



1 Executive summary

The competitive landscape of the personal transport industry has been and is continuing to experience unprecedented change and disruption from regulatory reform, new entrants and new, vertically integrated business models. Since the 5% cap on surcharges was introduced in Victoria in 2014, the illegal entry of Uber in 2012 and subsequent legalisation of ridesharing in 2016, competition in all facets of the industry has substantially increased and is now more intense than ever.

Ridesharing service providers have grown the market for personal transport and are now an entrenched part of the competitive landscape. Their services are perfectly substitutable for booked Taxi services and they have taken market share from unbooked Taxi services. Ridesharing service providers' share of the market is increasing year on year. Concurrently, deregulation of the Taxi licencing system in Victoria in October 2017 has almost doubled the number of Taxis in Victoria.

Since Cabcharge Payments provides in-Taxi hardware to facilitate non-cash payments, the number of terminals it deploys has increased directly in line with the increase in the number of Taxis. [REDACTED]

[REDACTED]

The ESC should change the maximum surcharge from 5% to [REDACTED] to satisfy its statutory obligation to ensure persons facilitating the making of non-cash payment transactions are able to recover the reasonable cost of accepting and processing such transactions.¹

In setting the maximum surcharge, the ESC must allocate proper weight to each of its statutory objectives. The ESC's overarching statutory objective is to promote the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services. The ESC's other statutory objectives require the ESC to allocate proper weight to, amongst other factors, the financial viability of the industry, efficiency and incentives for long-term investments in the industry, the degree and scope for competition as well as the benefits and costs of regulation for low income and vulnerable consumers.

[REDACTED]

If the ESC were to maintain or decrease the maximum surcharge, the ESC would not be allocating proper weight to its statutory objectives, including because its determination would not allow providers of in-Taxi non-cash payment services to recover their reasonable costs of accepting and processing the transactions, be detrimental to the financial viability of the industry, reduce competition in the industry, diminish economic efficiency and incentives for long term investment, further disadvantage low income and vulnerable consumers and create an unsustainably low return on assets in the industry.

It would also likely result in the ESC's counterpart regulators in other States and Territories following the ESC's lead, resulting in far reaching, adverse consequences for Cabcharge Payments and many of its competitors, as well as consumers in other States and Territories of Australia. This would mean that the ESC would have negatively impacted the provision of transport services to regional areas and marginalised and disabled passengers across Australia.

2 A2B Australia Limited

A2B Australia Limited (**A2B**) (formerly Cabcharge Australia Limited) is an Australian Securities Exchange listed company in the personal transport sector in Australia.

A2B's dispatch technology is deployed globally and its expertise in payments is embraced by retailers and the Taxi industry throughout Australia. A2B is home to brands including 13cabs, Cabcharge, EFT Solutions, and Mobile Technologies International.

¹ Sub-section 122(2) of the *Commercial Passenger Vehicle Industry Act 2017*

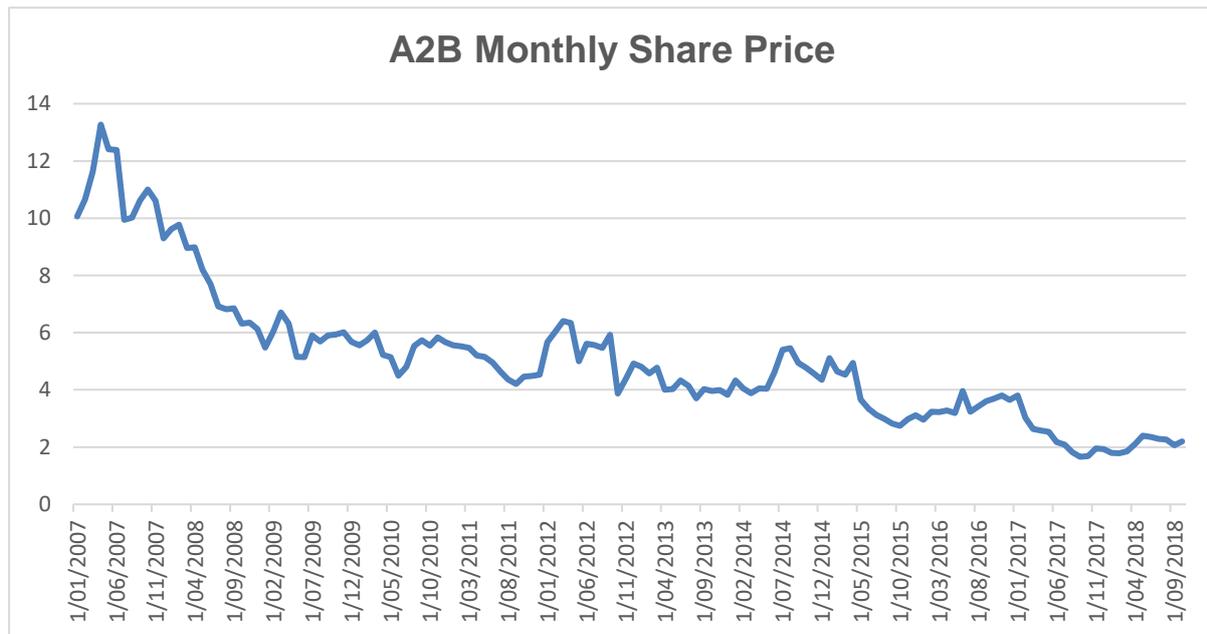
² Sections 8 and 8A of the *Essential Services Commission Act 2001*



In support of its drivers and their passengers, A2B provides class leading and cutting edge technology to 96% of Australia's 22,000 Taxis as well as to Taxis in 50 cities throughout North America, Europe and New Zealand. A2B's 13cabs Taxi network is the largest in Australia directly supporting 10,000 vehicles and 40,000 drivers, including by providing Taxi booking services, full Taxi fit-outs and repairs, vehicle financing and insurance, and driver training and education.

The following figure depicts A2B's monthly share price from 1 January 2007 to 1 September 2018. At a macro level, the company's falling share price is not consistent with a company that is earning supernormal profits in Victoria or elsewhere.

Figure 1: A2B's monthly share price – 1 January 2007 to 1 September 2018



3 Cabcharge Payments Pty Limited

A2B's Taxi payments business is conducted by its wholly owned subsidiary, Cabcharge Payments Pty Ltd (**Cabcharge Payments**).

Amongst other things, Cabcharge Payments provides a service to Taxi passengers by discharging their obligation to pay the driver for which it charges a service fee.

4 Substantial increase in competition in the personal transport services industry

The competitive landscape of the personal transport industry has changed substantially from when the 5% cap on non-cash payment surcharges was introduced in 2014. Every facet of the industry is now subject to intense competition.

4.1 Marked increase in number of Taxis as a result of regulatory change

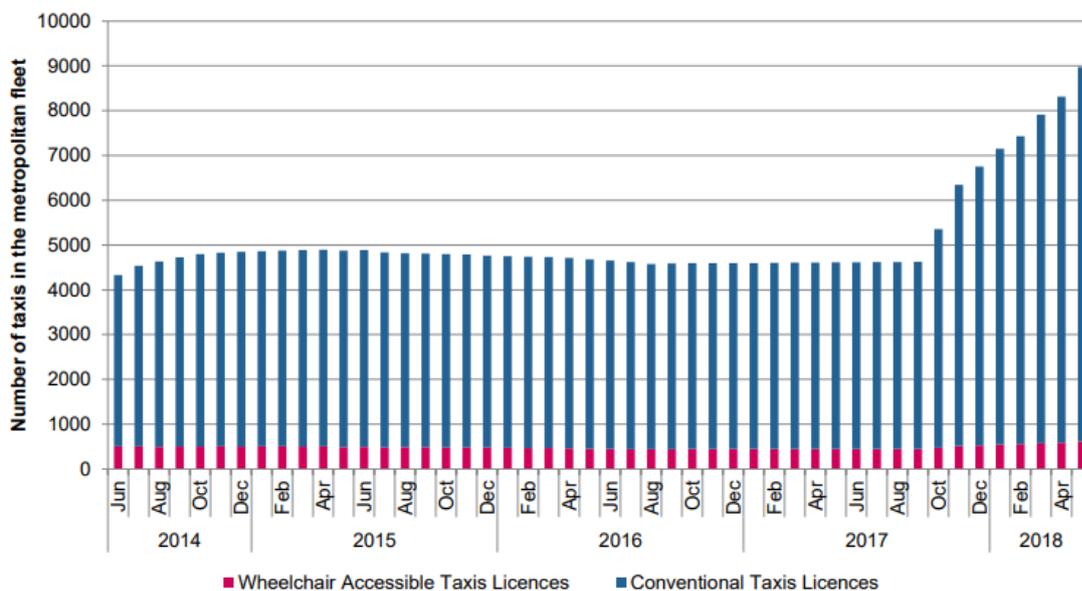
In August 2017, the Victorian Parliament passed the *Commercial Passenger Vehicle Industry Act 2017 (CPVI Act)*. The CPVI Act abolished the licence system for Taxis and hire cars that had existed for many years previously. The system was replaced with permits for people who wished to operate commercial passenger vehicles, being Taxis, hire cars or vehicles used to provide ridesharing services. The annual permit fee – payable to the State Government of Victoria – is currently \$53.80. This is a substantially lower amount than the one-off licence fee of up to \$500,000 that was previously paid to the State Government of Victoria for the right to own a Taxi plate.

The change in legislation also abolished the concept of a "Taxi licence plate owner", being the person who paid the one-off fee to the State Government. The one-off licence fee system enabled the "plate owner" to lease their Taxi plate to a Taxi operator for approximately \$22,000 - \$30,000 per year.

One of the consequences of the introduction of low cost permits is that the number of licensed Taxis has significantly increased.³ In the Victorian metropolitan zone (**metro zone**),⁴ the number of licensed Taxis has increased by 94% – from 4,625 in September 2017, to 8,970 in June 2018.⁵ At the end of FY2017/18, the total number of Taxi licences in Victoria was 10,480,⁶ an increase of approximately 127% since September 2017.

Figures 2 and 3 below were prepared by the ESC for its Final Decision in respect of its Unbooked Commercial Passenger Vehicle Fare Review 2018 (September 2018). The Figures depict the substantial increase in the number of licenced Taxis in the Victorian metro and urban zones before and after the change from one-off licence fees to annual permit fees.

Figure 2: Increase in the number of licenced Taxis in the metro zone – June 2014 to June 2018



Source: Figure 2.2 (“Change in licensed metro zone Taxis: June 2014 to June 2018”), ESC, Final Decision, Unbooked Commercial Passenger Vehicle Fare Review 2018 (13 September 2018)

In respect of the urban zone which includes Geelong, Ballarat, Bendigo, Frankston, Dandenong and the Mornington Peninsula, the increase in the number of Taxis in the urban zone has mirrored the trend in the metro zone. According to the ESC’s analysis, the total number of licensed Taxis in the urban zone increased by approximately 77%, from 498 in September 2017 to 881 in June 2018.⁷

³ ESC, Final Decision, Unbooked commercial passenger vehicle fare review 2018, p. 39

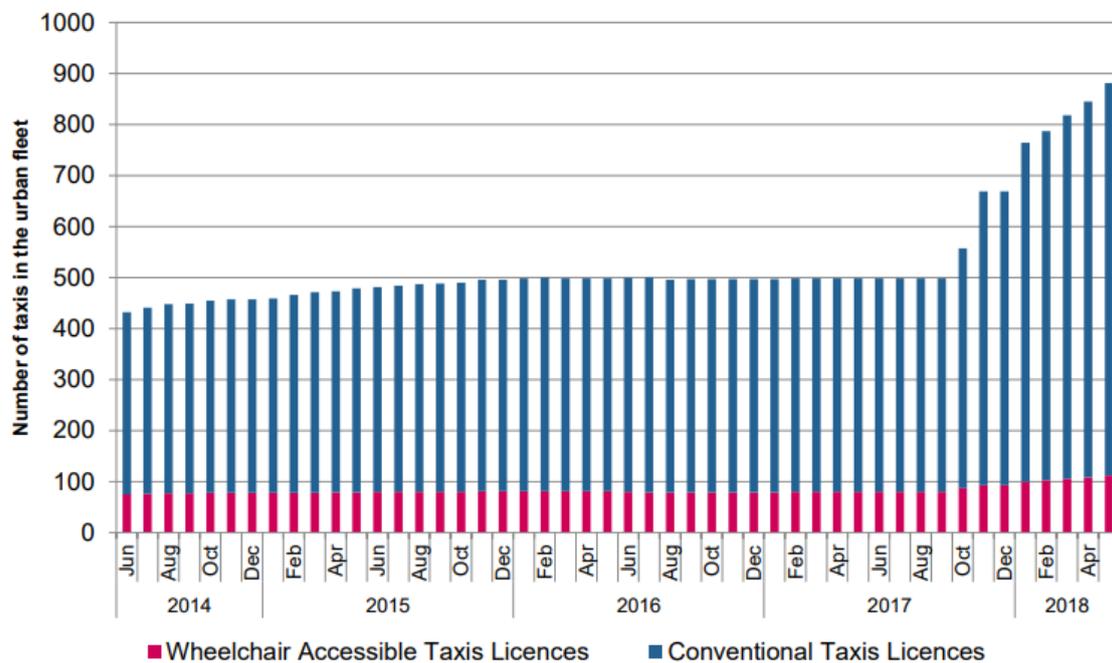
⁴ The metro zone covers most of the greater metropolitan Melbourne area

⁵ ESC, Final Decision, Unbooked commercial passenger vehicle fare review 2018, p. 10

⁶ Commercial Passenger Vehicles Victoria, Annual Report 2017-18, p. 25

⁷ ESC, Final Decision, Unbooked commercial passenger vehicle fare review 2018, p. 10

Figure 3: Increase in the number of licenced Taxis in the urban zone – June 2014 to June 2018



Source: Figure 3.2 (“Licensed urban zone Taxis: June 2014 to June 2018”), ESC, Final Decision, Unbooked Commercial Passenger Vehicle Fare Review 2018 (13 September 2018)

As at 30 January 2019, the number of unbooked commercial passenger vehicles was 10,876.⁸ Unbooked commercial passenger vehicles is a new term used in the new and ongoing legislative reforms to describe the services provided by Taxis.

The increase in the number of total accredited drivers (of Taxis, hire cars (including vehicles used to provide ride share services) and buses) is further reflective of the substantial changes brought about by deregulation, with the number of total accredited drivers increasing by approximately 59%, from 58,084 in 30 June 2017⁹ to 92,479 in 31 January 2019.¹⁰

Figure 4: Accredited drivers

Accredited parties on 30 June	2017-18	2016-17
Total accredited drivers (taxi, hire car, bus driver)	81,089	58,084
Total active taxi drivers*	15,925	16,758
Total accredited industry participants (licence operator, network service provider, licence holder)	44,314	9,830
Total driving instructor authorities	2,181	2,181

*Note: an active driver is defined as one who undertook at least one shift within the last 12 months.

Source: Taxi Services Commission, Annual Report 2017-18, p. 25

As can be seen from Figure 4, while the number of total licenced Taxis has increased, the number of active Taxi drivers has declined from 16,758 to 15,925 over the same period.

⁸ <http://web2.economicdevelopment.vic.gov.au/Taxi/about-us/industry-statistics>

⁹ Taxi Services Commission, Annual Report 2017-18

¹⁰ Commercial Passenger Vehicle Victoria, “Commercial passenger vehicle industry statistics: Statistics end of January 2019”, available at <https://web2.economicdevelopment.vic.gov.au/Taxi/about-us/industry-statistics> (accessed 25 February 2019)

4.2 Increased demand for terminals and lower utilisation of terminals

Notwithstanding the decline in the number of Taxi drivers, the increase in the number of licenced Taxis has led to an increase in the demand for in-Taxi payment terminals. Cabcharge Payments has had to respond to this demand by deploying more terminals in Victoria.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Prior to deregulation, the typical entity applying to become a Cabcharge Payments merchant had a fleet of more than 100 Taxis. In the last 12 months, the typical entity applying to become a Cabcharge Payments merchant in Victoria has less than five Taxis. The administration costs associated with processing an application and the set-up of a merchant with over 100 vehicles is the same as in the case of a merchant with only one vehicle.

The result of these changes is that Cabcharge Payments' customer base is more fragmented than ever and this has substantially contributed to Cabcharge Payments' increasing cost of providing in-Taxi payment services in Victoria.

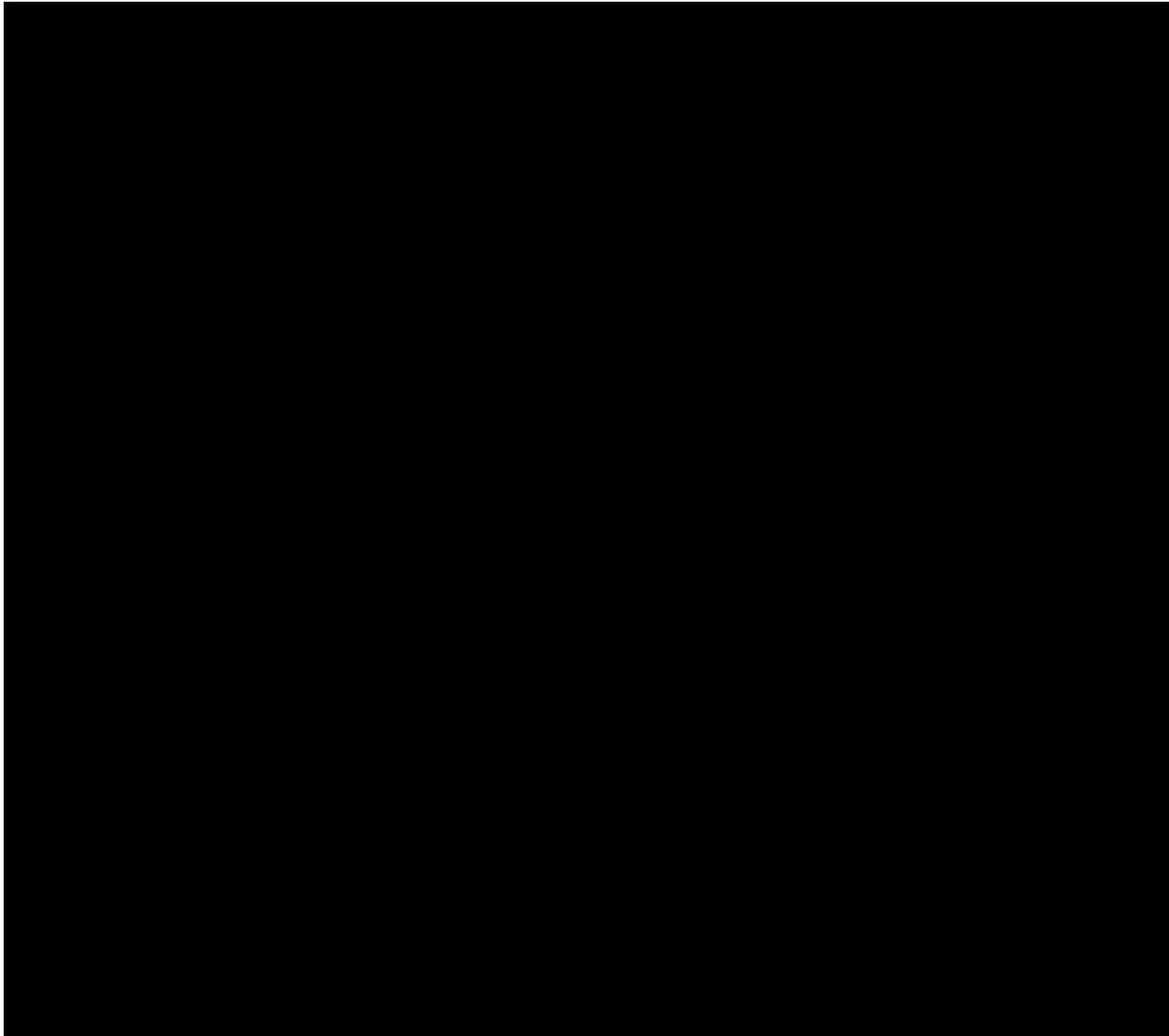
The absence of any of the major banks providing services in the sector is symptomatic of the extent of fragmentation and the relatively high costs of operating in a highly fragmented environment. As the Taxi Services Commission observed in its Taxi Industry Inquiry, Final Report:

*"The Draft Report described the particular characteristics of the in-cab payment systems market and explained why the costs of processing electronic payments in Taxis are higher than for other retailers.... The report noted that higher costs are driven by the high risk of fraud and the unwillingness of banks to deal directly with Taxi operators."*¹¹

¹¹ Taxi Industry Inquiry, Final Report (September 2012), p.208

4.3 Ridesharing is now an entrenched part of the competitive landscape

Uber illegally entered the personal transport market in Australia introducing the ridesharing concept in 2012 and was legalised by the Victorian State Government in 2016. Uber's services are perfectly substitutable for booked licenced Taxis. Uber has significantly increased competition and grown the overall size of the market for personal transport, as can be seen in Figure 6 below.



4.4 Taxis are increasingly under-utilised

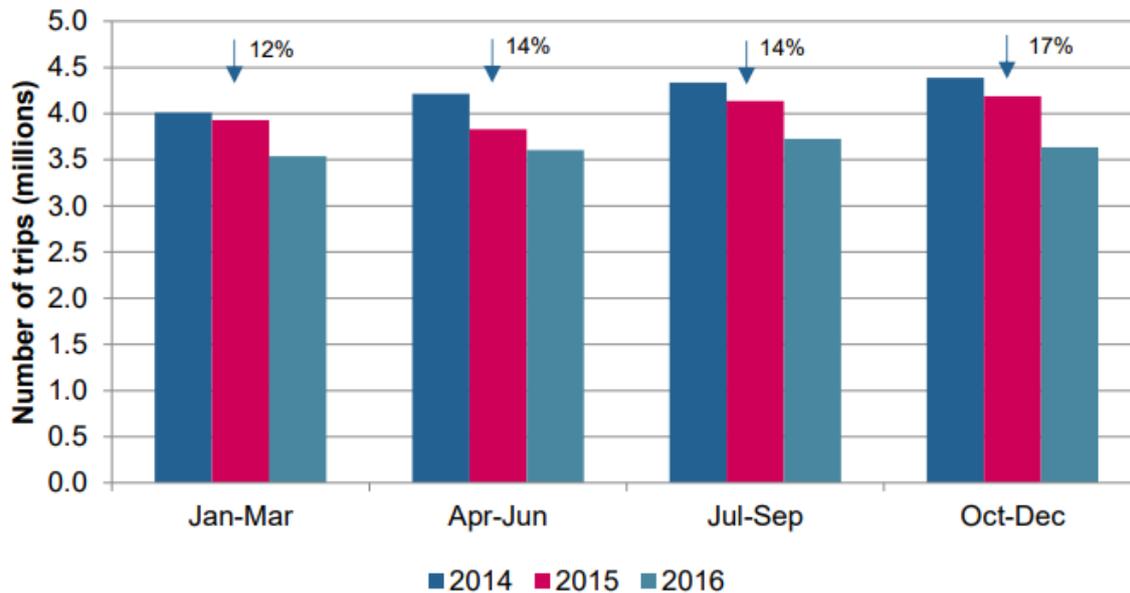
One of the consequences of the increased number of licenced Taxis and the growth of ridesharing services is that Taxis are spending more time on the road without a passenger which continues to significantly increase the unused capacity in Taxi fleets.¹⁴ This is charted in Figure 7 below.

¹² Includes Cabbiexpress International Limited, Cabcue Pty Ltd and Live Group Pty Ltd

¹³ Key external data sources: Deloitte report; Q4 2015, Roy Morgan research; April 2017, UBS Taxi spend analysis 1Q CY17, Ingogo financial statements, IBIS report

¹⁴ ESC, Final Decision, Unbooked commercial passenger vehicle fare review 2018, p. 4

Figure 7: Number of Taxi trips from 2014 to 2016



Source: Figure 2.1, “Unbooked Taxi trips in the metro zone: 2014 to 2016”, ESC, Final Decision, Unbooked Commercial Passenger Vehicle Fare Review 2018 (dated 13 September 2018)

The ESC has attributed the drop in demand for unbooked Taxis to passengers switching to new ridesharing services or greater use of Taxi apps.¹⁵

The fall in demand for Taxis is also reflected in the ESC’s analysis of the occupancy rates of Taxis (calculated as the total number of minutes that each Taxi was occupied divided by the total number of minutes each Taxi was on the road). According to the ESC, average occupancy rates decreased from 29% in 2014 to 27% in 2016.¹⁶ That is, Taxi drivers are spending more time without a passenger. The ESC attributed the decrease in occupancy rates to the impact of ridesharing entrants on Taxi demand.¹⁷ There is no evidence to suggest that this trend has reversed.

The fall in Taxi occupancy rates is a consequence of the recent Victorian regulatory settings. These have also had a profound impact in the income levels of drivers.

5 The consequences of the marked increase in competition are not yet fully understood

The former Chairperson of the Taxi Services Commission, Professor Allan Fels AO, stated in 2012 that:

“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”.

*“Removal of the regulation applying to the processing of electronic payments for Taxi fares should occur as part of a broader move to remove fare controls or **if and when new technology facilitates greater competition in payment processing fees.**” [Emphasis added]*

¹⁵ ESC, Final Decision, Unbooked commercial passenger vehicle fare review 2018, p. 5

¹⁶ ESC, Final Decision, Unbooked commercial passenger vehicle fare review 2018, p. 6

¹⁷ ESC, Final Decision, Unbooked commercial passenger vehicle fare review 2018, p. 6

Cabcharge Payments considers that the deregulation of Taxi licences and the proliferation of ridesharing have eliminated the concerns that existed in 2012. Competition is now intense.¹⁸ For example, Cabcharge Payments now faces competition from numerous suppliers of payment terminals and processing services who provide closely substitutable payment terminals, including CabFare, GMCabs, Ingogo, Live Taxi, Cabbixpress and Cabcue Australia. In addition, Cabcharge Payments faces competition from a number of fully integrated booking, dispatch and payment systems, including Uber, GoCatch, Rydo and DiDi.

In light of these developments and consistent with the statement of the former Chairperson of the Taxi Services Commission set out above, regulation of service fees in the Taxi industry for processing non-cash payments is no longer necessary.¹⁹

The ESC's recent decision in September 2018 to leave the maximum fares for unbooked Commercial Passenger Vehicles unchanged was due, in substantial part, to the recognition that the industry has undergone significant change and is now intensely competitive. The ESC's Chairperson, Mr Ron Ben-David, observed:

"The industry is being transformed with a range of new services, including ride sharing services, coming into the market."²⁰

"This is a time of significant uncertainty for the Taxi industry, particularly long-time operators, so we are recommending leaving maximum fares unchanged for now."²¹

The ESC, in its Final Decision in the Unbooked Commercial Passenger Vehicle Fare Review 2018 observed:

"On the other hand, we could consider lowering fares. There are some signs that Taxi service providers are under competitive pressure to reduce their fares. We have observed decreasing demand, increasing supply, and decreased costs. However, if this is the case, Taxi service providers are already free to lower their fares. The fares we set are only maximums.

So, in the context of all of the changes underway in the industry, and noting Taxis can already lower their fares as a way of trying to attract more passengers, we have decided to leave maximum fares unchanged for now. We consider this best promotes the long-term interests of consumers."²²

Many merchants (particularly those in regional Victoria) already set their own fares lower than the prescribed maximum. [REDACTED]

Similarly, in-Taxi payment processing is subject to intense competition and providers are under pressure to be as efficient as possible. The maximum surcharge can be reduced by providers if they so choose.

The effects of recent and ongoing developments on the Taxi non-cash payment processing industry, as with the Taxi industry more broadly, have not been fully realised at this point in time. The full effects of the developments will not be properly understood for two or more years once competition has continued to develop.

The implications of these changes on Cabcharge Payments' costs and revenues as described below are likely to evolve substantially. If current trends continue, and in the absence of any indications otherwise, Cabcharge Payments' financial viability would see further deterioration. It would be premature to make a determination that maintains or reduces the surcharge at this point in time.

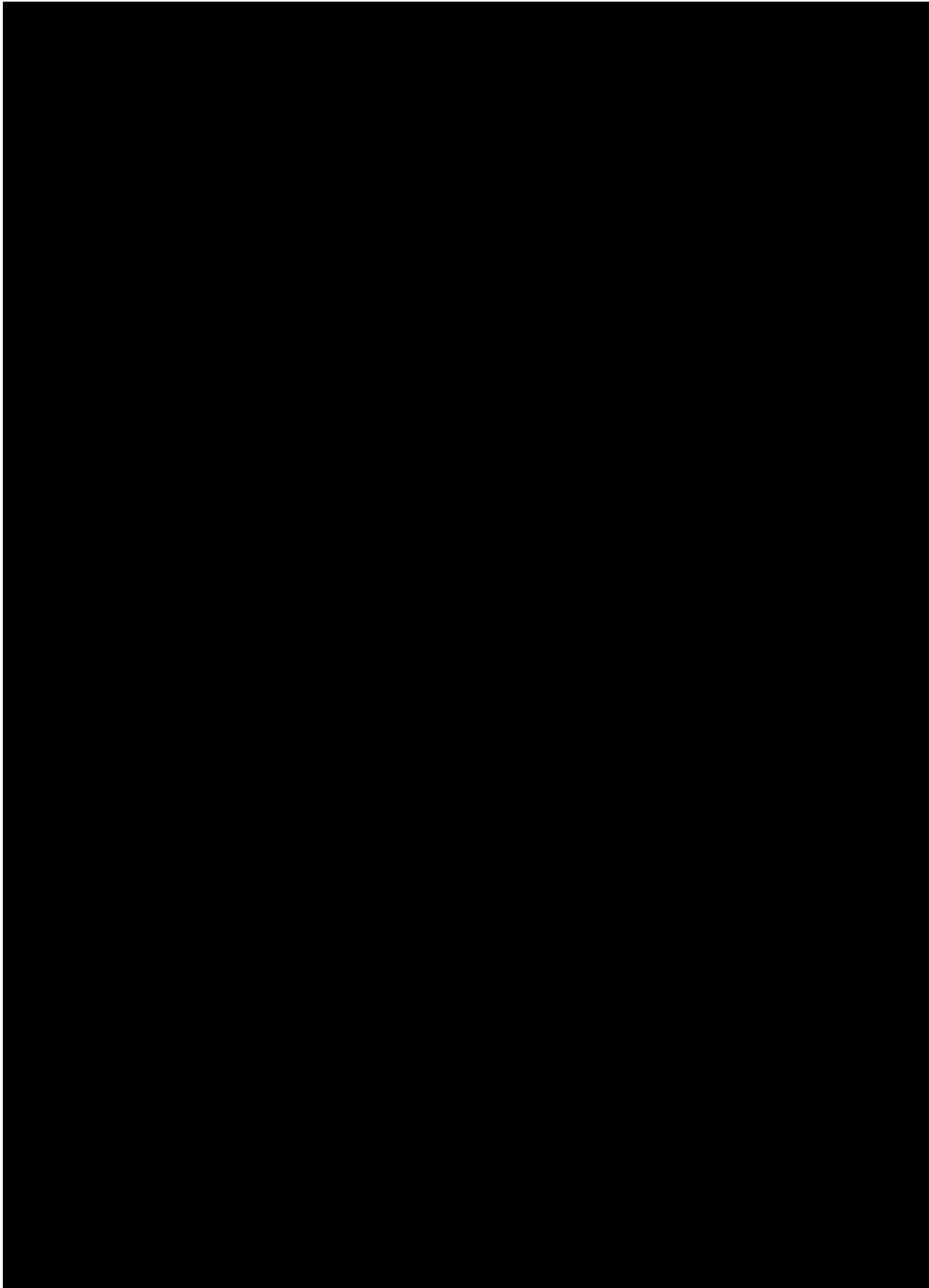
¹⁸ Taxi Industry Inquiry, Final Report September 2012, p. 45

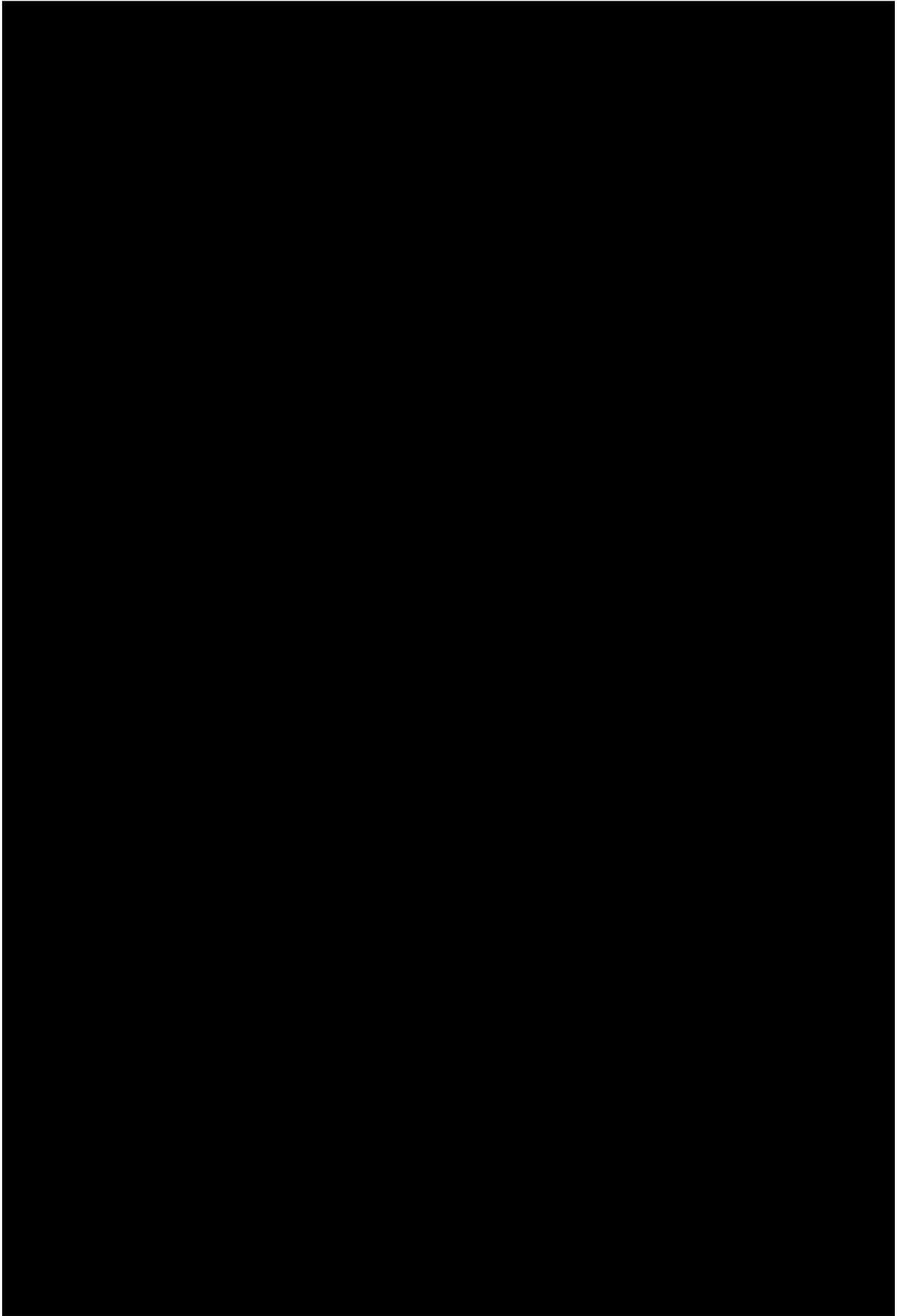
¹⁹ Taxi Industry Inquiry, Final Report September 2012, p. 36

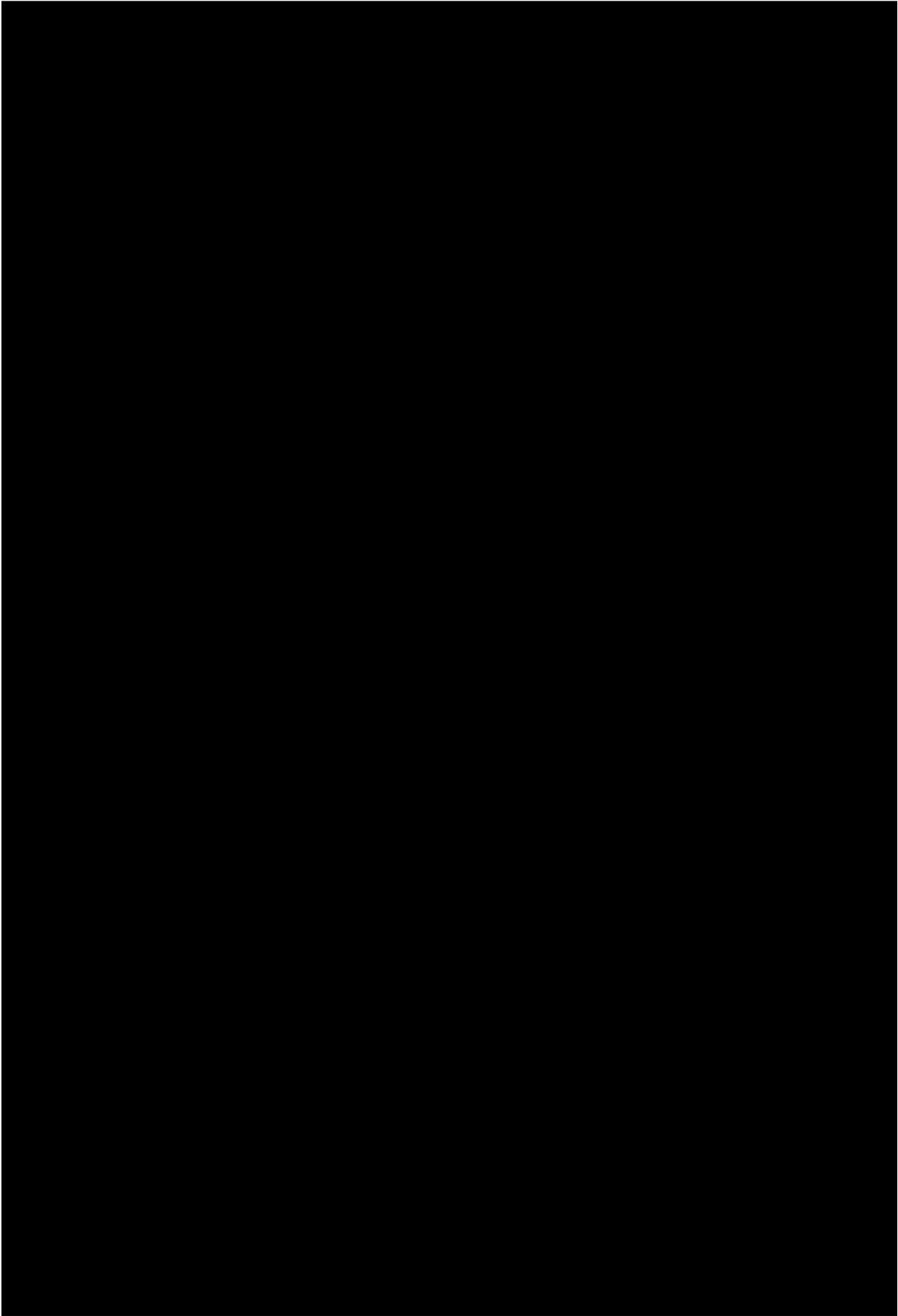
²⁰ Essential Services Commission, "Regulator proposes no change for rank and hail Taxi fair", 21 June 2018 available at <https://www.esc.vic.gov.au/media-centre/regulator-proposes-no-change-rank-and-hail-Taxi-fares>

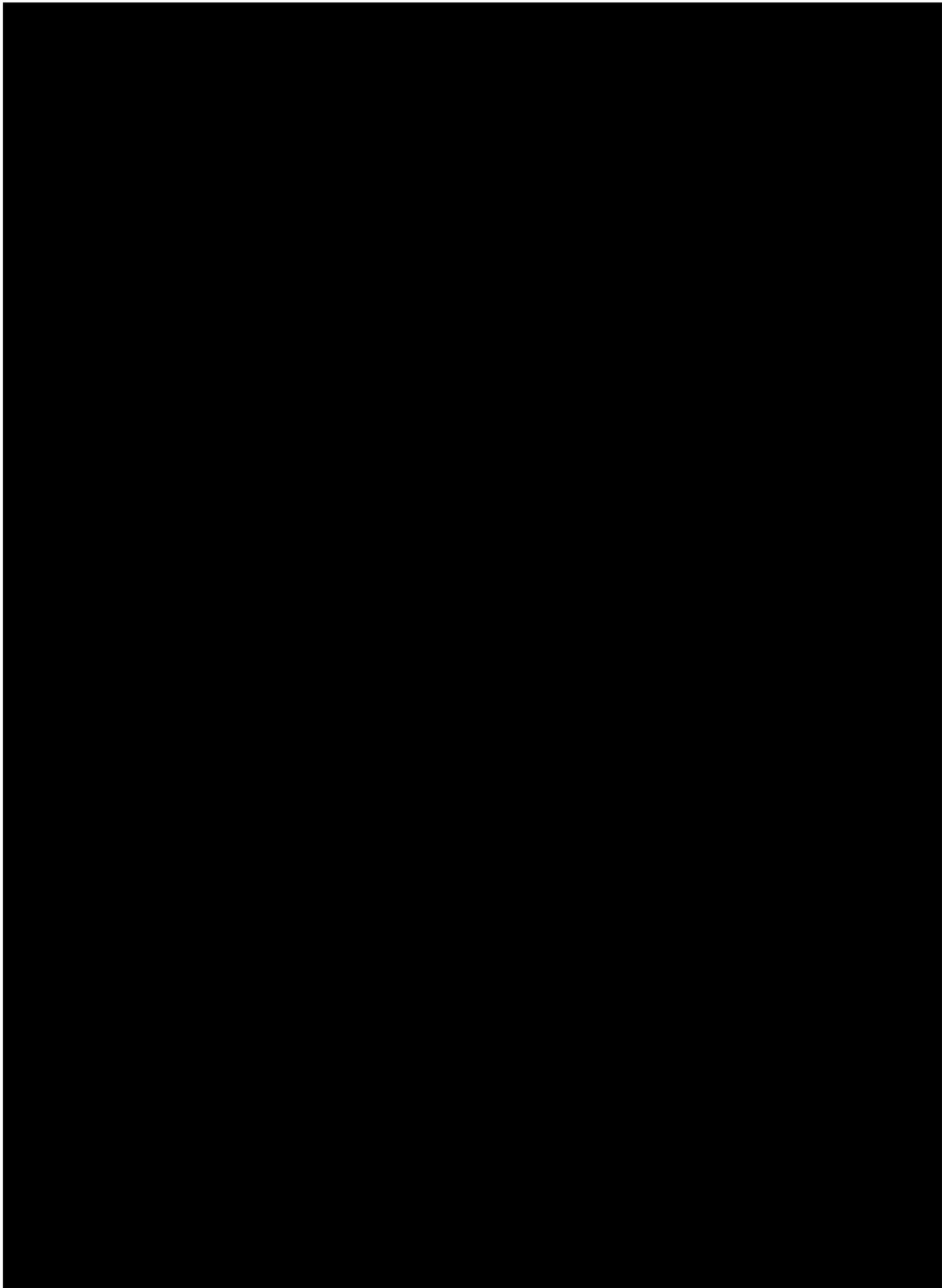
²¹ Essential Services Commission, "Regulator proposes no change for rank and hail Taxi fair", 21 June 2018 available at <https://www.esc.vic.gov.au/media-centre/regulator-proposes-no-change-rank-and-hail-Taxi-fares>

²² ESC, Final Decision, Unbooked Commercial Passenger Vehicle Fare Review 2018 (13 September 2018), p. 2









7 The ESC should not limit itself to considering the cost of acceptance

The ESC must assign proper weight to its overarching statutory objective to protect the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services, and assign proper weight to its other statutory objectives, including:²⁴

- the financial viability of the industry;
- the efficiency in the industry and incentives for long term investments;
- the degree of and scope for competition;
- the benefits and costs of regulation for consumers and users of products or services (including low income and vulnerable consumers); and
- the consistency in regulation between States and on a national basis.

7.1 The RBA's cost of acceptance methodology is not appropriate

The objectives of the Reserve Bank of Australia's (RBA) Standard²⁵ are more limited than the ESC's – the objectives of the RBA Standard are to ensure that payment surcharges (as defined in that standard) are not excessive and reflect the cost of using the payment methods for which they are charged.

The RBA does not have an express statutory objective to consider the financial viability of merchants generally, or in particular sectors, or equivalent statutory objectives to the ESC.

The RBA itself has expressed reservations about the appropriateness of its acceptance cost model and, in noting the exclusion of the Taxi industry, contemplates that an appropriate rate of return should also be permitted. In discussing the Taxi industry's exclusion from its card payment regulations, the RBA observed that the Taxi industry raises difficult issues, stating that:

“Given the greater complexity of the card payment process in the Taxi industry and the fact that most aspects of the industry – including Taxi fares – are heavily regulated, it is suggested it may be appropriate to leave regulation of surcharging in that industry to state regulators, who may be best placed to assess such issues as the actual cost or providing payment services in Taxis and the appropriate rate of return for Taxi payment providers”²⁶

Further, the RBA observed that while “a comprehensive definition that encompassed a wider range of costs faced by diverse merchants might be conceptually appealing,”²⁷ erring on the side of simplicity is

²⁴ Please see Schedule 1 for all of the ESC's statutory objectives in the context of this review

²⁵ RBA, *Payment Systems (Regulation) Act 1998*, Standard no. 3 of 2016, Scheme rules relating to merchant pricing for credit, debit and prepaid card transactions

²⁶ Section 4.3.1 of the *RBA Review of Card Payment Regulation May 2016*

²⁷ Section 5.2.2 of the *RBA Review of Card Payment Regulation May 2016*

likely to lead to an approach to surcharging that is more verifiable and enforceable in practice. In particular, costs that are internal to the merchant are not readily observable to a third party and are likely to be difficult to verify in an enforcement context (and are therefore excluded).²⁸

From a practical standpoint, the cost of acceptance methodology is not an appropriate model to use when considering in-Taxi electronic payments because the payment terminal provider does not sell (and therefore does not benefit from the sale of) the underlying service being the Taxi fare.

The ESC's statutory objectives mean that it would not be appropriate for the ESC to limit its approach to that adopted by the RBA of capping the maximum allowable non-cash payment surcharge at the reasonable cost of accepting and processing in-Taxi non-cash payments.

In other words, the ESC's proposed approach of using the RBA's reasonable cost of acceptance approach is too narrow to amount to a proper exercise of its statutory powers, having regard to the need to allocate proper weight to each of its statutory objectives.

Such an approach would fail to take into account the various differentiated business models that are currently used to provide in-Taxi payment processing services. In that regard, while acknowledging the powerful role of the ESC, the role does not extend to determining which out of a range of legitimate business models a service provider must adopt, or how a service provider must deliver non-cash payment processing services. Rather, the ESC's role is to determine the maximum surcharge for accepting and processing non-cash in-Taxi payment services and, consistent with its statutory objectives, to allow service providers to recover their reasonable costs of doing so (and to earn a sufficient margin to remain viable and continue to invest in the industry). It is ultimately the market, which is currently characterised by intense competition that will determine how such services are provided.

Confining any final determination to a maximum surcharge based on the reasonable costs of accepting and processing the transaction will not give proper weight to the significant changes occurring in the industry as a result of regulatory reform and new entrants and business models increasing competition significantly. The RBA itself recognises and acknowledges that the fee for paying by card in a Taxi encompasses more than just the fee paid to the acquirer.

7.2 Proper construction of sub-section 122(2) of the CPVI Act

Subsection 122(2) of the CPVI Act provides that the ESC must ensure that persons facilitating the making of non-cash payment transactions are able to recover their reasonable cost of accepting and processing the transactions. However, and importantly, the subsection is not an exhaustive statement of what the ESC must consider. It simply compels the ESC to ensure that its determination, at the very minimum, allows persons who facilitate the making of non-cash payment transactions to recover their reasonable cost of accepting and processing the transactions.

Only allowing for the recovery of the reasonable costs of accepting and processing non-cash payment transactions is highly likely to result in the ESC making an error from failing to allocate proper weight to its statutory objectives. The case of *Re: Dr Ken Michael AM; ex parte Epic Energy (WA) Nominees Pty Ltd & Anor* [2002] WASC 231; (2002) 25 WAR 511 makes this clear. In that case, it was held that the State regulator's failure to take into account its overarching statutory objectives when making a particular pricing determination constituted a failure to give weight to "fundamental elements" and resulted in a jurisdictional error. In the case, a consideration that was "highly material" to the decision – the financial viability of the service provider – was not treated as a "fundamental element."²⁹

8 Adverse consequences from not increasing the maximum surcharge

Any determination to not increase the maximum level for the non-cash payment surcharge will have adverse effects on the long term interests of Victorian consumers with regard to the price, quality and reliability of the personal passenger transport industry and, especially, Taxis, for the following reasons.

²⁸ Section 5.2.2 of the *RBA Review of Card Payment Regulation May 2016*

²⁹ The case has been applied in *Application by GasNet Australia (Operations) Pty Ltd, Re* (2004) ATPR [2003] ACompT 6 and *Re Application for A Writ of Certiorari Against the State Administrative Tribunal; Ex Parte Solomon* [2009] WASC 116.

8.1 Compromise financial viability of the industry

The facilitation of non-cash Taxi payments involves incurring significant, upfront costs to set up the required infrastructure at a sufficient scale to provide a compelling and cost-competitive offering.

A number of other service providers are likely to have larger negative margins than Cabcharge Payments and businesses are less resilient to further reductions in revenue, bearing in mind the recent structural changes in the market.

Cabcharge Payments expects that any decision not to increase the maximum level of the non-cash payment surcharge would put at risk the ability of all current participants to recover their efficient costs. In other words, it would likely cause all participants ultimately to exit the market.

8.2 Reduce competition within the industry

Further pressure on margins in the non-cash Taxi payments industry would likely have adverse implications on the degree of competition in the industry, as it will cause smaller service providers to exit.

In addition to forcing some firms to exit, maintaining or decreasing the surcharge would also increase barriers to entry since a large market share and substantial economies of scale would be required to have a competitive price/service offering.

8.3 Diminish economic efficiency and reduce incentives for long term investment

A determination to maintain or decrease the non-cash payment surcharge would also have a range of adverse implications on economic efficiency.

Preventing Cabcharge Payments (and at least some of its competitors) from recovering efficiently incurred costs will discourage long term investment in the industry and, at the same time, reduce economic efficiency.

The current non-cash payment surcharge is a cap, or upper bound, on prices. It does not, therefore, prohibit the provision of less extensive services at a lower price.

The ESC' statutory obligation to have regard to incentives for long term investment is inherently related to the promotion of efficiency in the industry. Prices that reflect the underlying efficient cost of supply provide efficient incentives for long term investment because they:

- signal to suppliers those investments for which customers are willing to pay and thereby promote allocative efficiency;
- provide suppliers with an assurance that they will be permitted to recover their efficiently incurred capital costs and thereby promote productive efficiency; and
- together, these outcomes promote efficient long-term investment in the services for which customers are willing to pay and thereby promote dynamic efficiency.

8.4 The costs of regulation (including externalities and the gains from competition and efficiency) for low income and vulnerable consumers will outweigh the benefits

The cost of regulation arising from not increasing the non-cash payment surcharge will be a loss in consumer welfare for the following reasons:

- services that customers are willing to pay for will not be provided, i.e., because the financial viability of service providers, or particular services they provide, is compromised if they cannot recover their efficient costs;
- a reduced number of service providers and higher barriers to entry will reduce competition, which would stifle innovation and investment in both existing and new service offerings; and
- prohibiting suppliers from recovering their efficiently incurred costs would discourage long term investment in the industry and reduce efficiency.

The potential cost to low income and vulnerable customers is particularly marked. The utilisation of payment terminals is lowest in the regional areas of Victoria. It is in these areas that the economics of facilitating in-Taxi payments is least favourable (for reasons of scale).

Maintaining or reducing the surcharge would exacerbate the ongoing deterioration in the economics of facilitating non-cash in-Taxi payments, as well as the inability of Cabcharge Payments and other payment processors to recover their efficient costs in Victoria, especially in regional Victoria.

In those circumstances, Cabcharge Payments would face a strong incentive to shift the focus of its business to metro Victoria - away from regional Victoria, where the economics of facilitating non-cash payments is least favourable.

As to any potential benefits of maintaining or decreasing the non-cash payments surcharge, they could follow from a strengthened incentive for less efficient service providers to improve their cost efficiency. However, the high level of competition in the industry and recent structural changes to the market have created strong incentives to operate efficiently. Less efficient service providers are already unable to provide competitive cost/service offerings. Consequently, there are unlikely to be any appreciable benefits arising from maintaining or reducing the non-cash payment surcharge.

For the past few decades, Cabcharge Payments has provided an advanced payment and processing solution in Victoria that facilitates the Multiple Purpose Taxi Program (**MPTP**).

The MPTP assists with the travel needs of people with severe and permanent disabilities by offering subsidised Taxi fares to eligible participants (**MPTP members**).

The MPTP makes Taxi travel more accessible and affordable for Victorians with a severe and permanent disability. The program began in February 1983 under the responsibility of VicRoads and is administered by the Commercial Passenger Vehicles Victoria (**CPVV**). The number of MPTP trips subsidised was 5,070,000 in 2017-18,³⁰ and increased by 14% in 2017-18 from the preceding year.³¹

The MPTP subsidy pays for 50% of an eligible participant Taxi fare up to a maximum of \$60 per trip.³² The subsidy is provided to the MPTP member. This subsidy is capped at an indexed amount per year, unless an exemption is granted on medical grounds such as a MPTP member being permanently confined to a wheelchair. [REDACTED]

An MPTP member may also be eligible for an additional allowance for trips made to attend employment, health care, training, volunteer work or education. In addition to the subsidy, the program pays a fee per trip to drivers of Wheelchair Accessible Vehicles.

Since the MPTP commenced, the technology that supports the program has undergone substantial changes. Most of the developments to the system and its customisation has focused on making transactions fully electronic to ensure security and efficiency in all operations.

The ESC's Consultation Paper for the present review claims that Cabcharge Payments' payment terminals have a significant advantage over other competitors, in that competitors' payment terminals cannot process MPTP subsidies.³³ This is simply not the case.

The MPTP is not exclusive and any processing company can apply to the CPVV to have their payment processing equipment authorised for this purpose. For example, following the successful completion of their trial as part of the MPTP Expansion Project, Oiii vehicles are now providing services to MPTP passengers.³⁴

³⁰ Commercial Passenger Vehicles Victoria, Annual Report 2017-18, p. 20

³¹ Commercial Passenger Vehicles Victoria, Annual Report 2017-18, p. 15

³² The fare includes the new \$1 per trip levy which is will be covered by your subsidy. However, the cost of any road tolls, airport fee/s and Silver Service is excluded. Commercial Passenger Vehicles Victoria (CPVV) pays a lifting fee when a driver loads and unloads an MPTP passenger travelling in a wheelchair or scooter into a wheelchair accessible vehicle

³³ Essential Services Commission, Taxi non-cash payment surcharge review 2019, December 2019, p.22.

³⁴ Commercial Passenger Vehicles Victoria, "Multi Purpose Taxi Program", 9 January 2019 available at <https://cpv.vic.gov.au/passengers/mptp>

CPVV are partnering with both Taxi and hire cars, as well as rideshare booking service providers, to trial technology that enables them to carry MPTP passengers.³⁵ CPVV is working to expand the MPTP to all regulated commercial passenger vehicle service providers, allowing them to offer services to MPTP members. This includes unbooked (Taxis) and booked (hire cars, including rideshare) commercial passenger vehicles.

A determination to maintain or decrease the 5% cap on non-cash payment surcharges would put at risk the continued provision of services to the disabled community under the MPTP. In an effort to remain economically viable, Cabcharge Payments would be forced to withdraw from the MPTP and cease providing socially important services to the disabled community.

Regional communities in Victoria would be adversely and disproportionately affected if Cabcharge Payments were to cease to offer MPTP services. The costs of providing non-cash payment services in Taxis is considerably higher in the country than in the city (owing to reasons including the absence of corporate traffic). The revenue Cabcharge Payments generates from the metropolitan areas of Victoria effectively subsidises the regional areas where disadvantaged populations are more likely to reside. At present, the only in-Taxi payment processors participating in MPTP only provide MPTP processing capability for a few hundred Taxis and in metropolitan areas only.

Accordingly, the cost of regulation arising from a lowering of the non-cash payment surcharge would disproportionately outweigh any potential benefits, and the adverse consequences would be particularly pronounced for low income and vulnerable customers who rely on government schemes to subsidise the cost of their transport needs.

8.5 Particular circumstances of the industry and the services

The particular circumstances of the non-cash in-Taxi payments industry have important consequences for the ESC's price determination. These circumstances include:

- a market subject to ongoing structural change and substantial disruption;
- a highly competitive market;
- a deterioration in the economics of facilitating non-cash payments, i.e., costs are increasing but revenue is not;
- differentiated products and cost/service offerings subject to a common maximum surcharge (effectively, a price cap); and
- the inability of Cabcharge Payments to recover its efficient costs of providing services in Victoria.

Any decision to maintain or decrease the maximum non-cash payments surcharge would fail to take into account these particular circumstances.

8.6 Efficient costs of supplying the service will not be recovered

The existing 5% non-cash payment surcharge does not permit Cabcharge Payments, or similar providers, to recover the efficient cost of providing their services in Victoria, and for which customers are willing to pay. Any decision to maintain or decrease the non-cash payment surcharge would not have regard to the efficient cost of providing the regulated service.

8.7 Return on assets in the industry will be unsustainably low

Consistent with economic principles and regulatory practice, Cabcharge Payments includes a return on assets in the capital cost component of its efficient costs. The return on assets is calculated on the basis of an independent estimate of its WACC [REDACTED]

[REDACTED]

[REDACTED]

³⁵ Commercial Passenger Vehicles Victoria, "Multi Purpose Taxi Program", 9 January 2019 available at <https://cpv.vic.gov.au/passengers/mptp>

It follows that any determination not to increase the non-cash payments surcharge will discourage ongoing investment in the industry.

8.8 Benchmark for prices, costs and return on assets

The current non-cash payment surcharge in Victoria is consistent with inter-State benchmarks for non-cash in-Taxi payment surcharges.

The recent structural changes and particular circumstances prevailing for facilitating non-cash in-Taxi payments in Victoria mean that international benchmarks are unlikely to be highly comparable. That said, A2B understands that the non-cash in-Taxi payment surcharge in New Zealand is typically a flat-rate surcharge in the order of \$2.20 to \$2.40, in Australian dollars.³⁶

This is higher than the average surcharge of \$1.70 received by Cabcharge Payments for the facilitation of non-cash in-Taxi payments in Victoria for the six month period ended 31 December 2018.³⁷ To the extent the New Zealand industry is taken to be comparable, this adds further weight to [REDACTED]

8.9 Costs of regulation should not exceed the benefits

The costs of regulation arising from not increasing the non-cash payments surcharge will by far exceed the benefits.

Cabcharge Payments submits there is sufficient evidence to cease regulating the surcharge because the sector is now intensely competitive.

9 Conclusion

Competition in the personal transport industry has intensified substantially since the 5% cap on surcharges was introduced in Victoria in 2014, driven primarily by the growing market share of ridesharing service providers in the industry and the deregulation of the Taxi licencing system in Victoria, the latter of which almost doubled the number of Taxis.

With [REDACTED] the cost of providing non-cash payment services in Taxis has increased considerably and [REDACTED]

The ESC's statutory obligation to ensure persons facilitating the making of non-cash payment transactions are able to recover the reasonable cost of accepting and processing such transactions supports a determination of changing the maximum surcharge to [REDACTED].³⁸

A decision to do so would also allow the ESC's to allocate proper weight to its statutory objective to protect the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services, as well as each of the ESC's other statutory objectives, including the financial viability of the industry, efficiency and incentives for long-term investments in the industry, the degree and scope for competition as well as the benefits and costs of regulation for low income and vulnerable consumers all support an increase to the maximum surcharge.

³⁶ Calculated using a NZD/AUD exchange rate equal to 0.96, and non-cash payment surcharges equal to NZ\$2.50 for Auckland Co-op Taxis and NZ\$2.30 for Green Cabs and Wellington Combined Taxis

³⁷ Calculated equal to \$138 million of electronic Taxi fares divided by 4 million transactions, multiplied by 5 per cent

³⁸ Sub-section 122(2) of the *Commercial Passenger Vehicle Industry Act 2017*

Schedule 1 – The ESC’s statutory framework

1.1 Statutory power to determine the maximum surcharge

The ESC’s power to set the maximum non-cash payment surcharge for commercial passenger vehicles is provided by:

- (a) section 32 of the *Essential Services Commission Act 2001 (ESC Act)* which gives the ESC the power to regulate “prescribed prices for or in respect of prescribed goods and services supplied by or within a regulated industry”;
- (b) section 123 of the CPVI Act which 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”;
- (c) section 3 of the CPVI Act which defines non-cash payment transaction to mean “the payment, other than by cash, of any amount due in respect of the hiring of a commercial passenger vehicle”; and
- (d) section 112 of the CPVI Act which defines non-cash payment surcharge to include “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”.

1.2 The ESC’s particular statutory objectives

Sub-section 122(1) of the CPVI Act provides that “the objective of the ESC in relation to the non-cash payment industry is to promote efficiency by regulating the amount that may be imposed by way of a non-cash payment surcharge.”

The ESC’s objective as articulated by sub-section 122(1) of the CPVI Act have their foundation in orthodox economic policy where, in the absence of a workably competitive market for setting prices, efficiency is promoted by prices that reflect the underlying cost of a good or service.

‘Efficiency’ is a term of art in economics and is widely accepted as having three distinct dimensions, being:

- **productive efficiency**, which is concerned with the means by which goods and services are produced, and is attained when production takes place with the least-cost combination of inputs;
- **allocative efficiency**, which is concerned with what is produced and for whom, and is attained when the optimal set of goods and services is produced and allocated so as to provide the maximum benefit to society; and
- **dynamic efficiency**, which is concerned with society’s capacity to achieve the efficient production and allocation of goods and services through time, in the face of changing productivity, technology and customer preferences.

1.3 The ESC’s power to price discriminate

Sub-section 124 of the CPVI Act makes it clear that the ESC “may regulate prescribed prices by determining different prices.” That is gives the ESC a discretion to choose to impose differentiated maximum prices if that would promote efficiency and ensure that persons facilitating the non-cash payment surcharge recover their reasonable costs of accepting and processing the transactions.

1.4 The ESC must ensure that persons facilitating non-cash payment transactions recover reasonable costs

Further, sub-section 122(2) provides that “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.”

1.5 Meaning of “reasonable cost”

Sub-section 122(3) provides a non-exhaustive definition of “reasonable cost”. It defines reasonable cost to “include any fees payable for the acquisition of transactions involving the use of debit, credit or charge cards”.

In respect of what the word “reasonable” means in the context of “the reasonable cost of accepting and processing non-cash payment transactions”, we consider it requires the ESC to apply an objective test.

For example, the ESC must reach a view about what is a reasonable cost without any element of perversity, arbitrariness, caprice, or absurdity which removes it from the class of a merely erroneous exercise of discretion.³⁹

The ESC must assess costs “sufficiently and fairly”, with “rationality and proportionality” in an objective sense.⁴⁰

1.6 The ESC’s overarching or fundamental statutory objectives

When exercising its power to meet its particular statutory objectives described above, the ESC must give proper weight to each of its overarching or fundamental statutory objectives in sections 8, 8A and 33 of the ESC Act.

According to section 8 of the ESC Act, in performing its functions and exercising its powers (such as the power to make a price determination), the ESC’s primary objective is to protect the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services.

Further, section 8A of the ESC Act states that in seeking to satisfy the objective specified in section 8, the ESC must have regard to the following matters to the extent that they are relevant in any particular case:

- (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—
 - (i) consumers and users of products or services (including low income and vulnerable consumers);
 - (ii) regulated entities;

³⁹ *Prasad v Minister for Immigration and Ethnic Affairs* (1985) 6 FCR 155 ; 65 ALR 549

⁴⁰ *Racial Discrimination Act 1975* (Cth); the Federal Court in *Bropho v Human Rights & Equal Opportunity Commission* (2004) 135 FCR 105; [2004] FCACA 16

- (f) consistency in regulation between States and on a national basis;
- (g) any matters specified in the empowering instrument.

The ESC 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.⁴¹

In addition to the above factors, the ESC must have regard to the following factors in making a price determination:⁴²

- (a) the particular circumstances of the regulated industry and the prescribed goods and services for which the determination is being made;
- (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; and
- (e) any other factors that the Commission considers relevant.

In making a price determination, the ESC must also ensure that:⁴³

- (a) wherever possible, the costs of regulation do not exceed the benefits; and

the decision takes into account and clearly articulates any trade-off between costs and service standards.

⁴¹ Section 8A(2) of the *Essential Services Commission Act 2001*

⁴² Section 33(3) of the *Essential Services Commission Act 2001*

⁴³ Section 33(4) of the *Essential Services Commission Act 2001*