission considers it necessary for the purposes of performing its functions or exercising its powers, the Commission may serve a notice on a person requiring the person to do one or more of the following—</p> <p>(a) provide to the Commission, in writing signed by the person or, in the case of a body corporate, by a competent officer of the body corporate, any information or class of information specified in the notice before a specified time and in a specified manner;</p> <p>(b) produce to the Commission a document or class of document specified in the notice that is in the person's possession, custody or control, before a specified time and in a specified manner;</p> <p>(c) appear before the Commission at a time and place specified in the notice to do either or both of the following—</p> <p style="padding-left: 40px;">(i) give information, including by answering questions, either orally or in writing;</p> <p style="padding-left: 40px;">(ii) produce a document or class of document specified in the notice that is in the person's possession, custody or control.</p> |
| s. 36(2) | <p>In exercising the power to serve an information gathering notice under subsection (1), the Commission must have regard to—</p> <p>(a) the relevance of the information, document or evidence sought; and</p> <p>(b) the estimated compliance costs.</p> |
| s. 36(3) | <p>Despite subsection (1), the Commission must not serve an information gathering notice under this section if it could serve one under section 37(1).</p> |
| s. 36(4) | <p>A person must not—</p> <p>(a) without reasonable excuse, refuse or fail to comply with an information gathering notice under subsection (1); or</p> |

| Section number | Section detail |
|----------------|----------------|
|----------------|----------------|

- (b) in purported compliance with an information gathering notice under subsection (1), knowingly—
 - (i) provide false or misleading information; or
 - (ii) produce documents that are false or misleading.

Penalty: In the case of a natural person, 120 penalty units or 12 months imprisonment;

In the case of a body corporate, 600 penalty units.

Note

See section 39A in relation to the protection against self-incrimination.

s. 36(5)

The Commission may exercise, or continue to exercise, a power under subsection (1) in relation to a matter that relates to its powers or functions until—

- (a) the Commission commences a proceeding in relation to the matter (other than a proceeding for an injunction, whether interim or final); or
- (b) the close of pleadings in relation to an application by the Commission for a final injunction in relation to the matter.

Division 2—Compliance with information gathering notices

Power to examine on oath or affirmation

s. 39

If a person is required to appear before the Commission to give evidence in compliance with an information gathering notice under section 37(1), the Commission may administer an oath or affirmation to the person.

Protection against self-incrimination—information gathering notices under section 36(1)

s. 39A(1)

It is a reasonable excuse for a natural person to refuse or fail to provide information, in compliance with an information gathering notice under section 36(1), if the provision of the information would tend to incriminate the person or expose the person to a penalty.

| Section number | Section detail |
|----------------|--|
| s. 39A(2) | Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce, in compliance with an information gathering notice under section 36(1), if the production of the document would tend to incriminate the person or expose the person to a penalty. |
| s. 39A(3) | It is not a reasonable excuse for a body corporate to refuse or fail to provide information or produce a document, in compliance with an information gathering notice under section 36(1), if the provision of the information or production of the document would tend to incriminate the body corporate or expose the body corporate to a penalty. |
| s. 39A(4) | <p>Any information given or document produced by a natural person or body corporate in compliance with an information gathering notice under section 36(1) is not admissible as evidence against that natural person or body corporate in any proceeding, other than in—</p> <p>(a) a proceeding arising out of the false or misleading nature of the information or document; or</p> <p>(b) a review under Part 7B; or</p> <p>(c) a proceeding for a monetary benefits order under section 61B.</p> |
| s. 39C | <p>Offence of coercion etc. against person who complies with information gathering notice</p> <p>A person must not, because another person complied, or intends to comply, with an information gathering notice—</p> <p>(a) threaten, intimidate or coerce the other person; or</p> <p>(b) take, threaten to take, incite or be involved in any action that causes the other person to suffer any loss, injury or disadvantage.</p> <p>Penalty: 120 penalty units.</p> |
| s. 39D | <p>No liability for loss, damage or injury</p> <p>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, document or evidence to the Commission in compliance with an information gathering notice.</p> |

Appendix H: Records to be kept on non-cash payment surcharges

Under the CPVI Act¹⁷¹ and the Commercial Passenger Vehicle Industry Regulations 2018 (Vic) (the Regulations), taxi payment processors are required to keep records.

Regulation 36 of the Regulations details the records that must be kept for non-cash payment surcharges (see table H.1). The records must be kept for a period of at least three years.¹⁷²

If you have questions in relation to these requirements, you should contact Safe Transport Victoria (formally Commercial Passenger Vehicles Victoria), who are responsible for the Commercial Passenger Vehicle Industry Regulations 2018.

Table H.1: Records to be kept for non-cash payment surcharges¹⁷³

Regulation detail

r. 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
 - (c) in respect of each non-cash payment processing device supplied by the person

¹⁷¹ Commercial Passenger Vehicle Industry Act 2017 (Vic), schedule 2, section 25.

¹⁷² Commercial Passenger Vehicle Industry Regulations 2018 (Vic), regulation 36(3).

¹⁷³ Commercial Passenger Vehicle Industry Regulation 2018 (Vic), regulation 36.

Regulation detail

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 I: Stakeholder submissions




We released a consultation paper for our review on 22 June 2022. Stakeholders had four weeks to make submissions.

We received 10 submissions through our public Engage Victoria website and via direct email, as listed in table I.2.

We received submissions from consumers, drivers, taxi payment processors, a consumer advocate group and an international payment processor. We considered the views raised in the submissions and addressed these throughout this decision.

We also met with taxi payment processors and other stakeholders during our review.

Table I.1: How we engaged

| | |
|---|---|
|  | <p>Key dates</p> <ul style="list-style-type: none">• 22 June 2022: consultation paper released.• 22 July 2022: submissions to consultation paper closed.• 6 September 2022: final decision and determination released.• 15 September 2022: new determination takes effect. |
|  | <p>Methodology</p> <ul style="list-style-type: none">• We sought feedback and submissions via Engage Victoria and direct email, on the consultation paper.• We invited stakeholders to email us at transport@esc.vic.gov.au• We met with several industry participants one-on-one prior to and during our review to seek their feedback. |
|  | <p>Number of participants</p> <ul style="list-style-type: none">• Between 22 June 2022 and 25 July 2022, we had 285 total views on our Engage Victoria consultation page by 152 unique visitors. Our webpage had 190 views over the same time.• We met one-on-one with several non-cash payment processor business representatives prior to and during our review.• We met one-on-one with some industry participants during our review. |



Number of submissions received (written, verbal)

- We received ten written submissions from taxi payment processors, an international payment processor, a taxi driver, members of the public and a consumer advocate body.
- All public submissions can be found on our [website](#).

Table I.2: Submissions received via Engage Victoria and via email

| Name of submitter | Date received |
|----------------------------|---------------|
| Anonymous 1 | 22 June 2022 |
| Anonymous 2 | 22 June 2022 |
| Darren Room | 22 June 2022 |
| Michael Telleson | 22 June 2022 |
| Felicity Crombach | 23 June 2022 |
| Annabel Richards | 24 June 2022 |
| Taxis.Plus | 13 July 2022 |
| Consumer Action Law Centre | 18 July 2022 |
| Visa | 22 July 2022 |
| A2B Australia Limited | 2 August 2022 |

Glossary

This section explains terms used throughout this paper and their definitions. The purpose of this glossary is to provide further context to the terminology used.

| Term | Definition |
|---|---|
| A2B Australia | <p>A2B Australia is an Australian company listed on the ASX specialising in personal transport services and digital payment software. Its customers include corporate clients, passengers, drivers and booking service providers.</p> <p>A2B Australia also owns and operates 13cabs, Australia's largest booking service provider, which supports over 7,000 taxis across Australia.¹⁷⁴</p> |
| Acquirer | <p>An institution that provides a merchant with facilities to accept card payments.</p> |
| Australian Competition and Consumer Commission | <p>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.</p> <p>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.</p> |
| Booked services | <p>Booked services are trips booked via an application, or over the phone or website.</p> |
| Booking service provider | <p>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.</p> |
| Cardholder | <p>Individual who owns and uses a card in paying for goods and services. In the supply chain, a cardholder is the consumer.</p> |
| Charge back | <p>This is when the acquirer removes/holds the funds of a disputed transaction.</p> |

¹⁷⁴ A2B Australia Annual Report 2021, page 19, available at: https://www.a2baustralia.com/upload/content/pdf/9178_A2B_AR21_book_v17_FA3.pdf (last accessed 14 August 2022).

| Term | Definition |
|---|---|
| | <p>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.</p> |
| Charge card | <p>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.</p> |
| Clearing | <p>The process of transmitting, reconciling and in some cases confirming payment instructions prior to settlement.</p> |
| Commercial Passenger Vehicle (CPV) | <p>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.</p> |
| Credit card | <p>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.</p> |
| Debit card | <p>Debit card is a card that enables the holder to access funds in a deposit account at an authorised deposit-taking institution.</p> |
| Direct debit | <p>A pre-authorised debit (pull) on the payer's (cardholder) account initiated by the recipient (merchant).</p> |
| EFTPOS | <p>Electronic Funds Transfer at Point Of Sale. The EFTPOS system is a domestic debit card system managed by eftpos Payments Australia Limited.</p> |
| Financial institution | <p>A company whose primary function is to intermediate between lenders and borrowers in the economy.</p> |

| Term | Definition |
|---|--|
| | The main types of financial institutions in Australia are Authorised Deposit-taking Institutions (DPI's), non-bank financial intermediaries, and insurers and fund managers. |
| 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. |
| 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. |
| 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. Safe Transport Victoria is responsible for specifying the functional requirements of fare devices. |
| mPOS terminal | A payment terminal which connects to a smartphone or tablet to process non-cash payments. |
| 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. |
| Non-cash payment surcharge (in the context of the taxi industry) | <p>A non-cash payment surcharge is a fee or charge:</p> <ul style="list-style-type: none"> • 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 |

| Term | Definition |
|--|---|
| | <p>non-cash payment transaction; or</p> <ul style="list-style-type: none"> 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 | <p>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.</p> |
| Payment processor | <p>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.</p> |
| Payment system | <p>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.</p> |
| Payment terminal | <p>Refers to the terminal or facility provided by banks to merchants to enable the latter to accept payments by cards.</p> <p>In the taxi payments industry, taxi payment processors supply the payment terminal to drivers, booking service providers or taxi operators.</p> |
| Price determination | <p>A price determination is the legislative instrument used to set prescribed prices for prescribed goods and services supplied by or within a regulated industry.</p> |
| Reserve Bank of Australia (RBA) | <p>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</p> |

| Term | Definition |
|--------------------------------------|--|
| | <p>operational roles in the payments system.</p> <p>The RBA sets interchange fees in designated debit, prepaid and credit card schemes. It also sets standards for merchant surcharging for credit, debit and prepaid card transactions in Australia.</p> |
| 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. |
| Safe Transport Victoria (STV) | Safe Transport Victoria, formally Commercial Passenger Vehicles Victoria until 30 June 2022 ¹⁷⁵ , and historically known as the Taxi Services Commission, is the regulator of the commercial passenger vehicle industry. |
| Scheme (or card scheme) | <p>Under the RBA's standards, scheme refers to the following designated payment systems:</p> <ul style="list-style-type: none"> • 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 |

¹⁷⁵ Commercial Passenger Vehicles Victoria merged with Transport Safety Victoria to become Safe Transport Victoria <https://cpv.vic.gov.au/about-us/news/taxis/cpvv-merge-with-tsv-to-become-safe-transport-victoria>

| Term | Definition |
|--------------------------|--|
| | <p>certain prescribed services as determined by the Victorian Government. The commission is responsible for setting maximum:</p> <ul style="list-style-type: none"> • charges for unbooked CPV services beginning in the metropolitan and urban and large regional zones • non-cash payment surcharge for booked and unbooked taxi services in Victoria. |
| Unbooked services | <p>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.</p> |