

Non-cash payment surcharge review 2022

Consultation paper

22 June 2022



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1. Summary

We are conducting a review of the current maximum surcharge applied to taxi fares when using payment methods other than cash in Victoria. Since 1 February 2021 the maximum surcharge has been:

- four per cent (including GST) for most non-cash payment methods.
- six per cent (no GST payable) for Cabcharge payments and any other commercial passenger vehicle specific payment instruments.¹

We are seeking your views on our approach and methodology to review these surcharges.

To assess industry data, we intend to use a bottom-up cost build and benchmarking to determine the reasonable costs. Reasonable costs include the following:

- Return on capital (regulated asset base).
- Return of capital (depreciation of payment terminals and infrastructure assets).
- Operating expenditure including:
 - maintenance depots to undertake payment terminal repair or swap over.
 - payment terminal maintenance and rental costs.
 - fraud costs (chargebacks) and fraud prevention costs.
 - merchant service fees.
 - direct and indirect labour costs associated with processing non-cash payments.
 - administration expenses, marketing and advertising costs.

This consultation paper marks the beginning of our review into the non-cash payment surcharges for taxi services in Victoria. We plan to use a similar methodology and approach to our last review and we seek your views on this plan.

Based on our initial consultations with taxi payment processors, it would seem likely some of the data we receive will be compromised by the impacts of the coronavirus pandemic.² This could

¹ The surcharge for usage of the Cabcharge payment instrument is not subject to GST. Cabcharge 2022, *Understanding your statement*, <https://www.cabcharge.com.au/understanding-your-statement> accessed 14 June 2022.

² We held meetings with the A2B Australia, Cabfare, GM Cabs, Ingogo, and Live Taxi in June 2022.

mean we exclude some data from our analysis if we consider it to be unsuitable for providing an accurate representation of the ongoing costs and revenues for the taxi payments industry.

Ultimately our focus is on tracking costs and revenues over the longer term as the basis for setting surcharges, rather than short term aberrations in market conditions and data. See chapter 4 for information on our proposed methodology and approach. It also outlines the feedback we are seeking to help inform our review.

We review and set the maximum non-cash payment surcharge in taxis

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

In Victoria there are non-cash payment processors who facilitate the acceptance and processing of non-cash payments.

From 1 February 2021, the maximum non-cash payment surcharge for taxi services in Victoria is:

- four per cent (including GST) for most non-cash payment methods.
- six per cent (excluding GST) for commercial passenger vehicle specific instruments (like Cabcharge).

In setting and reviewing the maximum surcharge, our objective, as specified in the Commercial Passenger Vehicle Act 2017, is to promote efficiency in the non-cash payment transaction industry by regulating the surcharge that may be imposed.³

To achieve this, 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.⁴ Reasonable cost includes any fees payable for the acquisition of transactions involving the use of debit, credit or charge cards.⁵

As per the Essential Services Commission Act 2001, our objective is also to promote the long term interests of Victorian consumers.⁶ To achieve this we must have regard to price, quality, and reliability of essential services.⁷

We must also have regard to a range of other matters, to the extent they are relevant, such as:

³ Commercial Passenger Vehicle Industry Act 2017, s. 122(1).

⁴ Commercial Passenger Vehicle Industry Act 2017, s. 122(2).

⁵ Commercial Passenger Vehicle Industry Act 2017, s. 122(3).

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

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

- the financial viability of the industry
- the degree of and scope for competition within the industry.⁸

Our determination must:

- ensure that the expected costs of the proposed regulation do not exceed the expected benefits.
- take into account and clearly articulate any trade-offs between costs and service standards.⁹

We must also adopt an approach and methodology which we consider best meets these objectives.¹⁰

Chapter 3 explains how we plan to conduct the review, in a manner that fulfils our role while achieving our objectives in the non-cash payment transaction industry.

Chapter 4 sets out the information we will seek from industry for our bottom-up cost build. We may use this and benchmarking to assess reasonable costs and set the maximum taxi non-cash payment surcharge.

Questions for stakeholders

1. To what extent is data for the years 2019-20 and 2020-21 useful for assessing the non-cash payment surcharges, given these years were affected by the coronavirus pandemic, particularly the ‘stay at home’ and other restrictions that were in place in Victoria?
2. Has there been any substantive changes to the taxi non-cash payment industry since our 2019 review? If so, what were these? Are there permanent changes in costs? If so, please explain their nature and cost drivers.
3. The 2019 review assessed costs and revenues on the basis of two payment terminals per taxi. Are two terminals still necessary? Is this assumption still reasonable and valid? Would a single payment terminal approach now be more or less representative of the industry in 2022?

⁸ Section 10(i) of the Essential Services Commission Act 2001 (Vic) (ESC 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 in 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 ESC Act. Section 8 of the ESC 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 ESC Act sets out matters the commissions 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 ESC Act.

⁹ Essential Services Commission Act 2001 (Vic) s. 33(4).

¹⁰ Essential Services Commission Act 2001 (Vic) s. 33(2)

4. How many taxi payments in 2019-20 and 2020-21 were made by non-cash means compared to earlier financial years?

2. Timelines and submitting feedback

This consultation paper marks the beginning of our review into the non-cash payment surcharge for taxi services in Victoria. We have met with stakeholders about the review.

The existing taxi non-cash payment surcharges have been in place since 1 February 2021 following conclusion of our inaugural surcharge review in September 2020. Apart from the coronavirus pandemic, we will be seeking views about whether other significant factors or issues have emerged in the industry since 2020.

Under section 124(4) of the Commercial Passenger Vehicle Industry Act 2017, we must complete a review of our September 2020 taxi non-cash surcharge determination no later than two years after it was made. This means we must complete our review and release our decision by 7 September 2022.

We will obtain information and data from taxi payment processors via compulsory information notices issued under section 36 of the Essential Services Commission Act 2001.

Table 1 gives a timeline for our review.

Our charter of consultation and regulatory practice has further information on the principles that guide our approach to consultation.¹¹

Table 1: Timeline for non-cash payment surcharge review 2022

Activity	Due date
Release consultation paper	22 June 2022
Deadline for submissions on consultation paper	22 July 2022
Conclude review and release decision	7 September 2022

Send us your feedback by 22 July 2022

We plan to perform a review of the current non-cash payment surcharges using a similar, bottom-up cost assessment and benchmarking methodology we used for our 2019 review. Our approach is similar because our objectives have not changed. We will collect data and information from taxi payments processors to evaluate the cost of providing non-cash payments services.

¹¹ Essential Services Commission, Stakeholder engagement framework: Charter of consultation and regulatory practice, 2018, available at: <https://www.esc.vic.gov.au/about-us/how-we-regulate/stakeholder-engagement-framework>

We want your views on our plan to use a similar methodology and approach to reviewing and setting the maximum surcharge to be applied to non-cash payments for taxi services in Victoria.

Engage Victoria public consultation platform

We invite written submissions on this consultation paper by close of business **Friday, 22 July 2022** through Engage Victoria website. To view our Engage Victoria page and information on how to make a submission, please visit Engage Victoria at <https://engage.vic.gov.au/review-of-the-non-cash-payment-2022-surcharge-for-taxis>.

E-mail and mail

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

Attention: Price Monitoring and Regulation Division – Transport
Essential Services Commission
Level 8, 570 Bourke Street
Melbourne VIC 3000

Publication of submissions

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

We treat all submissions as public information unless the submitter has asked us to treat some or all of a submission as confidential or commercially sensitive. Please clearly specify any information that you **do not** want to be made public.¹²

Meet and speak with us in person

Want to discuss your views in person? **Please feel free to contact us by e-mail at transport@esc.vic.gov.au, or by phone on (+61 3) 9032 1300 or 1300 664 969.**

¹² Our submissions policy can be found on our About us page <https://www.esc.vic.gov.au/about-us/our-submission-policy>

3. Introduction

We are reviewing the current maximum non-cash payment surcharges that apply to taxi fares in Victoria.

Since 1 February 2021:

- the maximum surcharge applied to most non-cash payment methods is four per cent.
- commercial passenger vehicle specific payment instruments have a maximum surcharge of six per cent.

Our role is to ensure people like taxi payment processors and taxi drivers are able to recover the reasonable cost of accepting and processing non-cash payments.

Our objective when setting the maximum non-cash payment surcharge is to promote the long-term interests of Victorian consumers. In seeking to achieve this objective we must have regard to the price, quality and reliability of services provided by non-cash payment transaction industry. We must also, to the extent relevant, consider the financial viability and degree of, and scope for, competition in the commercial passenger vehicle (taxi) non-cash payment industry.

This chapter sets out what non-cash payments are, including a brief history of their regulation in Victoria and explains the commission's role and objectives in regulation of this industry.

You can find detailed explanations of our previous review and the history of non-cash payments for taxis on our website: www.esc.vic.gov.au.

What are non-cash payment surcharges?

When customers purchase a good or service using payment methods other than cash the merchant (the business the customer buys the goods or service from) incurs a cost of accepting this payment.

The cost of payment acceptance can vary depending on the size of the business and the type of payment method used. A surcharge can be applied to a customer's payment allowing merchants to pass on the cost of accepting that payment to the customer. This is called a non-cash payment surcharge.

The Reserve Bank of Australia (RBA) regulates surcharges for every industry except the taxi industry through its standard.¹³ The RBA's standard explains a merchant's surcharge for a particular payment type (card type) should not exceed the average cost of acceptance over the most recent 12-month period for that type of card. For example, if the average cost of acceptance for Visa credit cards is one per cent, then the merchant can only surcharge one per cent on Visa credit card payments.

The Australian Competition and Consumer Commission (ACCC) can enforce excessive surcharging on goods and services excluding taxi services. The ACCC explain a typical surcharge cost can range from 0.5 to 2 per cent for debit, credit and American Express cards.¹⁴

We set the maximum non-cash payment surcharges applied to taxi services in Victoria.¹⁵ A non-cash payment surcharge can apply when paying for booked and unbooked taxi services using a credit card, debit card or charge card.

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

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

From 1 February 2021 the maximum non-cash payment surcharge for taxi services in Victoria is:

- four per cent (including GST) for most non-cash payment methods.
- six per cent (excluding GST) for commercial passenger vehicle specific instruments.¹⁶

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

¹³ 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 amended 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 21 April 2022.

Commercial Passenger Vehicle Industry Act 2017, s. 112(2)(a-b) states we do not have the power to set fees and charges covered by the standards set by the RBA.

¹⁴ Australian Competition and Consumer Commission 2022, <https://www.accc.gov.au/consumers/prices-surcharges-receipts/credit-debit-prepaid-card-surcharges#typical-surcharge-costs>, accessed 21 April 2022.

¹⁵ Commercial Passenger Vehicles Industry Act 2017, s. 122 and s. 124

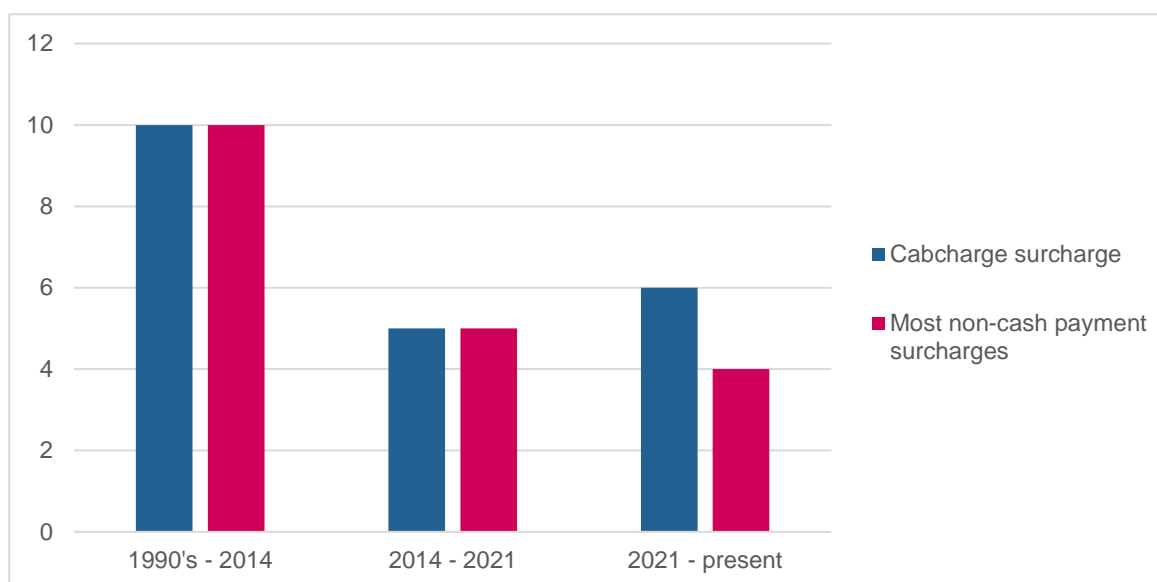
¹⁶ The surcharge for usage of the Cabcharge payment instrument is not subject to GST. According to Cabcharge this is because it is a financial transaction that is subject to GST on inputs (https://accounts.cabcharge.com.au/subpages/update3_cabchargegst.htm) [last accessed 7 November 2019].

History of non-cash payment surcharges for taxi fare in Victoria

Standard industry practice was to apply a 10 per cent surcharge (excluding GST) to non-cash payments for taxi fares in Victoria until the Victorian Taxi Industry Inquiry (the inquiry) in 2012.¹⁷ Prior to the inquiry the non-cash payment surcharge was unregulated.

As a result of the inquiry a maximum surcharge amount was set at five per cent (including GST) from 2014. We conducted a review in 2019 of the then maximum five per cent non-cash payment surcharge and determined two new maximum amounts effective 1 February 2021: four per cent (including GST) for most non-cash payment methods and six per cent (excluding GST) for cards like Cabcharge. Figure 1 shows the change in non-cash payment surcharges over time as a result of changes in policy surrounding the regulation of maximum amounts as they apply to taxi fares in Victoria.

Figure 1: Historical non-cash payment surcharges for taxi services in Victoria



Usually taxi payment processors collect the surcharge

A non-cash payment surcharge may be collected by the taxi payment processor, booking service provider, taxi driver or taxi owner. Who surcharges the passenger will vary depending on the payment terminal used.

¹⁷ Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Draft Report, May 2012, p.252.

Taxi payment processor surcharging

There are a large number of different taxi payment processing services that provide payment terminals specifically designed for the taxi industry. These include Cabcharge, Cabfare, GM Cabs, Ingogo, and Live Taxi. Although these services differ in their relationship with financial institutions, owners, drivers and payment schemes (such as Visa and MasterCard), for the purpose of our review we will call them taxi payment processors.

Services provided by taxi payment processors

The terminals provided by taxi payment processors can perform more functions than terminals provided by other payment processors (such as the big four banks, Tyro, or Square). These functions can include integration with the taxi meter, integration with the taxi dispatch system, payment of government taxi subsidies, calculation of the non-cash payment surcharge and printing tax invoices with pick-up and drop-off locations.

How taxi payment processors collect the surcharge

Taxis mostly use terminals provided by taxi payment processors. These terminals pay the fare and surcharge to the taxi payment processor. The surcharge is kept by the taxi payment processor and the fare is transferred 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

Drivers can choose between different payment processing options.¹⁸ Taxi payment processors therefore compete for drivers to steer payments to their payment devices. As a result, taxi payment processors usually do not charge drivers for accepting non-cash payments, but often provide different forms of incentives to attract more drivers to use their payment terminals.¹⁹ Some taxi payment processors offer drivers other incentives such as commission,²⁰ redeemable vouchers or fuel discounts.²¹

¹⁸ Cabcharge-branded cards can only be processed by Cabcharge terminals and one other competitor. 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 22 April 2022.

²¹ <https://gmcabs.com.au/drivers/>, accessed 22 April 2022.

Taxis often use secondary terminals

As a condition of their vehicle registration, all taxis must have a terminal that can process multi-purpose taxi program (MPTP) subsidies. By default, this is a terminal provided by A2B Australia, which is currently the only type of terminal that is able to process MPTP subsidies.

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

Booking service provider surcharging

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 a taxi using an app. If the booking service provider takes payment it may charge up to the maximum surcharge. We note some booking service providers choose not to impose any surcharge.

Taxi driver surcharging

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

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

The Commercial Passenger Vehicle Act 2017 sets out our role in the regulation of non-cash payment surcharges for Victoria's taxi industry.

See appendix A for legislative requirements but in short, we are required to promote efficiency by regulating the amount that may be imposed by way of a non-cash payment surcharge.²²

²² Commercial Passenger Vehicles Act 2017, s. 122(1).

To do this, we must set a maximum surcharge that will ensure that persons facilitating the making of non-cash payment transactions are able to recover the reasonable cost of accepting and processing such transactions.²³

We are able to set the surcharge in a manner we consider best promotes efficiency in the industry and which meets the commission's overall objective to promote the long term interests of Victorian consumers.²⁴

We are also required to complete a review of the maximum surcharge every two years following the making of the most recent determination.²⁵

What is outside the scope of our review?

We will not review payment surcharges by hire car or ride sharing services such as Didi and Uber.

We are also not able to make changes to the legislative environment regulating the maximum surcharge, which is a policy matter for the Victorian government. Equally, we have no role in reviewing, assessing or alternating any surcharges that are covered by the RBA's surcharging standard.

²³ Commercial Passenger Vehicles Act 2017, s. 122(2).

²⁴ Essential Services commission Act 2001, s. 8(1).

²⁵ Commercial Passenger Vehicle Industry Act 2017 (Vic), s 124(4).

4. Our approach

We will obtain information and data from taxi payment processors via compulsory information notices issued under section 36 of the Essential Services Commission Act 2001.

To assess industry data, we intend to use a bottom-up cost build and benchmarking to determine the reasonable costs.

This chapter sets out the information we will seek from industry and how we will use it to assess and set the maximum taxi non-cash payment surcharge.

Information requests will be compulsory

We will obtain information and data from taxi payment processors via compulsory information notices issued under section 36 of the Essential Services Commission Act 2001.

Methodology for review

Our 2019 review methodology was to build up the actual costs incurred by taxi payment processors and benchmarking those to the cost of acquiring and accepting credit and debit cards in the rest of the economy. We did this by obtaining payment processors' data.

We will once again assess the reasonable costs of providing non-cash payment services through compulsory information notices issued under section 36 of the Essential Services Commission Act 2001.

We will take the same group of costs from our 2019 review as being the reasonable costs of providing taxi non-cash payment services. Those costs are listed in this section. We will evaluate the costs and revenue data provided to us by the taxi non-cash payment service providers to assess whether the existing surcharges should be altered.

We will also make use of the data payment processors provided in our first review undertaken during 2019 and 2020.

Based on our initial consultations with taxi payment processors, it would seem likely some of the data we receive will be compromised by the impacts of the coronavirus pandemic.²⁶ This could mean we exclude some data from our analysis if we consider it to be unsuitable for providing an accurate representation of the ongoing costs and revenues for the taxi payments industry.

²⁶ We held meetings with the A2B Australia, Cabfare, GM Cabs, Ingogo, and Live Taxi in June 2022.

Ultimately our focus is on tracking costs and revenues over the longer term as the basis for setting surcharges, rather than short term aberrations in market conditions and data.

Bottom-up cost assessment

One of the main methods we used in our 2019 review of taxi non-cash payment surcharges was to gather industry evidence about the actual costs incurred in providing the service.

This gives an indication of the reasonable costs likely to be incurred by the sector as it makes available hardware and software to process non-cash transactions.

We intend to continue with our definition of 'reasonable costs' being 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.²⁷

This requires us to determine which costs are likely to be reasonably incurred. Not all costs might be associated with accepting and facilitating non-cash payments. If so, those costs should be excluded from our analysis. To include them would mean customers are paying through the surcharge for costs not associated with facilitating and accepting non-cash payment transactions.

We will use a building block model to assess and determine the costs stacks. This is directly comparable to the approach and methodology we have adopted in other regulated sectors, like energy retailing (for the Victorian Default Offer) and the water sector.

The cost stacks relate to return on capital, return of capital (also referred to as depreciation), operating expenditure and tax expenses. Summing these up gives the costs incurred in providing the service.

In the 2019 review, we used the following cost categories to represent reasonable costs:

- Return on capital (regulated asset base)
- Return of capital (depreciation of payment terminals and infrastructure assets)
- Operating expenditure including:
 - maintenance depots to undertake payment terminal repair or swap over
 - payment terminal maintenance and rental costs
 - fraud costs (chargebacks) and fraud prevention costs
 - merchant service fees
 - direct and indirect labour costs associated with processing non-cash payments

²⁷ Essential Services Commission, Taxi non-cash payment surcharge review 2019: consultation paper, December 2018, p.9.

- administration expenses, marketing and advertising costs.

We intend to use these same categories for our 2022 review. We will be asking the industry for information on these costs over the period 2019-20 and 2020-21.

Having established that these are the reasonable cost categories, we must then determine if the quantum of the costs incurred is reasonable.

One element of this is to consider if multiple payment terminals per taxi is still a valid assumption. In our 2019 review, we allowed for multiple terminals per taxi, despite the potential costs of the taxi payments industry being lower with a single terminal. We assessed the costs of multiple terminals to be reasonable, as a single terminal assumption could have restricted competition, because taxis might be limited to using terminals that can process multi-purpose taxi program (MPTP) subsidies, which is currently provided by a single taxi processor. We seek stakeholders' views on this assumption and whether it still reflects common industry practice.

We excluded certain costs when undertaking the 2019 review of the non-cash payment processors costs. We plan to continue to exclude the following from our assessment of reasonable costs:

- Commissions and other incentives paid to drivers
- Fees paid to booking service providers that do not relate to the acceptance and processing of non-cash transactions
- Taxi meter and dispatch function costs
- Cashing booths, driver centre and lounge expenses
- Driver payment cards
- Lost property
- Technology refresh costs.

Benchmark surcharges in similar industries

As a further check on reasonable costs of accepting and processing non-cash payment transactions, our 2019 review looked at comparable costs in other sectors. This included surcharges on credit, debit and eftpos transactions imposed by banks, other financial institutions and card schemes for goods and services in the rest of the economy.

This gives an insight into the costs incurred by other industry sectors for providing similar type services to taxi payment processors. Adjustments might need to be made to take account of the different activities required to facilitate and process non-taxi related transactions.

If there are material changes in the industry since our last review, the benchmarking will give a guide as to the likely variances.

4. Our approach

Questions for stakeholders

1. To what extent is data for the years 2019-20 and 2020-21 useful for assessing the non-cash payment surcharges, given these years were affected by the coronavirus pandemic, particularly the 'stay at home' and other restrictions that were in place in Victoria?
2. Has there been any substantive changes to the taxi non-cash payment industry since our 2019 review? If so, what were these? Are there permanent changes in costs? If so, please explain their nature and cost drivers.
3. The 2019 review assessed costs and revenues on the basis of two payment terminals per taxi. Are two terminals still necessary? Is this assumption still reasonable and valid? Would a single payment terminal approach now be more or less representative of the industry in 2022?
4. How many taxi payments in 2019-20 and 2020-21 were made by non-cash means compared to earlier financial years?

Glossary

Term	Definition
Acquirer	An institution that provides a merchant with facilities to accept card payments.
Booked services	Booked services are trips booked via an application, or over the phone or website.
Booking service provider	A person, company or association who provides a service that reserves CPVs to transport passengers at a certain time, departure point, and destination. Previously called network service provider.
Cardholder	Individual who owns and uses a card in paying for goods and services. In the supply chain, a cardholder is the consumer.
Commercial Passenger Vehicle (CPV)	Any motor vehicle used or intended to be used for carrying passengers for hire or reward, excluding a bus used to provide a bus service.
Commercial Passenger Vehicles Victoria	Commercial Passenger Vehicles Victoria, formerly the Taxi Services Commission, is the regulator of the commercial passenger vehicle industry.
Charge back	This is when the acquirer removes/holds the funds of a disputed transaction. For example, a merchant makes a sale of \$20, one month later the customer disputes the transaction and claims the credit card was stolen. The acquirer will remove the \$20 from the merchant's account and apply a charge back fee. A charge back fee is usually charged at a premium.
Charge card	It is a card whose holder has been granted a non-revolving credit line enabling the cardholder to make purchases and possibly make cash advances. A charge card does not offer extended credit; the full amount of any debt incurred must be settled at the end of a specified period.
Clearing	The process of transmitting, reconciling and in some cases confirming payment instructions prior to settlement.

Term	Definition
Credit card	It is a card whose holder has been granted a revolving credit line enabling the cardholder to make purchases and/or cash advances up to a pre-arranged limit. The credit granted can be settled in full by the end of a specified period or in part, with the balance taken as extended credit. Interest may be charged on the transaction amounts from the date of each transaction or only on the extended credit where the credit granted has not been settled in full.
Debit card	Debit card is a card that enables the holder to access funds in a deposit account at an authorised deposit-taking institution.
Direct debit	A pre-authorised debit on the payer's (cardholder) bank account initiated by the recipient (merchant).
eftpos	Electronic funds transfer at point of sale. The eftpos system is a domestic debit card system managed by eftpos Payments Australia Limited.
Financial institution	A company whose primary function is to intermediate between lenders and borrowers in the economy.
Interchange fee	A fee paid between card issuers and acquirers when cardholders make transactions.
Issuer	An institution that provides its customers with debit or credit cards.
Meter	A mechanical, electrical or electronic device that calculates, records or displays information about fares and charges for the provision of unbooked commercial passenger vehicle services. Commercial Passenger Vehicles Victoria is responsible for specifying the functional requirements of fare devices.
Merchant	Person or business that accepts a card for payment for goods or services.
Merchant service fee	A transaction-based fee charged to a merchant by an acquirer for acquiring, or by a payment processor for arranging the acquisition of, one or more types of card transactions from that merchant.

Term	Definition
Multi Purpose Taxi Program (MPTP)	A government program that subsidises taxi fares for people with severe and permanent disabilities. MPTP members receive a 50 per cent subsidy on taxi fares up to a maximum of \$60 per trip and \$2180 per year. Some MPTP members, for example those using wheelchairs, are exempt from the annual cap.
mPOS terminal	A payment terminal which connects to a smartphone or tablet to process non-cash payments.
Non-cash payment surcharge	<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 non-cash payment transaction; or • payable by the owner or driver of a commercial passenger vehicle or by all or any of them because the payment of an amount payable in respect of the hiring of the vehicle is made wholly or partly by means of a non-cash payment transaction.
Payment instrument	Payment instruments are methods which customers use to make payments or transmit money. Frequently used payment instruments include cash, cards, cheques and electronic funds transfers.
Payment processor	An entity that is not a related entity of the merchant that provides services and/or equipment to the merchant in connection with, the acceptance by that merchant of cards for payment for goods or services.
Payment terminal	<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>

Term	Definition
Payment system	Refers to arrangements which allow consumers, businesses and other organisations to transfer funds usually held in an account at a financial institution to one another. It includes payment instruments like cash, cards, cheques and electronic fund transfers which customers use to make payments, and the unseen arrangements that ensure funds move from accounts at one financial institution to another.
Price determination	A price determination is the legislative instrument we use to set prescribed prices for prescribed goods and services supplied by or within a regulated industry.
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 operational roles in the payments system.</p> <p>The RBA sets interchange fees in designated debit, prepaid and credit card schemes. It also regulates merchant surcharging for credit, debit and prepaid card transactions in Australia.</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.
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.

Term	Definition
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.
Unbooked services	Unbooked services are CPV services that are provided other than as a result of the provision of a booking service. They include trips hailed from the street, hired from a recognised taxi rank or trips that have not been booked via an application, over the phone or website.

Appendix A: 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 at: <http://www.legislation.vic.gov.au>.

Relevant sections of the Commercial Passenger Vehicle Industry Act 2017

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</p> <p>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

Meaning of non-cash payment surcharge

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

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

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

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

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

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

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

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

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

s. 113

Cap on non-cash payment surcharges

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

(a) exceeds the prescribed amount; or

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

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

(3) A person must not—

(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 (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.

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

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

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

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

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

s.118

Non-cash payment surcharge may be recovered as a debt

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

s.119

Proceeding for damages

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

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

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

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

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

s.120

Compensation orders

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

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

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

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

(a) the injured person; or

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

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

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

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

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

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

(6) The regulator must not make an application under subsection (2)(b) on behalf of an injured person who has not consented in writing to the making of the application on their behalf.

s. 121

Application of Essential Services Commission Act 2001

(1) For the purposes of the **Essential Services Commission Act 2001**—

(a) this Division is relevant legislation; and

(b) the non-cash payment transaction industry is a regulated industry.

(2) If there is any inconsistency between a provision of this Division and a provision of the **Essential Services Commission Act 2001**, the provision of this Division prevails.

s. 122

Objective of the ESC

(1) The objective of the ESC in relation to the noncash payment transaction industry is to promote efficiency by regulating the amount that may be imposed by way of a non-cash payment surcharge.

(2) In seeking to achieve the objective specified in subsection (1), the ESC must ensure that persons facilitating the making of non-cash payment transactions are able to recover the reasonable cost of accepting and processing such transactions.

(3) In this section—

reasonable cost includes any fees payable for the acquisition of transactions involving the use of debit, credit or charge cards.

s. 123

Powers in relation to non-cash payment service regulation

For the purposes of Part 3 of the Essential Services Commission Act 2001—

- (a) non-cash payment transactions are prescribed services; and
- (b) the maximum amounts of non-cash payment surcharges are prescribed prices.

s. 124

Exercise of regulatory functions

(1) The ESC may regulate prescribed prices by determining different prices according to circumstances specified in the determination if it considers it necessary to do so in order for it to comply with section 122(2).

(2) Subsection (1) does not limit section 33(5) of the Essential Services Commission Act 2001.

(3) The ESC must make a price determination no later than 12 months after the day on which section 18 of the Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017 comes into operation.

(4) The ESC must complete a review of a price determination no later than 2 years after it is made.

Schedule 2, s.25

Subject matter for regulations

Non-cash payment surcharges

25. The keeping by persons who provide services for processing non-cash payment surcharges of records of, or relating to, the following—

- (a) non-cash payment surcharges charged or collected by persons using the services;

Section number	Section detail
	(b) the operation and programming of equipment that enables non-cash payment transactions to be made;
	(c) the retention and storage of information, data and electronic communications relating to non-cash payment surcharges;
	(d) the structure of, setting of and receipt of non-cash payment surcharges;
	(e) commercial arrangements supporting non-cash payment surcharges.

Relevant sections of the Essential Services Commission Act 2001

Section number	Section detail
s. 8 (1)	<p>Objective of the Commission</p> <p>In performing its functions and exercising its powers, the objective of the Commission is to promote the long term interests of Victorian consumers.</p>
s. 8 (2)	<p>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.</p>
s. 8A (1)	<p>Matters the Commission must have regard to</p> <p>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—</p> <ul style="list-style-type: none"> (a) efficiency in the industry and incentives for long term investment; (b) the financial viability of the industry; (c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries; (d) the relevant health, safety, environmental and social legislation applying to the industry; (e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for— <ul style="list-style-type: none"> (i) consumers and users of products or services (including low income and vulnerable consumers); (ii) regulated entities; (f) consistency in regulation between States and on a national basis;

	(g) any matters specified in the empowering instrument.
s. 8A (2)	Without derogating from section 8 or subsection (1), the Commission must also when performing its functions and exercising its powers in relation to a regulated industry do so in a manner that the Commission considers best achieves any objectives specified in the empowering instrument.
s.32	Price Regulation
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.32(2)	In this section – prescribed goods and services means any goods or services made, produced or supplied by or within a regulated industry which goods or services are specified in the empowering instrument as being goods or services in respect of which the Commission has power to regulate prices; prescribed price means the price or price-range however designated for the supply or sale of any goods or services by or within a regulated industry or particular factors used in price-fixing or terms and conditions relating to the price at which particular goods or services are supplied or sold, being a price, price-range, factor or term and condition specified in the empowering instrument as being a price, price-range, factor or term and condition which the Commission has power to regulate.
s.33	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)	In making a determination under this section, the Commission must have regard to— (a) the particular circumstances of the regulated industry and the prescribed goods and services for which the determination is being made;

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

Part 4—Information gathering notices

Division 1—Information gathering notices

- s. 36 Information gathering notices—performing functions or exercising powers
- s. 36(1) 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—
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- (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;
 - (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;
 - (c) appear before the Commission at a time and place specified in the notice to do either or both of the following—
 - (i) give information, including by answering questions, either orally or in writing;
 - (ii) produce a document or class of document specified in the notice that is in the person's possession, custody or control.

- s. 36(2) In exercising the power to serve an information gathering notice under subsection (1), the Commission must have regard to—
- (a) the relevance of the information, document or evidence sought; and
 - (b) the estimated compliance costs.

- s. 36(3) Despite subsection (1), the Commission must not serve an information gathering notice under this section if it could serve one under section 37(1).

- s. 36(4) A person must not—
- (a) without reasonable excuse, refuse or fail to comply with an information gathering notice under subsection (1); or
 - (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

- s. 39 **Power to examine on oath or affirmation**
- 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.
- s. 39A **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.
- 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) 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—
- (a) a proceeding arising out of the false or misleading nature of the information or document; or
- (b) a review under Part 7B; or
- (c) a proceeding for a monetary benefits order under section 61B.
- s. 39B **Protection against self-incrimination—information gathering notices under section 37(1)**
- s. 39B(1) It is not a reasonable excuse for a natural person or a body corporate to refuse or to fail to provide information, produce a document or give evidence, in compliance with an information gathering notice under section 37(1), if the provision of the information, production of the document or giving of the evidence would tend to incriminate the natural person or body corporate or expose the natural person or body corporate to a penalty.
- s. 39B(2) Any information provided, document produced or evidence given by a natural person, in compliance with an information gathering notice under section 37(1), is not admissible as evidence against that natural person in a criminal proceeding, other than in a proceeding arising out of the false or misleading nature of the information or document.
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s. 39B(3)	<p>Any information provided, document produced or evidence given by a body corporate, in compliance with an information gathering notice under section 37(1), is not admissible as evidence against that body corporate in a criminal proceeding, other than—</p> <p style="margin-left: 40px;">(a) in a proceeding arising out of the false or misleading nature of the information or document; or</p> <p style="margin-left: 40px;">(b) in a criminal proceeding under this Act or relevant legislation.</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 style="margin-left: 40px;">(a) threaten, intimidate or coerce the other person; or</p> <p style="margin-left: 40px;">(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 B: Records kept for non-cash payment surcharges

Under the Commercial Passenger Vehicle Industry Act 2017 (Vic)²⁸ and the Commercial Passenger Vehicle Industry Regulations 2018 (Vic), taxi payment processors are required to keep records.

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

Any questions regarding these requirements, should be directed to Commercial Passenger Vehicles Victoria, which is responsible for the implementation of the Commercial Passenger Vehicle Industry Regulations 2018.

Regulation number 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

²⁸ Commercial Passenger Vehicle Industry Act 2017, schedule 2, section 25.

- (c) in respect of each non-cash payment processing device supplied by the person or used to process a relevant transaction—
- (i) if the device is programmed to add a non-cash payment surcharge that is a fixed amount, the amount of that surcharge; and
 - (ii) if the device is programmed to add a non-cash payment surcharge that is not a fixed amount, the basis on which the amount of the surcharge is determined; and
 - (iii) any day on which the programming of the device is set or changed—
 - (A) to make the device add a non-cash payment surcharge; or
 - (B) to change the amount the device adds as a non-cash payment surcharge; and
 - (iv) each commercial passenger vehicle in relation to which the device is used; and
 - (v) the periods during which the device is used in relation to each commercial passenger vehicle; and
 - (vi) if the device is supplied by the person—
 - (A) each person to whom the device is supplied; and
 - (B) the period during which the device is supplied to that person.

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

Penalty: 10 penalty units.

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

Note

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