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THE ESSENTIAL SERVICES COMMISSION AND ITS ROLE IN RELATION TO TAXIS

INFORMATION PAPER

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PREFACE

Following the completion of independent Taxi Industry Inquiry and subsequent government response, fundamental reforms are being made to the taxi and hire car industry in Victoria. The recent enactment of the *Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013* provides the legislative basis for the first wave of these reforms.

As a result of the new legislation, the Essential Services Commission ('the Commission'), which previously had an *advisory* role in relation to the setting of taxi fares, will now *determine* maximum fares. In determining these fares, the Commission is required to develop a new methodology that restructures certain elements of existing fare arrangements, and allows for flexibility for factors such as the time of day, or day of the week that the taxi service is provided.

Because many stakeholders in the taxi industry may be unfamiliar with the work of the Commission, this information paper has been prepared to provide an overview of who we are and what we do. It also discusses the processes that we typically adopt in undertaking our work. This is covered in Chapter 1 of this paper.

Chapter 2 then focuses specifically on the Commission's new roles in relation to taxis as a result of the new legislation. Finally, Chapter 3 outlines the next steps as the Commission prepares to undertake its review of the taxi fare methodology and determine new maximum taxi fares.

A snapshot of Victoria's taxi industry is provided in Appendix A, which includes details of the regulatory arrangements, while Appendix B provides a full list of the recommendations of the Taxi Industry Inquiry that will impact on the Commission's new roles.

1 OVERVIEW OF THE COMMISSION

1.1 Introduction

The Government of Victoria established the Essential Services Commission ('the Commission') on 1 January 2002 under the *Essential Services Commission Act 2001*. The Act establishes our organisation as the primary economic regulator of essential services in Victoria.

Industries in which we are involved include water and sewerage, electricity, gas, ports, rail freight, statutory insurance and transport sectors (including taxis). Our role differs for each regulated industry, but generally involves regulating prices, service standards, market conduct and consumer protection. We also investigate and advise the Government on regulatory matters that affect Victoria's essential services. In addition, the Commission administers the Victorian Energy Efficiency Target (VEET) scheme.

In recent years, the Government has asked us to provide advice on matters that extend the traditional areas of utility regulation (such as Victoria's vocational education and training fee and funding model).

The Commission comprises one full-time commissioner appointed as the Chairperson, and any number of full-time and part-time additional commissioners as the Minister for Finance considers necessary to enable the Commission to perform its functions. Dr Ron Ben-David is currently our Chairperson, and we have two part-time Commissioners: Dennis Cavagna and Mary Anne Hartley (see profiles in Box 1).

The Commissioners are supported by regulatory and analytical staff, led by a Chief Executive Officer and an executive team, with qualifications in economics, accounting, engineering and other analytical disciplines.

While legal decision making is ultimately the responsibility of the Commissioners, the staff are responsible for formulating recommendations, and being the main point of contact in consultation with stakeholders.

In addition to its staff, the Commission is supported by specialist contractors and consultants experienced in providing analysis on technical, economic and legal regulatory matters relating to a particular review, inquiry or investigation.

Box 1: Profiles of our Commissioners

Dr Ron Ben-David joined the Victorian Department of Treasury and Finance in 1998. This was followed by a number of years in the Department of Premier and Cabinet, where he became a Deputy Secretary in 2004. In 2007, he established Victoria's Office of Climate Change and then headed the Secretariat for the Garnaut Climate Change Review. He has served as Chairperson of the Commission since late 2008.

Dr Ben-David has written and presented on a wide range of issues including: governance and regulation in the water industry, retail energy markets, climate change, sustainability, federalism, local government, taxi reform and economic philosophy. In 2005, Dr Ben-David became a Fellow of the Institute of Public Administration Australia (Vic).

Dr Ben-David holds a B.Sc (Optometry), B.Comm (Hons) and PhD (economics), all from the University of Melbourne. He is a Fellow of the Institute of Public Administration Australia (Vic).

Dennis Cavagna was appointed part-time Commissioner in November 2007, and assumed the role of Acting Chairperson on 21 July 2008 until 15 December 2008.

Prior to his appointment to the Commission, Mr Cavagna had more than 24 years' experience in the Water sector, including six years in the position of Managing Director of the Melbourne metropolitan water retailer, South East Water. Mr Cavagna holds a Bachelor of Economics from Monash University and is a Fellow with the Institute of Chartered Accountants. He is also a former chairman of the Victorian Water Industry Association.

Mary Anne Hartley was appointed part-time Commissioner in October 2011. Ms Hartley is a practising barrister, admitted to the legal profession in 1984 and appointed a Senior Counsel in 2009. She has served as a Director of Melbourne Water, the Victorian Channels Authority, Gascor Ltd, the Port of Melbourne Corporation and Monash Gallery of Art. Before joining the Victorian Bar, Ms Hartley was a partner in a national law firm, where she advised public hospitals and practised insurance and shipping law. She is an accredited mediator.

1.2 Our role and objectives

Our legislated objective (as stated in Section 8 of the *Essential Services Commission Act 2001*) is to promote the long term interests of Victorian consumers, and we seek to achieve this objective by having regard to the price, quality and reliability of essential services.

In seeking to achieve this objective, the Commission must have regard to the following matters (as stated in Section 8A of our legislation) to the extent that they are relevant in any particular case:

- efficiency in the industry and incentives for long-term investment;
- the financial viability of the industry;
- the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;
- the relevant health, safety, environmental and social legislation applying to the industry;
- the benefits and costs of regulation for consumers and users of products and services (including low income and vulnerable customers) and for regulated industries; and
- consistency in regulation between States and on a national basis.

We also have objectives and functions under industry specific legislation, including: the *Electricity Industry Act 2000*, the *Gas Industry Act 2001*, the *National Electricity (Victoria) Act 2005*, the *National Gas (Victoria) Act 2008*, the *Water Industry Act 1994*, the *Rail Management Act 1996*, the *Port Management Act 1995*, the *Accident Towing Services Act 2007*, and the *Victorian Energy Efficiency Target Act 2007*.

Under the *Essential Services Commission Act 2001*, the Commission is a body corporate and an independent statutory authority. Determinations, reports and inquiries are not subject to the direction or control of the Minister, unless expressly provided for in legislation.

Further details of our roles and responsibilities in different sectors are summarised below.

1.2.1 Our roles in energy

The Commission's role in the energy sector is regulating and monitoring the conduct of providers of electricity and gas services pursuant to the *Electricity Industry Act 2000* and the *Gas Industry Act 2001*. We monitor and audit retailers' compliance with the regulatory framework, including various Codes and Guidelines.

Individual customer complaints needing resolution are handled by the Energy and Water Ombudsman Victoria, or Consumer Affairs Victoria. However, systemic problems or disputed wrongful disconnection claims are referred to the Commission.

We assess energy industry licence applications and administer existing licences for retail, generation, transmission and distribution businesses.

The Commission was expecting to transfer its responsibilities in retail energy regulation to the Australian Energy Regulator (AER) on 1 July 2012. However, in June 2012, the Victorian Government announced it was deferring transition to the National Energy Retail Law. As a result, the Commission has retained its oversight of the Energy Retail Code until certain state-specific consumer regulations are finalised. In the meantime, the Commission is harmonising Victorian regulation with the National Energy Customer Framework as far as practicable, while retaining some key Victorian-specific consumer protections.

With the exception of determining the standard feed-in tariff, the Commission does not have a role in determining energy prices. Energy retail prices are deregulated in Victoria, and network prices are determined by the AER. Nevertheless, the Commission has a customer information program that includes the *YourChoice* website that facilitates the comparison of retailers' prices and provides information to energy consumers on a range of energy issues.

1.2.2 Our roles in water

The Commission assesses prices proposed by water businesses against the principles set out in the Water Industry Regulatory Order (WIRO). In approving maximum prices, the WIRO requires the Commission to assess the proposals of water businesses against principles such as: ensuring prices are set to allow a business to recover the efficient costs of providing services; that prices provide incentives for sustainable water use; and that prices take into account the interests of customers, including low income and vulnerable customers.

The Commission has recently completed a review of the prices to apply to water and sewerage services provided by Victoria's water businesses (regional, rural and metropolitan areas) for the regulatory period 2013-18.

The Commission's Customer Service Codes play an important role in protecting the interests of households and other water consumers. The Codes protect households and other consumers by specifying the standards and conditions of service that water businesses must comply with in providing regulated services to customers. Business compliance with elements of the Codes is audited by the Commission on an annual basis.

We also undertake performance monitoring and reporting of the water businesses. These annual reports help to drive improvements in water business service delivery by facilitating open and transparent scrutiny of performance.

1.2.3 Our roles in ports

The Commission currently has a light-handed regulatory role in the ports sector. Certain services at the Port of Melbourne are subject to a price monitoring scheme.

The Port of Melbourne Corporation (PoMC) is required to publish a Pricing Principles Statement setting out how it intends to set its prices for port services (i.e. reference tariffs). PoMC is also required to consult effectively with users every year regarding proposed price changes before it publishes its reference tariff schedule for that year.

Each year, PoMC provides us with certain financial and business information so that the Commission can undertake its monitoring function and publish a monitoring report, where required.

Under the *Ports Management Act 1995*, the Commission is required to undertake periodic (five-yearly) reviews of the form of regulation applying to regulated ports services in Victoria. (The next scheduled review must be completed by 30 June 2014.)

The Commission has a role in responding to and, where necessary referring to the Government, complaints from port users about port pricing and service provision.

1.2.4 Our roles in the transport sectors

The Commission administers the State's third party access regime for freight rail infrastructure. The Commission's principal roles under the regime are to assess and approve the access arrangements of access providers – including the determination of an 'efficient' price of access – and to resolve access disputes of which it receives notice.

The Commission conducts periodic reviews of accident towing and storage fees. The Minister for Roads is required to receive the Commission's recommendations before making a determination regarding these fees.

In the past, a similar role has been played by the Commission in relation to taxi fares or rates – i.e. taxi fares have been determined by the Minister for Public Transport following advice provided by the Commission. However, this is set to change as a result of new legislation introduced as part of the Government's response to the Taxi Industry Inquiry. The new role for the Commission will be explained in greater detail in the remaining chapters of this information paper.

1.2.5 Our roles in statutory insurance

Under the direction of the Minister for Finance, the Commission undertakes annual data and performance monitoring of domestic building insurance (DBI) in Victoria. In addition, we have been asked to examine the adequacy and validity of the Victorian Managed Insurance Authority's DBI premiums on a biennial basis.

1.2.6 Our administration of the VEET scheme

The Commission is responsible for operating the VEET scheme, which includes: accrediting persons who may create energy efficiency certificates; approving energy efficient products for which certificates may be created; administering the creation, registration, transfer and surrender of certificates maintaining electronic registers; enforcing energy efficiency shortfall penalties; and assessing compliance with the relevant legislation and guidelines.

In 2011 the Government extended the VEET scheme from the residential to the business sector and strengthened our powers to avoid potential rorting of the scheme.

1.3 Our consultation with stakeholders

The Commission recognises that its decisions affect the consumers and users of Victoria's essential services, as well as the regulated businesses that produce these services. For this reason, we aim to be open and transparent in our decision-making, and to consult with as many people in the broader community as possible. Public participation in our regulatory processes enhances the relevance and effectiveness of our decisions.

Our consultation principles mean that we commit to be:

- independent, balanced and fair by ensuring our decisions and processes do not reflect undue influences and are consistent with our statutory objectives;
- open and transparent by publishing our work program on our website;
- accessible to, and inclusive of, all relevant stakeholders by providing them all reasonable opportunity within a reasonable timeframe to participate in our consultation processes;
- representative and fair in the way in which we explain the key issues, facts and information and reflect the comments that stakeholders make to our processes;
- effective in identifying priority issues, providing well-targeted opportunities for consultations and resolving them in a timely manner;

- efficient by minimising the costs of our regulatory activities and seeking to ensure that the costs of regulation do not exceed the benefits;
- active in engaging with government agencies, regulatory bodies and industry and consumer advocates, to better inform our regulatory approach, especially on emerging issues; and
- active in working with regulated businesses to achieve efficient regulatory outcomes that ultimately benefit consumers.

When beginning consultation on a particular matter, we inform stakeholders of the terms of reference for our investigation, outlining our proposed process, broad approach and timelines. Where timelines allow, issues papers may be released to formally begin a review or inquiry. We provide details of the relevant person or persons to contact for further information, and other relevant matters.

These details are communicated through direct correspondence and placement on our website, complemented by newspaper advertising. Once a consultation is advertised, we provide opportunities for stakeholder input into our regulatory or price review. Stakeholders are encouraged to provide written submissions, outlining issues to be considered as part of our consultation. Many of our major reviews feature direct consultation, such as public meetings and workshops.

Further details about the Commission's consultation processes can be found in our *Charter of Consultation and Regulatory Practice*, which is available on our website (www.esc.vic.gov.au).

2 THE COMMISSION'S ROLE IN RELATION TO TAXIS

2.1 Taxi Industry Inquiry

In March 2011, the Victorian Government established an inquiry into the Victorian taxi and hire car industry, headed by Professor Allan Fels AO and Dr David Cousins AM. It also announced that the Taxi Services Commission (TSC) would assume the role of industry regulator from the Victorian Taxi Directorate. Since 1 July 2013, the TSC has operated as a statutory authority with powers to administer reform of the industry.¹

The Taxi Industry Inquiry (TII) received more than 1,500 written submissions, and met with a range of different stakeholders. A draft report was released in May 2012.

The final report was submitted to the Government in September 2012, which included 139 recommendations for reform. Following further consultation with the community, the Government released its response in May 2013.

The Government accepted the vast majority of the TII's recommendations. The first wave of reforms has been given effect by the *Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013*, which received Royal Assent on 2 July 2013. These reforms include changes to the Commission's legislative role with respect to taxis. These changes are detailed in this chapter.

2.2 A move from advisory to determinative powers for taxi fares

The Commission's previous role with respect to taxis, before the recent reforms came into effect, was to provide advice to the Minister for Public Transport on taxi-cab fares. In other words, the Commission performed an advisory role, and it was the Minister who actually determined taxi fares (although the Minister could only determine a fare or hiring rate after he or she had received advice from the Commission).

The last time that the Commission provided advice on Victorian-wide taxi fares was in August 2008² when it recommended a fare increase of 6.1 per cent over

¹ Details about the TSC and the other participants and markets in the Victorian taxi industry are summarised in Appendix A.

² The Commission has also provided advice on taxi fares for late night, shared taxi schemes in Melbourne and Geelong in November 2012 and July 2013, respectively.

previous levels. This was based on a methodology that calculated the increase in fare revenue necessary to recover costs and maintain operator margin.

The Commission also recommended a process to adjust fares annually. However, the Minister for Public Transport has not adjusted fares since the last increase in 2008. Consequently, the current individual fare components (current taxi fares) are as identified in Table 1.

Table 1 Current Victorian taxi fares as at July 2013

| | | Metro | Urban | Country |
|---|----------|--|-------------------------------------|---------|
| Flagfall | | \$3.20 | \$3.20 | \$3.30 |
| Distance (\$/km) | Tariff 1 | \$1.617 | \$1.634 | \$1.67 |
| | Tariff 2 | Surcharge of 20 per cent (midnight to 5am) | Additional \$3.00 (midnight to 6am) | |
| | Tariff 3 | \$2.42 | \$2.451 | \$2.505 |
| Time (\$/min) (applies if the speed is below 21 km/h) | Tariff 1 | 56.6c | 57.2c | 58.5c |
| | Tariff 2 | Surcharge of 20 per cent (midnight to 5am) | 58.5c | 58.5c |
| | Tariff 3 | 85c | 85.8c | 87.75c |

Source: Victorian Taxi Directorate

As a result of the Government adopting recommendations made by the TII, the legislation has been changed to give the Commission *determinative* rather than advisory powers to set fares.

Under the new legislation, the Commission is required to determine maximum charges for:

- services provided by taxi cabs (taxi services); and

- taxi non cash payment surcharges.³

2.3 The taxi industry — a regulated industry under the ESC Act

The *Essential Services Commission Act 2001* (the ESC Act) has been amended to provide that the **taxi industry** and the **taxi non cash payment transaction industry** are 'essential services', the effect of which is to make the taxi industry a 'regulated industry' for the purpose of the ESC Act.

The Commission's functions include 'such functions as are conferred by this Act and relevant legislation under which a regulated industry operates'. In addition, for the purposes of Part 3 of the ESC Act (which deal with issues about price regulation):

- the services provided by taxis are 'prescribed services' and the maximum charges for such services are 'prescribed prices'; and
- taxi non cash payment transactions are 'prescribed services' and the maximum amounts of taxi non cash payment surcharges are 'prescribed prices'.

As outlined below, the inclusion of the taxi industry and taxi non cash payment transaction industry as regulated industries under the ESC Act has implications for the Commission's objectives and approach when exercising its powers.

2.4 Timing for determinations

Taxi fares

- The new legislation requires that the Commission must make an initial determination of maximum charges for Taxi Services no later than 1 July 2014 – i.e. within 12 months of the date on which the *Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013* came into effect.
- Thereafter, the Commission must complete a review of each price determination at least once every two years. This timeframe will allow the Commission to take account of changes to the cost of providing taxi services and any other relevant factors.

³ That is, surcharges payable by a hirer or by the owner, operator or driver of a taxi cab, because a taxi fare is paid wholly or in part by means of a non-cash payment transaction (i.e. using a debit, credit or charge card).

Non-cash payment surcharges

- In relation to the setting of non cash payment surcharges, there is no specified timeframe for the Commission to make an initial price determination.⁴ Rather, the Commission may make a determination if it is necessary to do so in order to meet its objectives in relation to the taxi non cash payment transaction industry (see below). However, once a determination is made, the Commission must review this determination no later than two years after it is made.

2.5 Dual objectives and many matters to have regard to

Section 33(2) of the ESC Act – which applies to the Commission’s new role in relation to taxis – provides that, 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.’

This means that in setting maximum charges for taxi services and non cash payment surcharges, the Commission must adopt an approach and methodology that best meets both the Commission’s objectives in Section 8 in the ESC Act and the objectives set out in the *Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013*. Those objectives are as follows:

- As stated in Chapter 1 of this paper, the Commission’s primary objective under Section 8 of the ESC Act is ‘*to promote the long term interests of Victorian consumers*’.
- The objective specified in Section 162B of the *Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013* in relation to the **taxi industry** is ‘*to promote the efficient provision and use of commercial passenger vehicle services*’.
- The objective specified in Section 162G of the *Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013* in relation to the **taxi non cash payment transaction industry** is ‘*to promote efficiency by regulating the amount that may be imposed by way of a taxi non cash payment surcharge*’.

⁴ Until a determination is first made by the Commission, the surcharge cannot exceed 5 per cent.

In setting maximum charges for the purposes of the new legislation, the Commission will be required to have regard to:

- the general factors set out in section 8A of the ESC Act (see Chapter 1 of this paper for the list of these factors);
- the price determination factors set out in section 33(3) of the ESC Act⁵; and
- in relation to the setting of maximum charges for taxi services, the Recommendations (12.1 to 12.9) and (13.1 to 13.5) in the Final Report of the TII. These are listed in full in Appendix B of this paper, but include the recommendation that fares should be restructured to:
 - not adversely affect services, which requires an increase in peak times, offset against a reduction in fares at all other times;
 - increase the flagfall and reduce the price per kilometre for the metropolitan zone to address the 'undesirable practices of short fare refusal and inefficient behaviour such as airport overcrowding';
 - replace the 'Tariff 3' 50 per cent surcharge on the distance rate with a flat fee of between \$10 and \$15, when customers book a higher occupancy vehicle or when they select one from a rank; and
 - simplify multiple hire fare charging to support the industry to offer more flexible, innovative share-ride type services and include provisions for multi-purpose taxi program members to use their subsidy for shared rides.

The new legislation also includes the manner in which the Commission may regulate taxi fares, and includes determining different prices according to:

- a) the time of day at which, or day of the week or kind of day on which, the service is provided; or
- b) the taxi-cab zone that is specified in the vehicle's licence; or
- c) the speed at which the vehicle is travelling; or

⁵ These are: (a) the particular circumstances of the regulated industry and the prescribed goods and services for which the determination is made; (b) the efficient costs of producing or supplying the regulated goods and 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; and (e) any other factors that the Commission considers relevant.

- d) the distance travelled by the vehicle; or
- e) the type of vehicle; or
- f) the occupancy of the vehicle, including where there is more than one hirer;
or
- g) where the journey begins or ends.

3 NEXT STEPS

The immediate priority for the Commission is to commence a review of taxi fare methodologies, and to satisfy the legislative obligation to determine fares within 12 months of commencement of new legislation. However, the Commission is aware of pressure to make a fare determination ahead of the July 2014 deadline.

Access to relevant data (such as metered data on trip lengths and time of day usage of taxis) will be critical to the Commission's work, and we look forward to working cooperatively with the taxi industry to secure the information needed to build the new methodology and determine taxi fares in a timely fashion.

The Commission recognises that, as with many reforms, the development of a new 'optimal' taxi fare methodology may need to be a staged process. Our immediate focus will be to establish a robust framework for the setting of taxi fares, which is consistent with the key parameters set out in the legislation. However, because of a number of uncertainties about how the market for taxi services will react to changes (e.g. how participants in taxi market respond to changes in the level of taxi fares and/or time-of-day pricing), it is likely that refinements will subsequently need to be made to take into account the lessons from experience.

Because the legislation requires the Commission to review fares on a regular basis (i.e. at least once every two years after a fare determination is made), we have the ability to introduce a staged approach to the reform of taxi fares.

As with most aspects of the Commission's overall work program, we intend to undertake an open and consultative process in our review of the taxi fare methodology and determination of new maximum taxi fares. Although the exact process and timelines are still being scoped, a typical approach would be as follows:

- release of an **issues paper**, which outlines the Commission's task and seeks written feedback on the key matters that will be relevant to the review;
- **consultations** with taxi industry participants, which may take the form of individual meetings and/or public hearings;
- release of a **draft report**, which details the Commission's draft decision on the new taxi fare methodology and draft determination of maximum fares, and which invites feedback from stakeholders;
- a **further round of consultation**; and

- release of a **final report**, which sets out the Commission's final decisions in relation to the new taxi fare methodology and maximum taxi fare determinations.

One way of streamlining the process – and therefore completing the fare methodology review and fare determination ahead of the 12-month legislated deadline – would be to remove the draft report stage, and for the Commission to proceed from the post issues paper consultation phase directly to the release of the final report. The decisions in the final report would be reviewed again within two years at the latest.

APPENDIX A – SNAPSHOT OF THE VICTORIAN TAXI INDUSTRY

This appendix provides an overview of the main participants and markets in the taxi industry, highlighting any changes to terminology following the release of the Victorian Government's response to the Taxi Industry Inquiry.

A.1 Taxi licences

Current legislation mandates that all taxis in Victoria must operate under a taxi licence, which is a government granted permission to operate a taxi. The number of licences on issue is controlled and subject to limitations. There are three basic types of taxi licence, as follows:

- **Conventional licences** – this is the most common type and enables taxis linked to these licences to operate 24 hours a day, seven days a week. The price of these licenses has varied over the years but was recently estimated at approximately \$350,000 for a metropolitan licence (albeit prior to the Government's response to the Taxi Industry Inquiry). There are currently 4,442 conventional licences on issue across Victoria.
- **Peak service licences** – also referred to as 'green top' taxis due to their distinctive livery, these taxis are only permitted to operate in the metropolitan area between 3pm and 7am, and 24 hours during specified major events. There are currently 600 peak service licences on issue.
- **Wheelchair accessible taxis (WAT) licences** – taxis with WAT licences are designed for the purpose of transporting people in wheelchairs and have an explicit obligation to give priority to wheelchair bookings. There are currently 686 WAT licences on issue across Victoria.

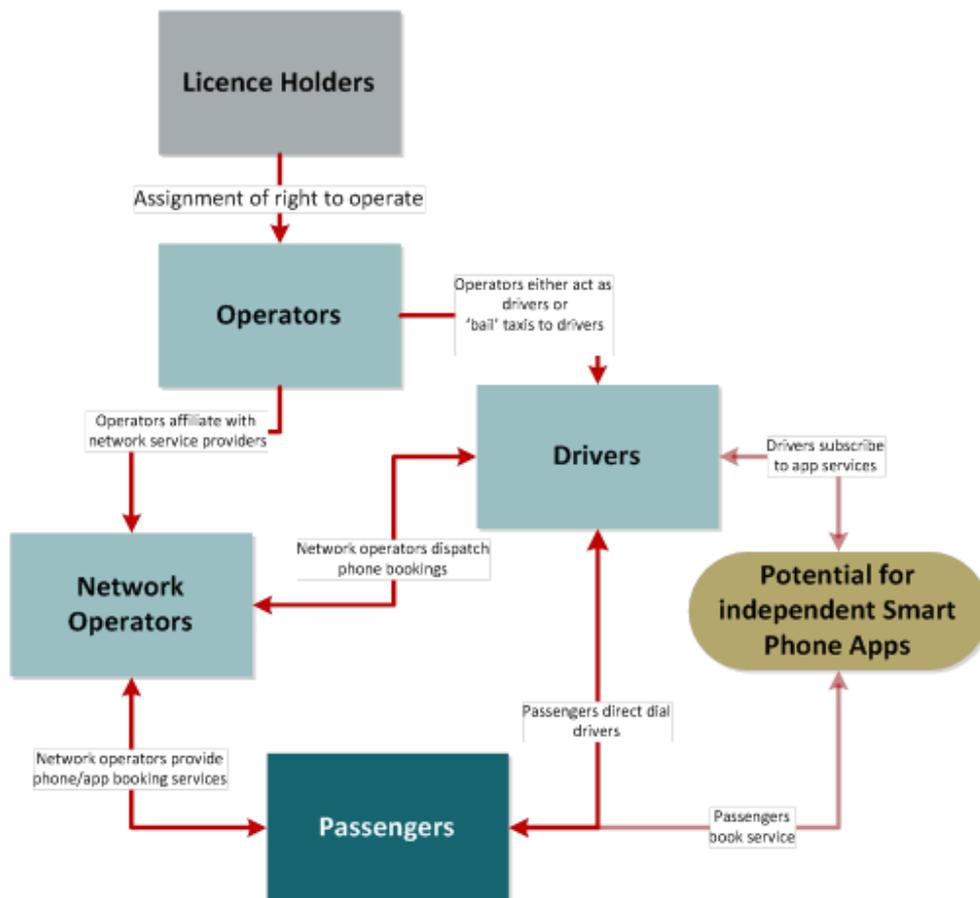
Each taxi is zoned to a particular area, the intention of which is to limit its operations and encourage the provision of service in that zone. Taxis cannot pursue rank and hail work outside their licensed zone but can accept pre-bookings outside the area. The current zones are:

- *Metropolitan* – metropolitan Melbourne;
- *Outer suburban* – Frankston and Dandenong;
- *Urban* – the cities of Geelong, Ballarat and Bendigo;
- *Country* – all other areas. Generally country taxis are licensed to operate within five to eight kilometres of the local post office.

A.2 Taxi Industry participants

There are four main categories of industry participant in the Victorian taxi industry, in addition to customers. They are depicted in the Figure 1 and described in more detail below. In practice, some industry participants operate in a number of capacities, an example of which is a licence holder who also operates (and potentially also drives) a taxi.

Figure 1: Taxi Industry Participants



A.2.1 Licence holders

These are individuals, firms or other legal entities that own and hold taxi licences. Licence holders are not required to operate the licensed taxi themselves and can *assign* (i.e. lease) the right to operate a vehicle to a third party taxi operator for a fee.

Existing taxi licence holders who have assigned their licence to an accredited operator under the current legislation will be permitted to continue to do so following the passage of the Government's proposed legislation for the taxi industry. Furthermore, they will not be required to obtain a permit when continuing or renewing assignments. Rather, they will be required to maintain up-to-date basic details (such as a name and business contact details) with the Taxi Services Commission (who became the Taxi industry regulator from 1 July 2013) for the Public Register.

A.2.2 Operators

Operators are persons or corporations that operate one or more taxis. Some operators may own the associated taxi licence, while others have been assigned the rights by a licence holder for a fee. Under current legislation, owners of taxi licences may assign (lease out) their licence to an operator for up to three years.

Recent assignment fees have been in the order of \$30,000 per annum but this is expected to fall (to the price of a new licence i.e. \$22,000) given current reforms. Given the supply of taxi licences is determined by the Government – and hence fixed – assignment fees are driven by demand, which is in turn driven by the expected profitability of conducting business as a taxi operator.

Taxis may be driven by the operator themselves or bailed to drivers. While there are a number of large and medium sized fleet operators, the vast majority of Victorian taxis are operated by operators who manage only one or two taxis. Over 70 per cent of licences in Melbourne are now operated by a person other than the licence holder. For regulatory purposes, the assignee (operator) assumes all privileges, duties and responsibilities of the assignor (licence holder) for the duration of the assignment period.

In the future, operators who access a licence through assignment or seek to lease a licence from the Government for an annual fee will be required to obtain a permit, provided they satisfy a character check. Once a permit is granted, the holder can purchase as many taxi and/or hire car licences as they wish.

A.2.3 Network service providers (to be replaced by Authorised Taxi Organisations)

Network service providers (NSPs) are companies that run taxi depots, whose primary role is to coordinate phone bookings — the receipt of calls from prospective customers and then dispatch of requests for service to drivers. NSPs (particularly in Melbourne) also provide a wide range of ancillary services and infrastructure to the taxi industry, including security, car fit outs, financing, repairs, taxi licence brokerage and driver training.

Each taxi, through its accredited operator, was previously required by law to be affiliated with an NSP, with current network fees estimated at approximately \$7,000 per annum. These fees are determined by the networks themselves.

Three NSPs currently operate in Melbourne, namely:

- Black Cabs (13 CABS), a subsidiary of Cabcharge;⁶
- Silver Top Taxis, owned by the Gange Corporation;
- Platinum Taxis, a smaller, independent provider.

Separate service providers operate in Frankston and Dandenong and most regional and country townships also have their own local NSP.

An alternative to NSPs (from a customer's perspective) are informal 'trunk groups' or secondary networks. These groups employ different dispatch methods to those of the authorised networks, examples of which have included unique communication systems or the simple use of mobile phones. Operators who are members of such groups are still required to affiliate with an NSP but these informal networks facilitate more direct connection between customers and service providers. It is likely that the individual driver (or at least a colleague or known associate) will have a more direct relationship with an individual customer and as such, they are a common source of repeat business, particularly for regular trips (to and from the airport, for example).

Authorised Taxi Organisations

One of the Taxi Industry Inquiry's significant recommendations with respect to booking and dispatch – subsequently supported by the Government – was to remove mandatory affiliation. This will allow any person permitted to provide taxi and/or Pre-Booked Only (i.e. hire car) services to choose to operate independently or to affiliate with one or more approved Authorised Taxi Organisations (ATOs).

ATO is a new concept under the proposed legislation and replaces NSP. The Government will seek to streamline approval processes for ATOs with a view to encouraging new entry and competition with the existing NSPs. ATOs will continue to have some regulatory obligations, as follows:

- to actively monitor the performance of affiliated permit holders and drivers to ensure they adhere to appropriate safety and service standards;
- to implement customer complaint handling procedures in line with AS ISO 10002-2006;
- to implement disciplinary procedures in relation to permit holders and/or drivers who fail to adhere to designated standards; and
- to provide specified service delivery data to the Taxi Services Commission.

⁶ Cabcharge also owns Arrow Taxis and North Suburban Taxis, small NSPs that operate within the Metropolitan zone. It is assumed, therefore, that the metropolitan network services is an effective duopoly.

A.2.4 Drivers

It is estimated there are approximately 15,000 active taxi drivers in Victoria, of which more than 12,000 work in the Melbourne metropolitan area. Drivers of all commercial passenger vehicles such as taxis, hire cars, special purpose vehicles and buses are regulated via a common commercial passenger vehicle driver accreditation scheme.

Most taxi drivers are bailees who rent a taxi from an operator through a standardised Bailment Agreement and are therefore considered independent contractors rather than employees. Bailee drivers negotiate their remuneration arrangements with operators, which generally involves a revenue split of the total fares received during a shift. Historically this has been 50/50, although other arrangements exist. For example, drivers may pay an upfront fee (or pay-in) to an operator and then retain all fare revenue for that shift. It is understood that such pay-in arrangements are quite common in NSW.

Operators then cover the costs of operation – assignment fee, maintenance, NSP affiliation, etc. – from their share of fare revenue.

A.2.5 The industry regulator

The Taxi Services Commission (TSC) has assumed the role of industry regulator from the Victorian Taxi Directorate (VTD) and has operated as a statutory authority since 1 July 2013 with powers to administer reform of the industry in line with the Government's response to the Taxi Industry Inquiry. It is the primary technical regulator, having regulatory responsibilities in areas such as vehicle standards, metering and other mandatory equipment, entry requirements for industry participants, driver knowledge and ongoing obligations for operators and NSPs/ATOs.

The TSC will also be granted powers with respect to licensing, such as having the power to suspend the issue of new taxi licences in the metropolitan and urban zones during the first three years of the new legislation when the level of entry into the industry is considered 'excessive' and not in the interest of consumers. In determining whether the release of new licences is excessive, the TSC is able to have regard to the financial viability of the taxi industry and impacts on services and standards. The TSC will also administer a new 'consumer interest test' for the release of licences in the regional and country taxi zones.

A.3 Market for taxi services

Although the services provided by taxis are essentially the same — destination to destination travel — any meaningful analysis of the taxi market requires the segregation of the market into separate sectors or sub markets. Taxi markets are generally divided into:

- **Hail** — taxis cruise the streets and are hailed or flagged down by passengers from the side of the road.
- **Rank** — designated taxi ranks are signposted throughout metropolitan Melbourne, major regional cities and country towns. In most cases, passengers stand at the rank and queue for a taxi.
- **Bookings** — passengers can book a taxi by telephone or over the internet.

The relative importance of these submarkets can differ dramatically across different locations. In Australia's metropolitan markets the hail and or rank markets are predominately important for airports, major railway stations and major sporting and entertainment venues for specific events (such as the Melbourne Cup or the AFL or NRL Grand Finals) and the central business districts.

The Commission's 2007-08 Taxi Fare Review report estimated that in Victoria, rank fares accounted for 15-20 per cent, hail fares 20-25 per cent, and phone bookings 60 per cent in metropolitan areas, while phone bookings accounted for 90 per cent of all taxi engagements in country areas.

Hail

This market refers to instances where passengers hail taxis from the side of the road. The market is essentially opportunistic in nature in that there are no controls on location such as ranks or coordination by external parties such as networks.

Once hailed, a driver cannot refuse a fare that is too short or inconvenient. Drivers may indicate at the end of a shift that they will only accept fares to destinations which are on the way to the taxi-cab's home base. The driver will display a sign that indicates the relevant destination.

This market is often referred to as the cruising taxi market in reference to cabs that frequent or 'cruise' past areas of probable high demand (such as the central business districts) in search of fares.

The primary participants in this market are the passenger, driver and operator; network service providers (now ATOs) do not participate.

Rank

Ranks and 'safe ranks' (ranks that also offer security for late night users) operate throughout the high traffic areas of metropolitan and regional Victoria. Taxi ranks are usually located in central business districts or at busy shopping centres and special locations such as airports.

In some cases ranks are supervised (such as Melbourne Airport ranks) but in most situations ranks are unsupervised and rely on the orderly behaviour of passengers and taxis to operate effectively. Ranks coordinate the allocation of taxis to

passenger services by allowing taxis to queue for the opportunity to provide services, while also allowing passengers to queue for the provision of taxi services.

The current convention in Victoria is that passengers are expected to hire the first available taxi from the taxi queue. Conversely, taxis are also required to accept the first available fare from the front of the queuing passengers.

Booking

Bookings occur either directly over the phone or via the internet and smart phone applications (apps). Statistics on the extent of phone bookings via apps are not currently available. With bookings, a passenger arranges for the provision of taxi services by booking a cab. Phone bookings may be made when a passenger contacts a network service provider or alternatively may occur through 'direct dial' where a passenger contacts an operator directly. By convention the network provider will assign the work to the nearest available taxi. Drivers affiliated with the network are obliged to provide services once they have accepted a job from the network service provider.

Another subset of the bookings market is an individual arrangement between a passenger and operator or driver, i.e. the trunk or secondary network discussed above.

APPENDIX B – TAXI INDUSTRY INQUIRY RECOMMENDATIONS RELEVANT TO THE COMMISSION’S ROLES IN TAXIS

Recommendations with respect to taxi fares

| Recommendation | |
|----------------|---|
| 12.1 | Taxi fares in Metropolitan and Urban zones should continue to be regulated in the short to medium term, and should change from being prescribed fares (fixed amounts) to maximum fares, giving permit holders and Authorised Taxi Organisations the ability to offer discounted rates below the maximum level to consumers. |
| 12.2 | Maximum fares should be determined by the Essential Services ESC (ESC). Fare reviews should be undertaken every two years, with the capacity to undertake interim reviews should certain cost thresholds (for example, LPG cost movements) be reached. |
| 12.3* | A Commissioner of the Taxi Services Commission should be appointed a member of the ESC for the purpose of assisting with taxi fare reviews and determinations for the first five years of taxi reform implementation. In addition, the ESC should be required to ensure its deliberations on fare setting have regard to the Government’s broader taxi reform package and its progress in implementing these reforms. |
| 12.4 | A review of the taxi fare setting methodology should be commenced as soon as possible. The terms of reference should have regard to the views expressed by the Taxi Industry Inquiry on fare setting methodology, should take into account the differences in industry structure between the taxi industry and other utility industries regulated by the ESC, and should consider fare setting models that account for demand factors in a dynamic way. |
| 12.5 | Maximum fares should be recorded on the taximeter. Authorised Taxi Organisations (ATOs) and independent permit holders should be permitted to determine and advertise lower fares than the maximum (and these discounted fares will also be shown on the taximeter), and all taxis affiliated with an ATO should be required to adhere to that organisation’s published rates. |
| 12.6 | In Regional and Country zones, where pre-booked services predominate, the Taxi Services Commission should be empowered to replace formal maximum fare regulation with a price notification and publication system, following the adoption of the licensing reforms proposed by the Taxi Industry Inquiry. |

| | |
|------|--|
| 12.7 | In areas where price notification applies, Multi Purpose Taxi Program (MPTP) passengers should have their subsidy component calculated on the Metropolitan zone regulated maximum fares rate. |
| 12.8 | Following the first three years of the reform program, the Taxi Services Commission should assess the extent and effectiveness of fare competition to determine if it is suitable to also move from maximum to notified and monitored fares in the Metropolitan and Urban zones. In making this assessment, the ESC should consider if all or part of these services are sufficiently competitive, particularly the pre-booked segment of the market. |
| 12.9 | <p>Fares should be restructured to:</p> <ul style="list-style-type: none"> • Ensure changes in operators' returns due to the new Driver Agreement do not adversely affect services, which require an increase in taxi fares late on Friday and Saturday nights (peak times), offset against a reduction in fares at all other times (off-peak) • Increase the flagfall and reduce the price per kilometre for the Metropolitan zone to address the undesirable practices of short fare refusal and inefficient behaviour such as airport overcrowding • Replace the 'Tariff 3' 50 per cent surcharge on the distance and time rate with a flat fee of between \$10 and \$15, which customers should be advised of when they book a higher occupancy vehicle or when they select one from a rank, such as at the airport • Simplify 'multiple hire' fare charging to support the industry to offer more flexible, innovative shared ride type services (for example, by allowing flat fee amounts for passengers in a shared ride trip that total more than the meter) and include provisions for MPTP members to use their subsidy for shared rides. |

Source: Victorian Taxi Industry Inquiry (2012), *Final Report, Customers First Service, Safety, Choice*

* Note that the Government did not support recommendation 12.3 in its response.

Recommendations with respect to non cash payments

| Recommendation | |
|----------------|---|
| 13.1 | <p>Barriers to entry into payments processing should be reduced by changing arrangements for the Multi Purpose Taxi Program (MPTP) scheme and changing the approvals process for EFTPOS devices in Victorian taxis.</p> <p>Regulations and the unique requirements mandated by the regulator for EFTPOS terminals should be rationalised and all taxi-specific requirements for mobile EFTPOS terminals removed as part of a transition to an industry certification framework. This should commence immediately and replace the current approval of this equipment by the State. During the transition to the new certification framework, minimal taxi-specific requirements for those EFTPOS terminals that are hard-wired (fixed) to other in-cab equipment should be retained.</p> |
| 13.2 | <p>A new standard should be established for the processing of MPTP cards and this should be made available to future card payment providers. This would involve allowing any EFTPOS terminal to process MPTP cards by permitting taxi fare data to be acquired by EFTPOS terminals via newer 'cloud' technologies, rather than only via the current requirement of a hard-wired link with the taximeter. The new standard should be sufficiently technically robust to control fraud under all operating conditions. Adoption of this recommendation will require a formal design evaluation and commercial procurement diligence, prior to implementation.</p> |
| 13.3 | <p>The 10 per cent service fee levied on the processing of electronic payments should be brought under regulation and set at a level that better reflects the resource costs of providing the service. The inquiry recommends this fee be set at five per cent of transaction value as a maximum amount that can be charged, until subject to a further evaluation by the Essential Services ESC.</p> |
| 13.4 | <p>More broadly, if payments processors continue to have difficulty in obtaining access to Cabcharge payment instruments, the Victorian Government should ask the Reserve Bank of Australia to consider designating Cabcharge as a payment system and impose an access regime requiring it to give access to payments processors on reasonable terms.</p> |
| 13.5 | <p>Removal of the service fee regulation applying to the processing of electronic payments for taxi fares should occur when competition is more effective in this area.</p> |

Source: Victorian Taxi Industry Inquiry (2012), *Final Report, Customers First Service, Safety, Choice*