

Determination of maximum non-cash payment surcharge for taxis (from 4 July 2019)

1 July 2019

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Summary

This determination sets out the maximum non-cash payment surcharge (maximum surcharge) that can be charged to passengers of taxis in Victoria.¹ Non-cash payment surcharges are fees charged to passengers, on top of the standard taxi fare, for paying by any method other than cash.

This determination sets the maximum surcharge at five per cent (including GST) and will take effect from 4 July 2019.

The commission is currently conducting a review of the maximum amounts of non-cash payment surcharges in taxis. The commission expects to have completed this review in September 2019.

When the commission has completed its review it will consider whether, on the basis of the findings from the final decision, it is necessary to amend this determination, or revoke this determination and make a second determination.

The draft decision is available on our website: www.esc.vic.gov.au.

¹ We do not regulate non-cash payment surcharges for rideshare and hire car services. Non-cash payment surcharges for rideshare and hire car services are regulated by the Reserve Bank of Australia (RBA) under the national payment systems framework.

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Determination

Statement of purpose

The Essential Services Commission (the commission) is the independent economic regulator responsible for determining the maximum amounts of non-cash payment surcharges (maximum surcharge) that may be charged by taxis registered to operate in Victoria. Non-cash payment surcharges are fees charged to passengers, on top of the standard taxi fare, for paying by any method other than cash.² The current maximum surcharge is five per cent.³

The purpose of this determination is to set the maximum surcharge following consideration of the objectives and matters to which the commission must have regard to as set out in the Essential Services Commission Act 2001 (Vic)⁴ and the Commercial Passenger Vehicle Industry Act 2017 (Vic) (CPVI Act)⁵.

In setting the maximum surcharge our objectives are to:

- Promote efficiency in the non-cash payment transaction industry by regulating the amount that may be imposed by way of a non-cash payment surcharge. In seeking to achieve this objective, we must ensure that persons facilitating the making of non-cash payment transactions (such as taxi drivers and taxi payment processors) are able to recover the reasonable cost of accepting and processing such transactions.⁶
- 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 essential services.⁷

We must also have regard to a range of other matters: such as the particular circumstances of the regulated industry (ie, the non-cash payment transaction industry) and the prescribed goods or services for which the determination is being made (ie, non-cash payment transactions), financial viability of the industry, efficiency in the industry and incentives for long term investment, and the

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

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

⁴ Essential Services Commission Act 2001 (Vic), sections 8, 8A and 33.

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

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

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

degree of and scope for competition within the industry.⁸ In addition, in making a determination, we must ensure that the expected costs of the proposed regulation do not exceed the expected benefits, and the determination takes into account and clearly articulates any trade-offs between costs and service standards. We must also adopt an approach and methodology which we consider will best meet the objectives set out above.⁹

Appendix A provides a summary of our legislative considerations.

Statement of reasons

The Victorian Government has implemented major reforms to Victoria's commercial passenger vehicle industry. In 2014, legislation came into effect setting the maximum surcharge at five per cent.¹⁰ The legislation also gave the commission the power to determine the maximum surcharge.¹¹ In 2017, further reforms were enacted. As part of these reforms the commission must make a price determination by 2 July 2019.¹²

The commission's review has been delayed

In December 2018 the commission released a consultation paper on its proposed approach to assessing the maximum surcharge. This consultation paper marked the beginning of the commission's current review of the maximum surcharge. Initially the review was intended to be finalised by 2 July 2019. However, as a consequence of a number of late submissions and slow responses from some stakeholders to our information requests, our draft decision was delayed. In order to provide stakeholders with an appropriate opportunity to comment on our draft decision we expect to be in a position to release our final decision in September 2019.

To ensure that we meet our obligations under the CPVI Act, we have issued this determination by the legislated 2 July 2019 deadline, but also before we have completed our current review and issued our final decision. This first determination sets the maximum surcharge at its current level of

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

⁹ Essential Services Commission Act 2001 (Vic), s 33(2) and s 8A(2).

¹⁰ Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013 (Vic).

¹¹ Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013 (Vic).

¹² The commission is required to make a determination no later than 12 months after the day on which section 18 of the Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017 (Vic) came into operation. That Act came into operation on 2 July 2018, meaning the commission is required to make its determination by 2 July 2019: Commercial Passenger Vehicle Industry Act 2017 (Vic), s 124.

five per cent (including GST). Following consultation on our draft decision, we will issue a second determination (if required) that will reflect the findings from our final decision.¹³

Maintaining the maximum surcharge at five percent is consistent with our objectives and legislative requirements

We consider that, having regard to the requirements of the legislative scheme, making a first determination setting the maximum surcharge at five per cent prior to completing our review is consistent with our objectives and the matters we must ensure and have regard to.

Under the CPVI Act we must ensure that taxi payment processors can recover the reasonable cost of accepting and processing non-cash payment transactions.¹⁴ The information before us at this time, including the analysis contained in the draft decision for our current review, suggests that the reasonable cost of accepting and processing non-cash payment transactions is less than five per cent.¹⁵ This first determination, to set the maximum surcharge at five per cent, will ensure that taxi payment processors can recover the reasonable cost of accepting and processing non-cash payment transactions while we complete our review.

We consider that setting the maximum surcharge at the current level, while we finish our review, promotes the long term interests of Victorian consumers. It provides time for stakeholders to make considered responses to our draft decision and for us to properly consider all of the information before us.

Stakeholders did not object to our proposed approach to our first determination

In our draft decision, we sought stakeholders' feedback on our proposal to issue a first determination by 2 July 2019, which sets the maximum surcharge at five per cent. Stakeholders did not object to this approach.

Nature and effect of this determination

This determination sets the maximum surcharge at five per cent (including GST). It will take effect from 4 July 2019. This will be the first publication date of the Victorian Government Gazette after we publish our determination. Our determinations take effect on or after the date we give notice of them in the gazette.

¹³ This final decision will constitute a review of a price determination under section 124(4) of the Commercial Passenger Vehicle Industry Act 2017 (Vic).

¹⁴ Commercial Passenger Vehicle Industry Act 2017 (Vic), s 122(2).

¹⁵ ESC, Taxi Non-Cash Payment Surcharge Review 2019: Draft Decision, 30 May 2019, pp. 2 to 4.

Further detail is available on our website

Details of the commission's review of the maximum surcharge can be found in the draft decision available on our website: www.esc.vic.gov.au.

How to obtain a copy of this determination

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

www.esc.vic.gov.au

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

Essential Services Commission

Level 37 / 2 Lonsdale Street

Melbourne Victoria 3000

P: +61 3 9032 1300 or 1300 664 969

E: publications@esc.vic.gov.au

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



Date: 26 June 2019

A handwritten signature in blue ink, appearing to read "Kate Symons", written over a horizontal line.

Kate Symons
Acting Chairperson

Determination schedule:

Maximum non-cash payment surcharge for taxis in Victoria

The maximum non-cash payment surcharge in this schedule is set under Part 3 of the Essential Services Commission Act 2001 and Part 6 of the Commercial Passenger Vehicle Industry Act 2017 (Vic). It applies from 4 July 2019 to:

- any person who provides or maintains any equipment (whether or not installed in the commercial passenger vehicle) or any application or software that enables the non-cash payment transaction to be made;
- any person who manages or administers the whole or any part of a system under which non-cash payment transactions may be made; and
- the owner and driver of the taxi.

The maximum non-cash payment surcharge is **five per cent** (including GST) of the amount otherwise payable in respect of the relevant hiring.

Appendix A: our legislative considerations

The commission's statutory power to determine the maximum surcharge

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

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

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

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

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

The CPVI Act requires the commission to make a price determination no later than 2 July 2019.¹⁶

The commission's objectives

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

¹⁶ Commercial Passenger Vehicle Industry Act 2017 (Vic), s 124.

cash payments.¹⁷ 'Reasonable cost' is defined in the CPVI Act to include 'any fees payable for the acquisition of transactions involving the use of debit, credit or charge cards'.¹⁸

The ESC Act states that in performing its functions and exercising its powers, the objective of the commission is to promote the long term interests of Victorian consumers. In performing its functions and exercising its powers in relation to essential services, the commission must in seeking to achieve this objective have regard to the price, quality and reliability of essential services.¹⁹ Without derogating from this obligation and the requirements under section 8A of the ESC Act outlined below, the commission must also when performing its functions and exercising its powers in relation to a regulated industry do so in a manner that the commission considers best achieves any objectives specified in the empowering instrument, in this case being the CPVI Act.²⁰

In making a price determination, the commission must adopt an approach and methodology which the commission considers will best meet the objectives specified in the ESC Act and any relevant legislation.²¹ Section 33(5) of the ESC Act states that a price determination by the commission may regulate a prescribed price for prescribed goods and services in any manner the commission considers appropriate. Section 124 of the CPVI Act provides that the commission may regulate prescribed prices by determining different prices according to the circumstances specified in the determination if it considers it necessary to do so in order for it to comply with its obligation to ensure that taxi payment processors are able to recover the reasonable cost of processing non-cash payments.

Factors the commission must have regard to

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

- efficiency in the industry and incentives for long term investment;
- the financial viability of the industry;
- the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;

¹⁷ Commercial Passenger Vehicle Industry Act 2017 (Vic), s 122(1)-(2).

¹⁸ Commercial Passenger Vehicle Industry Act 2017 (Vic), s 122(3).

¹⁹ Essential Services Commission Act 2001 (Vic), s 8.

²⁰ Essential Services Commission Act 2001 (Vic), s 8A(2).

²¹ Essential Services Commission Act 2001 (Vic), s 33(2).

- 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 (i.e. the CPVI Act).

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

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

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

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

We set the maximum surcharge in taxis

We determine the maximum surcharge in taxis. We do not regulate non-cash payment surcharges for rideshare and hire car services.²² Rideshare and hire car non-cash payment surcharges are regulated by the Reserve Bank of Australia under the national payment systems framework.²³

²² Commercial Passenger Vehicle Industry Act 2017 (Vic), s 112(2).

²³ RBA 2016, Standard No. 3 of 2016: Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions, May.