

Taxi Non-Cash Payment Surcharge review 2019

Draft Decision

30 May 2019



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Contents

1. Executive summary	1
Our role is to assess the maximum non-cash payment surcharge in taxis	1
Benchmarking and bottom-up cost assessment suggest the current maximum surcharge is too high	2
Our draft decision is for the maximum surcharge to be 4.5 per cent	3
We will provide a transition period to allow the industry to adjust	3
Our final decision will be delayed	4
We seek feedback on our draft decision and our first determination	4
2. Bottom-up cost assessment suggests the current maximum surcharge is too high	6
We used a building block model to assess the costs of taxi payment processors	7
We excluded costs that are not associated with processing non-cash payments	8
3. Benchmarking suggests the current maximum surcharge is too high	10
Our benchmarking suggests the current maximum surcharge should be reduced	10
The current maximum surcharge is high relative to the cost of payment processing in other industries	11
We accounted for the particular circumstances of the taxi payments industry in our benchmarking	11
We estimated our benchmarks using EFTPOS offers and revenue data	13
4. There will be one maximum surcharge	14
The cost of processing non-cash payments varies by payment method	14
Different payment processors have different costs	14
A single surcharge for all payment schemes is easier to understand	15
5. Stakeholders said the current maximum surcharge is too high	16
Stakeholders supported having one maximum surcharge for all payment methods	18
Appendix A: the non-cash payments supply chain	19
Non-cash payment systems	19
How credit, debit and charge card transactions work	20
Non-cash payments in the taxi payments industry	23
Taxi non-cash payment surcharging in other jurisdictions	26
Appendix B: our bottom-up cost assessment	32
Our bottom-up cost assessment suggests that the current maximum surcharge is too high	32
We used a building block model to assess taxi payment processors' costs	34
We excluded costs that are not reasonable costs of processing non-cash payments	36
Appendix C: our benchmarking assessment	40
The current maximum surcharge is high compared to our benchmark	40
We used revenue data and EFTPOS terminal offers in our benchmarks	44

We estimated the monthly non-cash payment revenue for the typical taxi	45
We estimated the monthly cost for the typical taxi	46
We calculated the monthly cost as a percentage of monthly revenue	50
We considered cost differences in processing non-cash payments in taxis and the broader economy	51
We used benchmarks from Australian banks and merchant aggregators	56
Appendix D: how we have assessed the maximum surcharge	57
Our approach to this review	57
Our assessment approach helps us meet our legislated requirements	58
Appendix E: our legislative considerations	62
The commission's statutory power to determine the maximum surcharge	62
The commission's objectives	62
Factors the commission must have regard to	63
We will set the maximum surcharge in taxis	64
Appendix F: regulation of non-cash payment surcharging in other industries	65
Surcharging is allowed in Australia	65
A surcharge must not exceed the average cost of acceptance	66
The RBA's guidance on surcharge rates	68
Interchange fees are also regulated by the RBA	68
Appendix G: origin of the non-cash payment surcharge	70
The surcharge was first introduced for processing paper docketts	70
The taxi industry inquiry set the maximum surcharge at five per cent	70
Other states have followed Victoria's example on the surcharge	71
Appendix H: the legislation governing our non-cash payment surcharge role	72
Appendix I: records to be kept on non-cash payment surcharges	86
Appendix J: Detailed list of matters raised by stakeholders	88
Glossary	109

1. Executive summary

Our draft decision is that:

- the maximum non-cash payment surcharge for taxis be reduced to 4.5 per cent (incl. GST)
- To minimise industry disruption we will delay the implementation of the changes to the maximum non-cash payment surcharge until 1 January 2020.

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

Non-cash payment surcharges are fees charged to passengers, on top of the standard taxi fare, for paying by any method other than cash. In 2012, the Taxi Industry Inquiry recommended that non-cash payment surcharges in taxis be regulated.¹ The inquiry recommended that the maximum non-cash payment surcharge (maximum surcharge) be set at five per cent. Prior to this recommendation it was industry standard to have a surcharge of 10 per cent on non-cash payments. The inquiry also recommended that we should review the maximum surcharge.

In 2014, legislation came into effect setting the maximum non-cash payment surcharge (maximum surcharge) for taxis at five per cent and giving us the power to determine the maximum surcharge.² While the definition of the maximum surcharge in the Commercial Passenger Vehicle Industry Act 2017 (Vic) (CPVI Act) refers to all commercial passenger vehicles, we do not regulate non-cash payment surcharges for rideshare and hire car services.³ Rideshare and hire car surcharges are regulated by the Reserve Bank of Australia (RBA) under the national payment systems framework.⁴

Following recent reforms to commercial passenger vehicle industry legislation, we are now required to determine the maximum surcharge for taxis by 2 July 2019.⁵

In setting the maximum surcharge our objectives are to:

- Promote efficiency in the non-cash payment transaction industry by regulating the amount that may be imposed by way of a non-cash payment surcharge. In seeking to achieve this objective,

¹ Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p. 217.

² Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013 (Vic), Division 5B.

³ Commercial Passenger Vehicle Industry Act 2017 (Vic), s.112(2).

⁴ RBA 2016, Standard No. 3 of 2016: Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions, May.

⁵ Commercial Passenger Vehicle Industry Act 2017, s. 124.

we must ensure that persons facilitating the making of non-cash payment transactions (such as taxi drivers and taxi payment processors) are able to recover the reasonable cost of accepting and processing such transactions.⁶

- Promote the long term interests of Victorian consumers. In seeking to achieve this objective we must have regard to the price, quality and reliability of essential services.⁷

We must also have regard to a range of other matters to the extent they are relevant: such as the financial viability of the industry and the degree of and scope for competition within the industry.⁸ Additionally, we must adopt an approach and methodology which we consider will best meet the objectives set out above.⁹ Appendix E has more information on our role in regulating the maximum surcharge in taxis.

Benchmarking and bottom-up cost assessment suggest the current maximum surcharge is too high

In our consultation paper, we proposed to use benchmarking and bottom-up cost assessments to inform our view as to the reasonable cost of accepting and processing non-cash payment transactions (processing non-cash payments).¹⁰ Both of these assessment techniques suggest that the current five per cent maximum surcharge is above the reasonable cost of processing non-cash payments.

Our bottom-up cost assessments, of the costs incurred by several taxi payment processors, showed that the least profitable taxi payment processor would require a surcharge of around 4.3 per cent (including GST) to recover its reasonable costs. Details of our bottom-up cost assessment can be found in chapter two.

We also undertook benchmarking analysis. It suggested that it may be possible for taxis to process non-cash payments for as little as 2.5 per cent (including GST). Further information on our benchmarking can be found in chapter three which explains our benchmarking analysis.

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

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

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

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

¹⁰ ESC, Taxi non-cash payment surcharge review 2019: Consultation paper, 11 December 2019, p. 3.

Our draft decision is for the maximum surcharge to be 4.5 per cent

Our draft decision is that the maximum surcharge be 4.5 per cent (including GST). Our initial view is that this maximum surcharge will promote efficiency and ensure that persons facilitating the making of non-cash payments (taxi payment processors)¹¹ are able to recover at least the reasonable cost of accepting and processing non-cash payments, and, as such is consistent with our objectives of promoting the long term interests of Victorian consumers.

A maximum surcharge of 4.5 per cent will provide a collective saving to consumers of roughly three million dollars each year. It will also allow taxi payment processors to recover at least the reasonable cost of processing non-cash payments. Our bottom-up cost assessment suggests that the reasonable cost of processing non-cash payments is around 4.3 per cent (including GST). Our benchmarking also suggests that the current maximum surcharge is above the reasonable cost of processing non-cash payments in the taxi payments industry.

In light of our bottom-up cost assessment indicating that the maximum surcharge should be reduced to around 4.3 per cent, our draft decision is to reduce the maximum surcharge to 4.5 per cent. This is to account for some of the imprecisions of this assessment, and make the surcharge easier to understand and administer. The surcharge we set is a **maximum**. Taxi payment processors and drivers are free to charge below that maximum.

We have adopted the higher end of the range arising from our bottom-up cost assessments of the reasonable cost of processing non-cash payments. Under legislation, we are required to set a maximum surcharge that ensures that taxi payment processors are able to recover the reasonable cost of processing non-cash payments.¹² Our bottom-up cost assessments of reasonable costs are based on the actual costs of taxi payment processors. Using the upper bound of these estimates of reasonable costs ensures that all taxi payment processors can recover at least the reasonable costs of processing non-cash payments.

We will provide a transition period to allow the industry to adjust

We acknowledge that these changes are likely to require modifications to taxi payment processors' software, and may affect the investment decisions of taxi payment processors. To allow for any potential industry disruption we propose to delay the implementation of the changes to the maximum surcharge until 1 January 2020.

¹¹ We acknowledge that this may also be taxi drivers, operators or networks but to make reading easier we have used the term **taxi payment processors** to refer to **persons facilitating the making of non-cash payments** throughout this document.

¹² Commercial Passenger Vehicle Industry Act 2017 (Vic) s. 122(2).

Our final decision will be delayed

Under legislation, our first determination on the maximum surcharge is due by 2 July 2019.¹³ However, as a consequence of a number of late submissions and slow responses from some taxi payment processors to our information requests, our draft decision has been delayed. In order to provide stakeholders with an appropriate opportunity to comment on our draft decision we will release our final decision in September 2019.

To ensure that we meet our obligations under the CPVI Act, we will issue a determination by the legislated 2 July 2019 deadline and before we issue our final decision. We propose that determination (our first determination) will set the maximum surcharge at its current level of five per cent (including GST). Following consultation on our draft decision, we will issue a new determination (if required) that will reflect the findings from our final decision.¹⁴

This approach will give stakeholders the opportunity to make submissions on our draft decision and us an appropriate length of time to consider those submissions and make our final decision. We consider that continuing the maximum surcharge at five per cent for a further six months prior to making a further determination is consistent with our objectives and having regard to the requirements of the legislative scheme. The preliminary work that has been conducted to date on benchmarking and bottom up assessments of cost indicate that the reasonable cost of processing non-cash payments is less than five per cent, and the taxi non-cash payment transaction industry has been successfully operating on that basis since 2014. Continuing the maximum surcharge at five per cent until a further determination can be made, that is fully informed by stakeholder comments on this draft decision, ensures that taxi payment processors can recover at least reasonable costs in the period between the commission's first and second determinations.

Also, this approach will not affect consumers as our draft decision is that the maximum surcharge change from 1 January 2020.

We seek feedback on our draft decision and our first determination

The release of this draft decision is intended to give stakeholders an opportunity to share their views on our proposed decision on the maximum surcharge. It also gives stakeholders the opportunity to comment on our proposed approach to our first determination, to keep the maximum surcharge at five per cent while we complete this review.

Submissions on the **draft decision** are due by **22 July 2019**.

¹³ Commercial Passenger Vehicle Industry Act 2017 (Vic), s. 124.

¹⁴ This final decision will constitute a review of the first determination under section 124(4) of the Commercial Passenger Vehicle Industry Act 2017 (Vic).

Submissions on our approach to the **first determination** (to keep the maximum surcharge at five per cent while we complete our review) are due by **24 June 2019**.

Indicative timelines

Depending on the outcome of our consultations with stakeholders, we will make our first determination on 1 July 2019. Following this we will continue our consultation on our draft decision. Table 1.1 gives an indicative timeline for the remainder of the review.

Table 1.1: Indicative timeline

Activity	Indicative timeline
Release draft decision	30 May 2019
Deadline for submissions on first determination	24 June 2018
Release first determination	1 July 2019
Deadline for submissions on draft decision	22 July 2019
Release final report and (if required) new price determination	September 2019
New price determination comes into effect (if required)	1 January 2020

How to make a submission

Please email your submission to transport@esc.vic.gov.au. You may also send submissions via fax to 03 9032 1303 or by mail marked:

Attention: Transport Division
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

Publication of submissions

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

We treat all submissions as public information unless the submitter has asked us to treat some or all of a submission as confidential or commercially sensitive. Please clearly specify any information that you **do not** want to be made public.¹⁵

¹⁵ <https://www.esc.vic.gov.au/about-us/our-submission-policy>

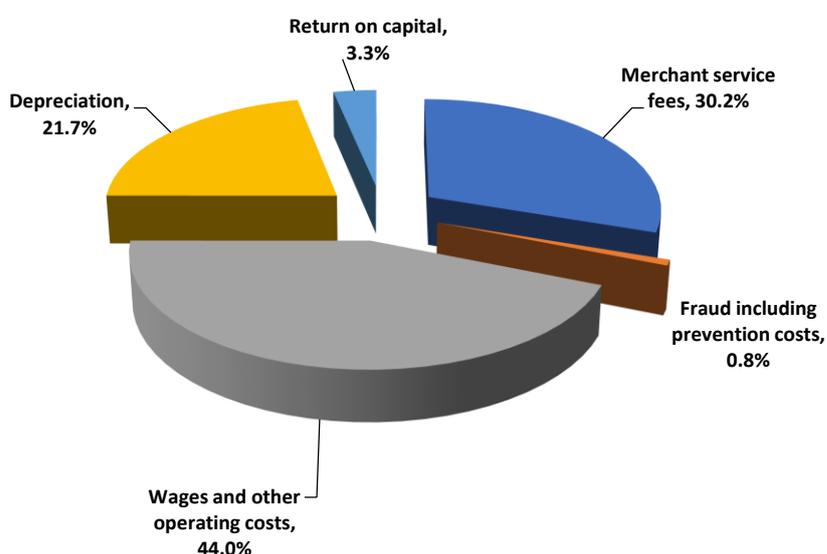
2. Bottom-up cost assessment suggests the current maximum surcharge is too high

We conducted a bottom-up cost assessment to see if the current maximum surcharge is too high or too low compared to the reasonable cost of processing non-cash payments in the taxi payments industry as required by the CPVI Act.¹⁶ Our assessment implies the current five per cent maximum surcharge is too high. This chapter summarises how we carried out our bottom-up cost assessment. Appendix B provides a more detailed discussion of our bottom-up cost assessment.

Our bottom-up cost assessment showed the reasonable costs of non-cash payments for taxi payment processors ranged between 2.7 per cent and 4.3 per cent. This suggests that a maximum surcharge of around 4.3 per cent (including GST) would allow taxi payment processors to recover the reasonable cost of processing non-cash payments. We used information provided to us by taxi payment processors to conduct this analysis.

Figure 2.1 shows the average share of the cost categories used in our assessment. We have not presented the costs of each payment processor. Taxi payment processors claimed this information as commercial in confidence.

Figure 2.1: breakdown of costs associated with processing non-cash payments in taxis



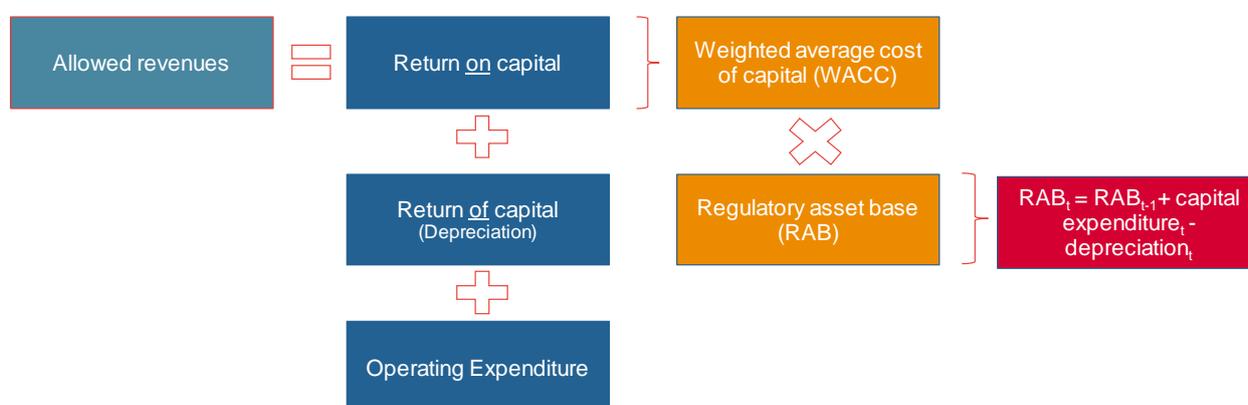
¹⁶ Commercial Passenger Vehicle Industry Act 2017, s.122.

We used a building block model to assess the costs of taxi payment processors

We used a 'building block' model for our bottom-up cost assessment of the cost of processing non-cash payments in taxis. The building block model is widely used by economic regulators in Australia in setting regulated prices.

Under a 'building block' model, the allowed revenue for a regulated firm is set equal to the sum of the cost components or building blocks for that firm. These building blocks commonly include allowances for a return on capital (or rate of return), return of capital (or depreciation) and operating expenditure. Figure 2.2 below is a high-level illustration of the different components of the building block methodology.

Figure 2.2: illustration of a real pre-tax building block model



- **Return on capital.** This is the regulated business' allowed earnings that reflect the opportunity cost of its capital investments. It is calculated by first establishing an asset base comprising the value of the assets used in providing the service (a regulatory asset base, or RAB) and multiplying it by an estimate of the weighted average cost of capital (WACC).
- **Return of capital (also known as depreciation).** The aim of providing this allowance is to enable the regulated business to recover the purchase price of its investments/assets over their useful life. It is usually calculated as the purchase price of assets divided by their useful life.
- **Operating expenditure.** These are the annual expenses required to run the business. In other words, any costs that can be fully allocated to a single year. Operating expenditure is often recurrent in nature.

After we assessed the reasonableness of the costs submitted by all taxi payment processors, we then used these costs to estimate the allowed revenues for each firm by summing up all the building blocks. This was turned into the surcharge required by each firm to recover its reasonable costs by dividing the allowed revenues for that firm by the total value of fares it processes.

$$\text{Required maximum surcharge} = \frac{\text{reasonable building block costs}}{\text{total fares processed}}$$

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

It is important that the building blocks do not include the costs of supplying unregulated services: in this case, the cost of services that are not related to processing non-cash payments. Including these costs would overstate the allowed revenue and allow the regulated business to recover costs of unregulated services from the users of its regulated service. In other words, passengers would be charged for services they do not use.

The Taxi Industry Inquiry, the recommendations of which are the basis for the legislation under which we regulate, identified this issue in the taxi payment industry. It noted that taxi payment processors used surcharge revenue to provide rebates to drivers who use their systems. It also noted that these rebates serve to demonstrate that the surcharge exceeds the cost of providing the payment service.¹⁷

When assessing the costs submitted to us by taxi payment processors, we noticed that they continue to provide rebates to drivers and networks. In addition to this they also provide additional services to drivers, funded with revenue from the non-cash payment surcharge, that are not reasonable costs of processing of non-cash payments. These include things such as: fuel discounts, immediate cash out facilities and taxi meter applications.

We excluded costs that are not reasonable costs of non-cash payments

Where possible, in our bottom-up cost assessment we have removed the cost of additional services that are not reasonable costs of processing non-cash payments. However, the level of detail in the information voluntarily provided to us by taxi payment processors does not allow us to isolate all costs related to non-regulated services with accuracy.

For this reason it is possible that our bottom-up cost assessment of taxi payment processors overstates the reasonable costs of processing non-cash payments. Following the completion of this determination process, we will reflect on how our decision making may be improved in the future by the nature of information provided to us and the form in which it is provided.

In our bottom-up cost assessment, to estimate the reasonable cost of processing non-cash payments, we have removed the costs associated with the following services, facilities and incentives where the data provided allowed us to isolate those costs.

¹⁷ Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p.217.

- **Commissions paid to drivers and networks**
- **Vouchers, fuel discounts, refuelling and car wash stations, driver lounge and fast food facilities**
- **Cashing booths:** Taxi drivers can withdraw their non-cash takings immediately from taxi payment processors' cashing booths or agents. This service is not part of processing non-cash payments. Further, taxi payment processors charge drivers a fee for these services. These fees should recover the costs of cashing booths.
- **Booking services:** Booking services are not part of processing non-cash payments.
- **Driver payment cards:** These costs are not reasonable costs of processing non-cash payments. Taxi payment processors could avoid these costs by depositing payments directly to taxi drivers' bank accounts.
- **Lost property:** This is a business administration cost that is recovered through taxi fares.
- **Donations:** Some taxi payment processors also noted they provide donations to charities. This is not a reasonable cost of processing non-cash payments.
- **Issuing costs:** Where possible we have excluded issuing costs. In payment systems these costs are generally recovered through account fees and interest charges. They are not reasonable costs of processing non-cash payments.

Another exclusion, although not in the nature of a service, facility or incentive, is an allowance for company tax. We have excluded a tax building block because we have already provided an allowance for tax by using a pre-tax WACC. We have used a pre-tax WACC as this avoids the difficulties of allocating taxation costs to different parts of businesses providing different services and operating across different states.

3. Benchmarking suggests the current maximum surcharge is too high

In our consultation paper, we said we would use benchmarking as part of our approach to determine the reasonable cost of processing non-cash payments.

As part of our benchmarking, we have looked at charges from payment processors to small businesses for processing non-cash payments. Those charges represent the **cost** of processing non-cash payments for small businesses with revenues similar to taxis. We have used those costs as our benchmarks. Our benchmarking does not include the costs of issuing payment instruments or costs of blended services (for example, providing payment processing **with** credit services).

Our benchmarking analysis suggests that the current maximum surcharge paid by passengers is higher than the reasonable cost of processing non-cash payments.

This chapter summarises our benchmarking analysis. Appendix C contains more details. All surcharges in this chapter are presented inclusive of GST.

Our benchmarking suggests the current maximum surcharge should be reduced

Our benchmarking suggests that taxis could process non-cash payments for a surcharge as low as 2.5 per cent.

We consider that payment terminals from banks and merchant aggregators, in Australia, are the appropriate services to consider when benchmarking the reasonable cost of processing non-cash payments. These payment terminals provide the same service to consumers that payment terminals in taxis provide to passengers: this makes the services comparable.

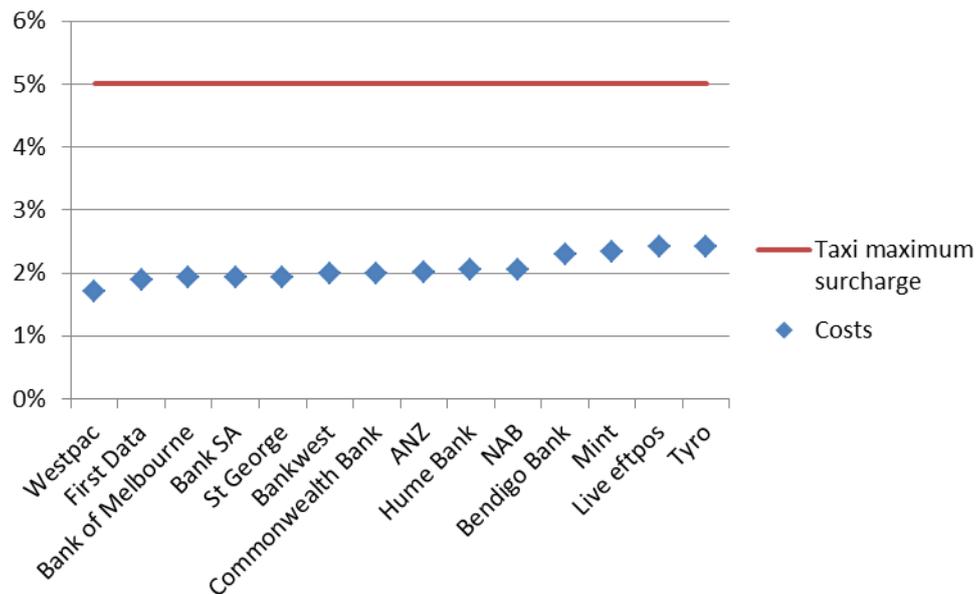
We estimated benchmarks for EFTPOS and mPOS terminals generally available to small businesses. An EFTPOS terminal is a standalone terminal while an mPOS terminal is a card reader which connects to a smartphone or tablet to process non-cash payments. EFTPOS terminals can provide the same service as the terminals currently used by taxi service providers, while mPOS terminals provide a slightly different service than the EFTPOS terminals currently used by taxi service providers. The main difference is that most mPOS terminals cannot automatically calculate surcharges. Because of this, we consider that the costs of EFTPOS terminals are likely to be more comparable to the primary terminals used in the taxi payments industry, and so have used the costs for EFTPOS terminals for our benchmarks. All payment terminals included in our benchmarking have 3G mobile connectivity and could be used in a taxi.

Benchmarking suggests the current maximum surcharge is too high

The current maximum surcharge is high relative to the cost of payment processing in other industries

Our benchmarking shows that, small businesses in other industries, with similar revenues to taxis, could process non-cash payments for a cost of between 1.7 and 2.4 per cent. Figure 3.1 shows a comparison of the current maximum surcharge and the costs of different offers for EFTPOS terminals from banks and other financial institutions in the broader economy.

Figure 3.1: offers for EFTPOS terminals (one terminal)



Of particular note is that a small business with monthly revenues similar to the typical taxi could process non-cash payments using a Live eftpos terminal at a cost of 2.4 per cent of their revenues. Live eftpos also provides a taxi non-cash payments service using exactly the same terminals. The only difference is that the terminals provided to taxis have different software. This software provides additional functionality such as automatic surcharging and specialised receipt information.

We accounted for the particular circumstances of the taxi payments industry in our benchmarking

In considering benchmark offers from other payment processors, we recognise that there are some factors that could influence the extent to which we can apply our benchmarking to the taxi payments industry. The main difference between taxis and merchants in the broader economy is that taxis often use two payment terminals.

Benchmarking suggests the current maximum surcharge is too high

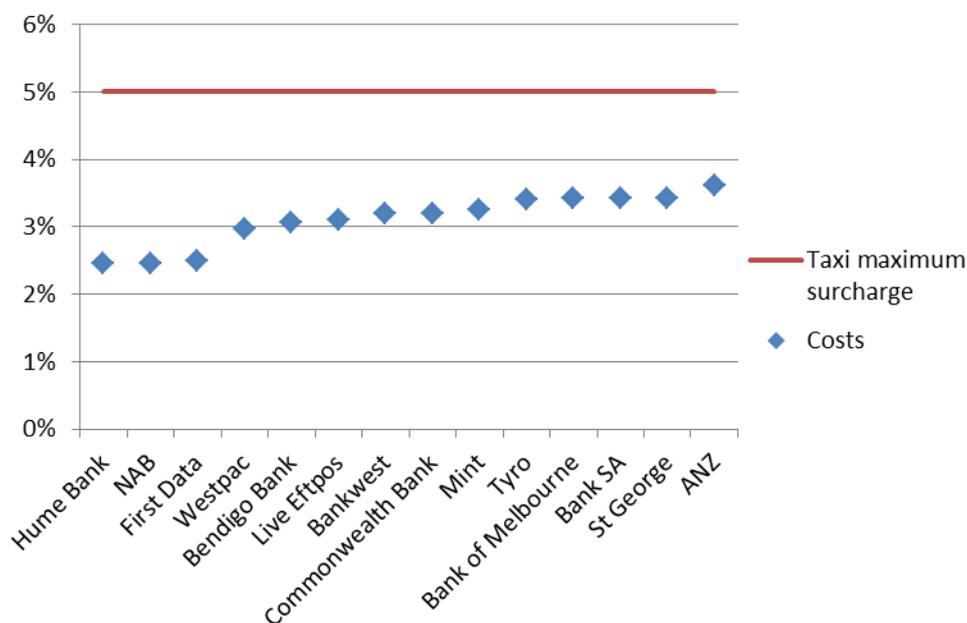
As a condition of their vehicle registration, all taxis must have a terminal that can process multi-purpose taxi program (MPTP) subsidies (see appendix C for further details).¹⁸ These primary terminals are provided by the taxi's network. However, many drivers also have a secondary terminal to benefit from the better terms, including incentives and commissions offered by other taxi payment processors.

We accounted for the practice of having multiple terminals by estimating the benchmark cost of processing non-cash payments for a driver possessing two terminals (a primary terminal and a secondary terminal). The difference between having one terminal or two terminals is that with two terminals fewer transactions are processed through each terminal. The costs of processing non-cash payments must then be recovered from a smaller number of transactions.

With two terminals non-cash payments can be processed for less than five per cent

When assuming that two terminals are used, our benchmarking shows that the cost of non-cash payment processing for small businesses, with similar revenues to the typical taxi, ranges from 2.5 per cent to 3.7 per cent. Figure 3.2 shows a comparison of the current maximum surcharge and non-cash payment processing offers for small businesses using two terminals.

Figure 3.2: offers for EFTPOS terminals (two terminals)



¹⁸ CPVV, commercial passenger vehicle registration conditions – definitions, available at: <https://cpv.vic.gov.au/vehicle-owners/registration-conditions/commercial-passenger-vehicle-registration-conditions-definitions> (last accessed 4 April 2019).

Benchmarking suggests the current maximum surcharge is too high

Again we note that, assuming two terminals are used, Live eftpos can provide non-cash payment processing at a cost of three per cent.

There were no services directly comparable to the Cabcharge payment instrument

We did not identify any benchmark services that are directly comparable to Cabcharge payment instruments. Cabcharge payment instruments provide a service similar to charge cards such as American Express and Diners Club, but they also provide account holders with additional services. In particular they allow greater control of card usage. This is done through using a combination of different payment instruments (single use cards, plastic cards, and digital passes) and geographical usage information.

For this reason our assessment of the reasonable cost of processing non-cash payments using Cabcharge payment instruments is based entirely on our bottom-up cost assessment. Our consideration of other potential differences between non-cash payments in the taxi payments industry and the broader economy are explored in detail in appendix C.

We estimated our benchmarks using EFTPOS offers and revenue data

Our benchmarks are calculated using a monthly turnover of \$4,276 for non-cash payments for the typical taxi and the monthly cost of processing non-cash payments.

The monthly revenue per taxi is derived from the data provided by taxi payment processors. It is calculated as the average fares processed per terminal multiplied by two. This assumption has been made to reflect the fact that many taxi drivers use two (or more) payment terminals.

The monthly cost is based on publicly available offers for EFTPOS terminals for small businesses from payment processors servicing the entire economy (including taxis if drivers chose to utilise their services). This includes monthly fees, merchant service fees, business account fees.

4. There will be one maximum surcharge

Our draft decision is that there will be a single maximum surcharge for all payment methods and service providers.

The cost of processing non-cash payments varies by payment method

Payment processors pay different fees to financial institutions depending on the type of card they are taking payment from. For example, payment processors will tend to pay more for accepting American Express and Diners Club cards than Visa or MasterCard cards. Table 4.1 below provides benchmarks for the fees charged for accepting different card types.

Table 4.1: RBA merchant service fee benchmarks¹⁹

Payment type	Typical surcharge
Domestic EFTPOS system	below 0.5 per cent
MasterCard and Visa Debit	0.5 to 1 per cent
MasterCard and Visa Credit	1 to 1.5 per cent
American Express	1.5 to 2 per cent

Different payment processors have different costs

Our bottom-up cost assessment showed the reasonable costs of taxi payment processors ranged between 2.7 per cent and 4.3 per cent. Our review also showed that at least some taxi drivers could access EFTPOS terminals from banks or other financial institutions. As some drivers have access to lower cost payment terminals, in at least some cases, the cost of processing non-cash payments may be lower for drivers than it is for taxi payment processors such as: Cabcharge, Cabfare, GM Cabs, Ingogo, and Live Taxi. This means that the costs faced by drivers and taxi payment processors might be different.

¹⁹ RBA, How do I know the surcharge imposed by a merchant is reasonable, <https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/q-and-a/card-payments-regulation-qa-conclusions-paper.html> (accessed on 24 October 2018).

There will be one maximum surcharge

A single surcharge for all payment schemes is easier to understand

We consider that in this instance a single maximum surcharge, which allows taxi payment processors to recover the reasonable cost of processing non-cash payments, is appropriate.

The net benefits of having a single maximum surcharge are likely to outweigh those of having multiple maximum surcharges. A single maximum surcharge is easier to understand for passengers and drivers, and it saves time as drivers do not have to explain different surcharges to passengers. It is also easier to implement.

On the other hand, having the taxi driver explain the different surcharges each time a passenger wishes to pay by non-cash methods is likely to be a tedious experience for both drivers and passengers. It may also lead to confusion and misunderstandings that may result in unnecessary conflict. Also, in the taxi payments industry, the price differences between different payment methods are in most cases a relatively small part of the cost of the surcharge.

Further, we note that the majority of submissions supported having a single maximum surcharge (see chapter five).

As the taxi payments industry continues to evolve and payment processing methods advance, future reviews may uncover evidence which demonstrates separate maximum surcharges for different service providers, or for different payment methods, are justified. The ESC Act does not prohibit us from determining multiple maximum surcharges and in future we may do so.²⁰

²⁰ Essential Services Commission Act 2001 (Vic), s 33(5).

5. Stakeholders said the current maximum surcharge is too high

In our December 2018 consultation paper, we sought feedback on our understanding of the taxi payments industry and our approach to reviewing the maximum surcharge. We also raised a number of specific questions about the current five per cent maximum surcharge including whether there should be a single surcharge or multiple surcharges and whether the maximum surcharge appeared to be too low, too high or at about the right rate.

We received a total of 55 submissions from consumers, drivers, card scheme providers, payment processors and commercial passenger vehicle associations. Of these 55 submissions, 24 requested that their names be kept anonymous and 17 requested that their submission not be published. This chapter summarises the key points raised by stakeholders. Appendix J contains more details about the submissions we received and our response.

Most stakeholders said the current five per cent surcharge is too high

Most stakeholders, that provided a response on the level of the surcharge, consider the current five per cent maximum surcharge to be too high. However, there were some stakeholders (mostly taxi payment processors and taxi associations) that said the maximum surcharge is at the right level or too low.

Five per cent is higher than what other merchants charge

The most frequently made point in submissions was that non-cash payment surcharges from other businesses are much lower than five per cent. Visa recommended the removal of the surcharge, but if not possible, a reduction in the maximum surcharge. Visa considers:

...the five per cent surcharge is significantly above the cost of acceptance. Data available through the Reserve Bank of Australia (RBA) (<https://www.rba.gov.au/payments-and-infrastructure/resources/payments-data.html>) shows that average merchant fees for debit, credit and charge cards in September 2018 were significantly lower than the current five per cent surcharge levied for taxis in Victoria.²¹

²¹ Visa, submission received 1 February 2019.

MasterCard considers that:

...if surcharging is to continue, the maximum permissible surcharge should be based on the allowable costs identified by the RBA and reflected in the estimates calculated by the ACCC.²²

While we agree that the current maximum surcharge is too high, we also note that the maximum surcharge for taxis will need to be high relative to other merchants. This is mainly because of the relatively low revenue for taxi drivers, compared to other small businesses. Taxi drivers have a smaller pool of transactions they can use to recover the fixed costs of payment processing. Our benchmarking assessment provides an estimate of the reasonable cost of processing non-cash payments to taxi drivers after taking this into account.

Taxi payment processors said they need a higher maximum surcharge to be profitable

A few other submissions stated that the five per cent maximum surcharge is too low and suggested it should be increased to somewhere between 6.3 and 7.5 per cent.²³

A2B Australia (formerly Cabcharge) considers that we should increase the maximum surcharge.²⁴

A2B Australia considers maintaining or decreasing the maximum surcharge would

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.²⁵

Our bottom-up cost assessment shows that a maximum surcharge of 4.3 per cent (including GST) would be sufficient to allow taxi payment processors to recover the reasonable costs of non-cash payments; including the cost of investing in assets and servicing low income and vulnerable customers.

²² Mastercard, submission received 14 February 2019.

²³ CabFare, submission received 1 February 2019; Anonymous, submission received 28 January 2019. See appendix J for the complete list of stakeholders who considered the maximum surcharge to be low.

²⁴ A2B, submission received 1 March 2019.

²⁵ A2B, submission received 1 March 2019.

Stakeholders said the current surcharge is too high

Stakeholders supported having one maximum surcharge for all payment methods

Most submissions made no comment on whether we should have one or multiple maximum surcharges. Most stakeholders that did have a view supported having a single surcharge.²⁶ They said a single maximum surcharge would:

- be easier to understand for passengers and drivers
- be easier to implement for payment processors
- be easier to enforce compliance with and
- make it more difficult for drivers to commit fraud by charging an inappropriate surcharge.

Some stakeholders did support multiple maximum surcharges.²⁷ These stakeholders noted that different payment methods have different processing costs and that there should be different maximum surcharges to reflect this.

²⁶ Two anonymous submissions received 11 December 2018; Neil Gilford, submission received 19 December 2018; Anonymous, submission received 21 December 2018; Anonymous, submission received 2 January 2019; Anonymous, submission received 9 January 2019; two anonymous and confidential submissions received 28 January 2019; Michael Jools, submission received 28 January 2019; Anonymous and confidential, submission received 29 January 2019; VTA, submission received 30 January 2019; CabFare, submission received 1 February 2019, p.47; CPVAA, submission received 4 February 2019, p.4; two confidential submissions received 4 February 2019.

²⁷ Anonymous, submission received 11 December 2018; Anonymous, submission received 10 January 2019; Confidential, submission received 4 February 2019; John Mizzi, submission received 18 January 2019.

Stakeholders said the current surcharge is too high

Appendix A: the non-cash payments supply chain

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

Non-cash payment systems

Non-cash payment systems allow consumers to pay, and businesses to accept payment, for goods and services without using cash. There are two main elements of non-cash payment systems:

- the payment instruments consumers use: cheques, credit, debit and charge cards
- the payment arrangements or card schemes in place which would ensure funds move to and from the accounts of relevant financial institutions.

The Reserve Bank of Australia reports that between 2007 and 2016 the proportion of non-cash payments of all transactions in Australia increased from 31 per cent to 63 per cent.²⁸ Over the same period, the share of cash payments decreased from 69 per cent to 37 per cent.

Payment instruments

There are many different types of non-cash payment methods. These include cheque, cards and vouchers. The most commonly used form of non-cash payment in Australia is cards. In 2016 credit and debit card payments made up 83 per cent of all non-cash payments.²⁹ Some of the most commonly used cards are Visa, MasterCard, and eftpos.

When a credit or charge card is used, cardholders pay for goods and services using credit from the financial institution that issued the credit or charge card. They may be used by the cardholder at the point of sale (card present) or via phone or the internet (card not present).

When debit cards are used to purchase goods or services, cardholders use money they have deposited in an account. There are two types of debit cards in Australia: the eftpos system and scheme debit cards. Eftpos cards are issued by Australian banks and are mainly used domestically. Eftpos card transactions may only occur in person at the point of sale (card present). Scheme debit cards are offered by Visa and MasterCard. Scheme debit cards can be used inside and outside Australia for either card present or not present transactions.

28 RBA (2017), How Australians Pay: Evidence from the 2016 Consumer Payments Survey, Research Discussion Paper 2017-04, July, p.2.

29 RBA (2017), How Australians Pay: Evidence from the 2016 Consumer Payments Survey, Research Discussion Paper 2017-04, July, p.2.

Payment arrangements or card schemes

A payment arrangement or a card scheme is a payment network which consumers and businesses can access to make or accept payment. The network is accessed most commonly by payment cards.

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

Key players

There are five main players in the non-cash payment system.³⁰ They are the:

- **cardholders** – the person or customer who has been issued the card
- **cardholder banks (also called issuing bank or issuer)** – the bank that issues the card to the cardholder. It provides credit in the case of credit cards or access to the cardholder's funds in the case of debit cards
- **merchants** – the person or business accepting a card as payment for goods or services
- **merchant banks (also called acquiring bank or acquirer)** – the institution that provides payment to merchants who have accepted a card as payment. It is responsible for requesting authorisation of a transaction from the cardholder's bank. It also supplies the payment terminals to merchants
- **payment schemes** – provide a range of services including transaction processing and international networking.

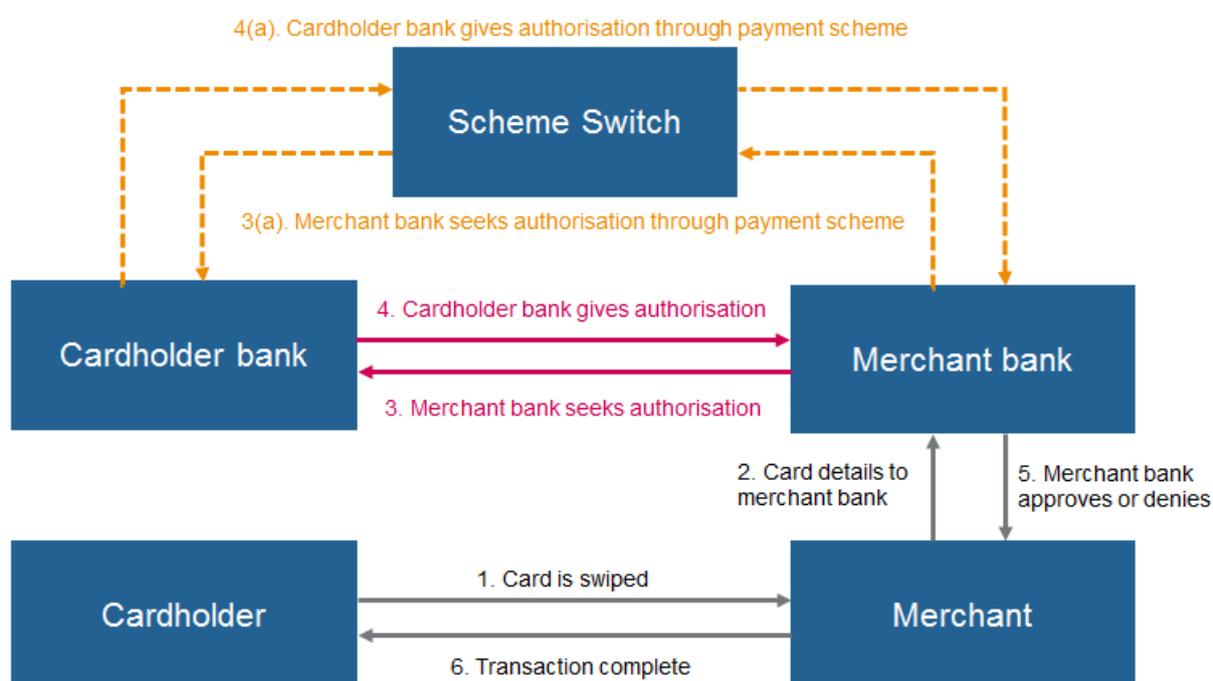
How credit, debit and charge card transactions work

Flow of information and relevant charges: four-party scheme

The parties involved in a four-party scheme are the cardholder, the cardholder's bank, the merchant, the merchant's bank and in some cases the payment scheme. Figure A.1 below describes the flow of information in a typical four-party scheme transaction.

³⁰ RBA (2005), Review of RBA and Payment Systems Board Annual Reports 2005 (First Report), June, p.25.

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



Notes:

1. Card is swiped through the payment terminal.
2. Transaction and cardholder details are sent to the merchant's bank.
3. If the merchant's bank is also the cardholder's bank the transaction can be authorised internally and the authorisation returned to the merchant. If the cardholder's bank is a different financial institution, the merchant's bank sends the transaction to the cardholder's bank (3) or through the payment scheme such as Visa or MasterCard (3a).
4. The cardholder's bank authorises or declines the transaction and sends the relevant message to merchant's bank (4) or via the payment scheme (4a).
5. The merchant's bank tells the merchant if the payment is authorised.
6. If the transaction is authorised, the transaction is complete.

Source: RBA (2005), Review of RBA and Payment Systems Board Annual Reports 2005 (First Report), June, p.26.

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

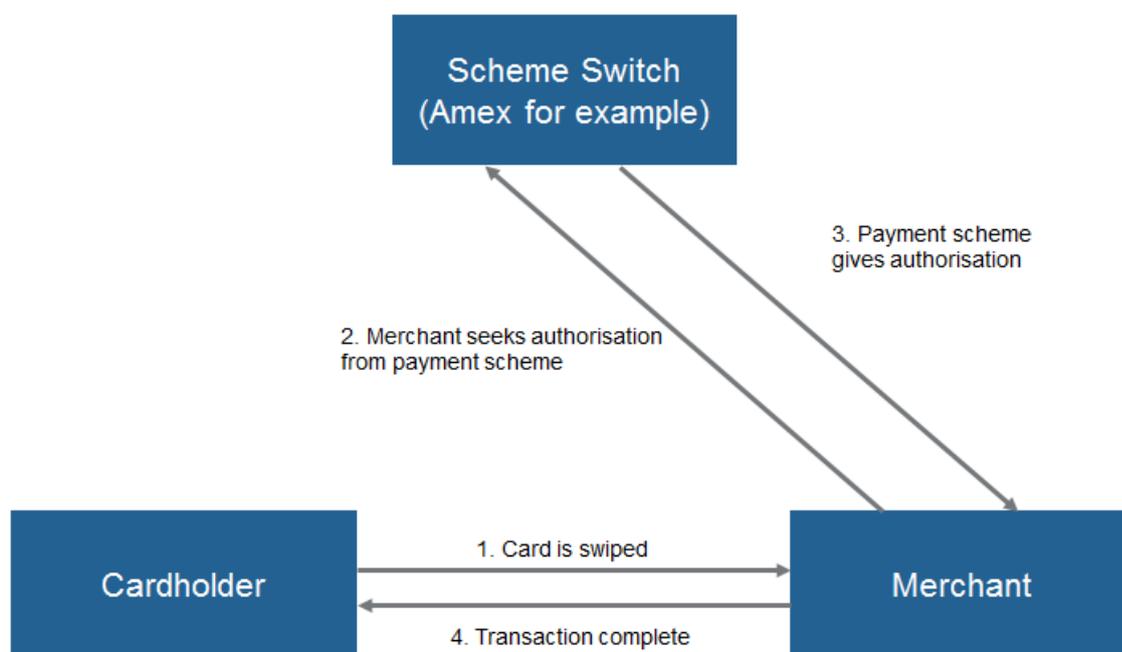
- An **interchange fee** is paid by the merchant's bank to the cardholder's bank every time a payment is made with a credit, debit and charge card. However, for eftpos transactions it is the cardholder's bank which pays the merchant's bank an interchange fee. The level of interchange fee is agreed between the cardholder's bank and the card schemes (Visa, MasterCard, eftpos) but is capped by the RBA.
- The **merchant service fee** is charged by the merchant's bank to recover the costs of providing services to merchants. The merchant service fees are not capped by the RBA.

- The **surcharge** is the charge a merchant collects from a cardholder/customer to recover the costs of accepting a non-cash payment. Under the RBA's standards, a surcharge must not exceed the merchant's costs of accepting a card, being the average cost per card transaction.

Flow of information and relevant charges: three-party scheme

In a three-party scheme, the issuer and the acquirer are the same entity, hence the name three-party. The key players are the issuer/acquirer, the cardholder and the merchant. Examples of three-party schemes are American Express and Diners Club. For example, American Express issues the card to cardholders and authorises merchants to accept or decline cardholders' American Express cards. Three-party transactions account for only about eight per cent of the number of all card transactions.³¹ Figure A.2 shows a typical three-party scheme transaction.

Figure A.2: Information flow for three-party scheme transactions



Notes:

1. Card is swiped by cardholder.
2. Merchant sends card details to scheme switch (American Express for example).
3. Scheme authorises or declines the transactions and sends the relevant message to the merchant.
4. If the transaction is authorised, the transaction is complete.

³¹ RBA, Payments Data, C: 2 Market Shares of Credit and Charge Card Schemes, available at: <https://www.rba.gov.au/payments-and-infrastructure/resources/payments-data.html> [last accessed 20 November 2018].

Because the issuing and acquiring entities are the same, there is no interchange fee in a three-party scheme transaction. However, the issuing/acquiring entity charges the merchant a merchant service fee. Merchant service fees under three-party schemes are generally higher than merchant service fees under four-party schemes.³² Three-party schemes are not subject to the RBA's standard on surcharging. But American Express and Diners Club each have a voluntary undertaking consistent with the RBA's surcharging standard.³³

Non-cash payments in the taxi payments industry

Payment instrument cards

In the taxi payments industry, credit, debit, and charge cards are all accepted forms of non-cash payments. Unlike in other parts of the economy, charge cards have a significant market share of non-cash payments in the Victorian taxi payments industry. This is due to the widespread use of Cabcharge payment instruments.

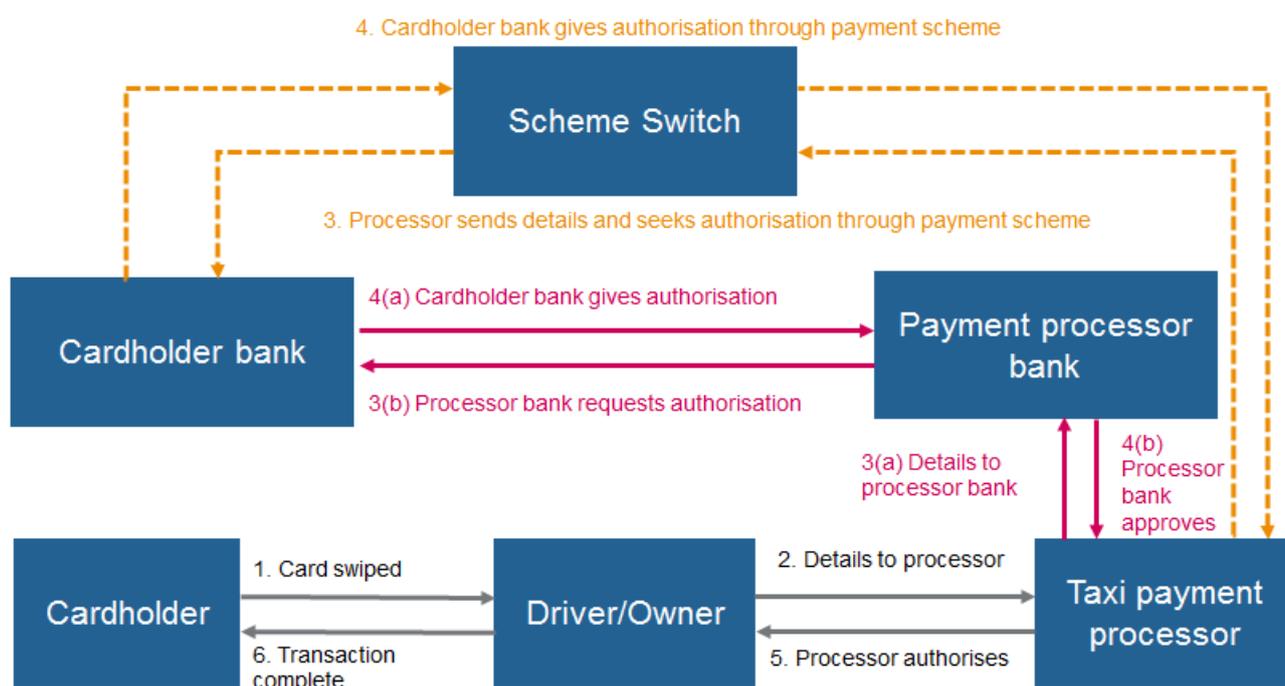
Four-party scheme

The flow of information described for a four-party scheme in figure A.1 also applies to the taxi payments industry but with one variation (figure A.3). An additional key player has been added: the taxi payment processor. Taxi payment processors aggregate taxi operators' non-cash transactions and act as the merchant interfacing with the acquiring bank. Instead of banks, the taxi payment processor supplies payment terminals to drivers, booking service providers or taxi operators as part of its payment services.

³² RBA (2016), Review of Card Payments Regulation Conclusions Paper, May, p.8.

³³ RBA (2016), Review of Card Payments Regulation Conclusions Paper, May, p.39.

Figure A.3: Four party scheme transactions in the taxi payments industry



Unlike other industries, the maximum surcharge that may be charged for non-cash payments in taxis is not regulated by the RBA. It is regulated by state regulators. Currently in Victoria, a maximum surcharge of five per cent may be collected from cardholders.

Cabcharge payment system

The Cabcharge payment system is a three-party scheme similar to that shown in figure A.2 above. As an issuer, Cabcharge has a relationship with the cardholder. It issues Cabcharge cards to account holders and charges them a five per cent service fee on all payments on the card.

There is no interchange fee in the Cabcharge scheme because Cabcharge is both the issuer and acquirer.

Taxi payment processors

Taxi payment processors are a sub group of **merchant aggregators**. Merchant aggregators process transactions for multiple merchants ('sub-merchants') through a single merchant account. This means merchants can accept non-cash payments without an individual merchant account. Merchant aggregators facilitate payments between merchants and consumers.

Some stakeholders have told us that taxi payment processors provide a unique service and this is why the surcharge is higher for taxis than in other industries. However, we note that there are several merchant aggregators operating in other industries that provide the similar services as taxi

payment processors at a lower cost. For example, Square charges only 1.9 per cent per transaction for card-present transactions and 2.2 per cent for card-not-present transactions.

Benefits of non-cash payments in taxis

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

- increasing driver safety³⁴
- reducing insurance and security costs by limiting potential theft and loss³⁵
- reducing administrative burden of cash payments for drivers and operators.³⁶

Competition in Victoria for providing payment services

Historically, there has been a high degree of market concentration in taxi payment processing, with Cabcharge holding strong positions in both taxi-specific payment instruments and payment processing.³⁷ There are now a number of players providing payment services in the Victorian taxi non-cash payment transaction industry such as Taxi LiveEpay, CabFare, GM Cabs, Ingogo and Smartpay, Cabcharge continues to be the largest provider of **taxi** non-cash payment transaction services (although taxis now face considerable competition from non-taxi booked commercial passenger vehicles).

Cabcharge's competitors provide mobile payment terminals to taxi drivers. To steer payments to their payment devices, taxi payment processors provide drivers different forms of incentives to encourage use of their payment terminals. Some taxi payment processors offer drivers incentives such as commissions³⁸, redeemable vouchers or gasoline discounts.³⁹

Generally, however, Cabcharge's competitors' payment terminals cannot accept Cabcharge cards or process MPTP subsidies. Cabcharge cards are a major form of payment for business and government travellers and, under state government regulation, taxis are required to have a terminal that can process MPTP subsidies.⁴⁰

³⁴ Mastercard, submission received 14 February 2019.

³⁵ Mastercard, submission received 14 February 2019.

³⁶ CabFare, submission received 1 February 2019; Mastercard, submission received 14 February 2019.

³⁷ Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p. 208.

³⁸ <https://www.ingogo.com.au/driver> (accessed on 25 October 2018).

³⁹ <http://www.gmcabs.com.au/eftpos-solution/> (accessed on 25 October 2018).

⁴⁰ Commercial passenger vehicle registration conditions, condition 5(1), available at: <https://cpv.vic.gov.au/vehicle-owners/registration-conditions/commercial-passenger-vehicle-registration-conditions-definitions#> (last accessed 23 November 2018).

Although, historically these factors may have provided Cabcharge a significant advantage over other processors, stakeholders have told us that one third-party taxi payment processor has been processing Cabcharge cards on some of their terminals. Also, Oiii, a recently entered taxi network, has introduced a new technology to process MPTP cards without a Cabcharge terminal.⁴¹ This technology is only in use on Oiii's dispatch systems.

Taxi non-cash payment surcharging in other jurisdictions

This section looks at regulation of non-cash payments in taxis in other jurisdictions. Our research suggests that the prevalence of non-cash payments is higher in jurisdictions where acceptance of non-cash payments is mandatory and non-cash payment surcharging is not allowed. This approach to regulation may encourage use of non-cash payments.

The fees charged in other jurisdictions

Table A.1 shows the non-cash payment surcharges for taxis that apply in Australia and other jurisdictions.

⁴¹ <https://vxier.pr.co/169788-oiii-breaks-mptp-industry-monopoly-with-the-release-of-new-victorian-government-approved-technology> (accessed 23 November 2018).

Table A.1 Non-cash payment surcharges in Australia and other jurisdictions

Jurisdiction	0%	≈2%	≈5%	≈7%	≈10%
Australian Capital Territory			X		
New South Wales			X		
Queensland			X		
Northern Territory			X		
South Australia			X		
Tasmania					X
Western Australia			X		
New Zealand				X	
Singapore					X
United Kingdom	X				
European Union	X				
Boston	X				
Chicago			X		
Las Vegas					X
New York	X				
San Francisco	X				
Quebec	X				

Australian Capital Territory,⁴² New South Wales,⁴³ Queensland,⁴⁴ Northern Territory,⁴⁵ South Australia,⁴⁶ Tasmania,⁴⁷ Western Australia,⁴⁸ New Zealand,⁴⁹ Singapore,⁵⁰ United Kingdom,⁵¹ European Union,⁵² Boston,⁵³ Chicago,⁵⁴ Las Vegas,⁵⁵ New York,⁵⁶ San Francisco,⁵⁷ Quebec⁵⁸

⁴² <https://www.accesscanberra.act.gov.au/ci/fattach/get/95685/1470004531/redirect/1/filename/Taxi+drivers+-+Standard+taxis.pdf> (last accessed 17 April 2019).

⁴³ <https://www.transport.nsw.gov.au/system/files/media/.../taxi-fares-order-2018.pdf> (last accessed 17 April 2019).

⁴⁴ <https://personalisedtransport.tmr.qld.gov.au/Taxi-services> (last accessed 17 April 2019).

⁴⁵ <https://transport.nt.gov.au/transport/transport-strategies-and-plans/commercial-passenger-vehicle-reforms/electronic-payment-surcharges> (last accessed 17 April 2019).

⁴⁶ <https://www.sa.gov.au/topics/driving-and-transport/transport-industry-services/taxi-and-passenger-transport/taxis> (last accessed on 17 April 2019).

Mandatory acceptance of non-cash payments (and its impact)

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

- London⁵⁹
- Barcelona⁶⁰
- France⁶¹
- Germany⁶²
- Madrid⁶³
- Boston⁶⁴
- Chicago⁶⁵

⁴⁷ https://www.transport.tas.gov.au/_data/assets/pdf_file/0008/179513/Proposal_Paper_-_both_options.pdf (last accessed on 17 April 2019).

⁴⁸ https://www.transport.wa.gov.au/mediaFiles/taxis/Taxis_P_Electronic_payment_surcharge_reduction.pdf (last accessed on 17 April 2019).

⁴⁹ This assumes that the average fare in New Zealand is the same as that in Melbourne; https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10797806

⁵⁰ This is GST exclusive; https://premiertaxi.com.sg/commuters/taxi_fare (last accessed 26 April 2019).

⁵¹ <https://tfl.gov.uk/modes/taxis-and-minicabs/taxi-fares?intcmp=4223>

⁵² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L2366&from=EN>

⁵³ <https://static1.squarespace.com/static/5086f19ce4b0ad16ff15598d/t/52af61e1e4b0871946c07a41/1387225569980/Rule+403.pdf>

⁵⁴ This assumes an average fare of \$15; a \$0.50 convenience fee applies to non-cash payments; <https://www.chicago.gov/content/dam/city/depts/bacp/rulesandregs/AldBealestransactionfeeordinance32216.pdf>

⁵⁵ This assumes an average fare of \$17.50; a \$3.00 fee applies to credit card payments; http://taxi.nv.gov/uploadedFiles/taxinvgov/content/Rider_Info/DidYouKnow.pdf

⁵⁶ http://www.nyc.gov/html/tlc/html/passenger/taxicab_rate.shtml

⁵⁷ <http://archives.sfmta.com/cms/cmta/documents/6-5-12item11creditcardfees.pdf>

⁵⁸ <https://www.opc.gouv.qc.ca/en/consumer/topic/price-discount/advertised-price/debit-card/>

⁵⁹ <https://tfl.gov.uk/info-for/taxis-and-private-hire/accepting-card-payments> (last accessed 17 April 2019).

⁶⁰ <http://taxi.amb.cat/s/en/usuari/formes-de-pagament.html> (last accessed 17 April 2019).

⁶¹ <https://www.service-public.fr/professionnels-entreprises/vosdroits/F22127> (last accessed 17 April 2019).

⁶² <https://ec.europa.eu/transport/sites/transport/files/2016-09-26-pax-transport-taxi-hirecar-w-driver-ridesharing-country-reports.pdf> (last accessed 17 April 2019).

⁶³ <https://www.madrid.es/portales/munimadrid/es/Inicio/Movilidad-y-transportes/Taxi/?vgnextfmt=default&vgnextoid=4813dc0bffa41110VgnVCM1000000b205a0aRCRD&vgnnextchannel=220e31d3b28fe410VgnVCM1000000b205a0aRCRD&idCapitulo=10558389> (last accessed 17 April 2019).

⁶⁴ https://www.cityofboston.gov/news/uploads/6033_4_24_27.pdf (last accessed 17 April 2019).

- New York⁶⁶
- San Francisco⁶⁷
- Saskatoon⁶⁸
- Quebec⁶⁹
- Seoul⁷⁰.

These policies have been introduced on the basis of research that showed the majority of passengers would like to be able to pay by card⁷¹ and also to increase driver safety.⁷² However research has also shown that there is often driver resistance to accepting non-cash payments as drivers may be charged a fee for processing debit or credit card payments.⁷³ To help deal with this issue, in some cases regulators have taken action to help taxis recover the associated costs.

For example, when Transport for London introduced mandatory acceptance of non-cash payments and banned non-cash payment surcharging in taxis, it took steps to address cost pressures associated with processing card payments.

Transport for London:

- Negotiated with the credit card industry to reduce credit card transaction fees paid by drivers from up to 10 per cent to three per cent.⁷⁴
- Increased the flagfall by 20 pence (about 1 per cent increase in average fare)⁷⁵ to assist drivers to cover the costs associated with processing card payments that they could no longer pass on to passengers.⁷⁶

⁶⁵ <https://www.chicago.gov/content/dam/city/depts/bacp/publicvehicleinfo/medallionowners/approvecardprocessingequipmenttaxi03142014.pdf> (last accessed 17 April 2019).

⁶⁶ <https://www1.nyc.gov/site/tlc/passengers/passenger-frequently-asked-questions.page> (last accessed 17 April 2019).

⁶⁷ https://web.archive.org/web/20180324113638/https://taxi.vic.gov.au/_data/assets/pdf_file/0014/20831/TaxiCabRegHar-a-PDF.pdf (last accessed 17 April 2019).

⁶⁸ <https://www.saskatoon.ca/sites/default/files/documents/9070.pdf> (last accessed 17 April 2019).

⁶⁹ https://www.ctq.gouv.qc.ca/fileadmin/documents/secteurs/taxi/Tarification_des_services_de_transport_par_taxi_-_Aide_memoire.pdf (last accessed 17 April 2019).

⁷⁰ <https://www.legco.gov.hk/research-publications/english/1415in13-taxi-service-in-selected-places-20150612-e.pdf> (last accessed 17 April 2019).

⁷¹ https://consultations.tfl.gov.uk/taxis/card-payment/user_uploads/paying-by-cards-in-taxis-report.pdf (last accessed 17 April 2019).

⁷² http://home2.nyc.gov/html/tlc/html/industry/taxicab_serv_enh_archive.shtml

⁷³ https://www.sfmta.com/sites/default/files/Meter%20Rates%20and%20Gate%20Fees_Final.pdf (last accessed 17 April 2019).

⁷⁴ <https://tfl.gov.uk/info-for/media/press-releases/2015/november/mayor-and-tfl-confirm-card-and-contactless-payments-will-be-accepted-by-london-taxis> (last accessed 17 April 2019).

In New York, the Taxi and Limousine Commission (TLC) introduced mandatory acceptance of non-cash payments in 2008. Prior to this, the TLC increased taxi fares by 26 per cent. This increase was tied to a series of technology-based customer improvements (including mandatory acceptance of non-cash payments) that would be implemented over the following years.⁷⁷ In New York, a driver may be charged \$7 per shift or \$49 per week for credit card processing. The TLC reviews the average credit card usage per shift every six months and adjusts the surcharge so that it is equivalent to five per cent of this.⁷⁸

Similarly, in many other US states drivers may have to cover the costs associated with processing non-cash payments. For example, in Boston drivers may have to pay a fee of up to six per cent for processing non-cash payments.⁷⁹ In San Francisco drivers may have to pay up to 3.5 per cent.⁸⁰

Prevalence of non-cash payments for taxis in other jurisdictions

Our research suggests that taxi regulators have typically adopted two different approaches to regulation of non-cash payments in taxis:

- Acceptance of non-cash payments is mandatory and non-cash payment surcharging is not allowed.
- Acceptance of non-cash payments is optional and non-cash payment surcharging is allowed.

The prevalence of non-cash payments appears to be higher where acceptance of non-cash payments is mandatory and non-cash payment surcharging is not allowed, which suggests that this approach to regulation may encourage use of non-cash payments. For example, in New York where acceptance of non-cash payments is mandatory and non-cash payment surcharging is not allowed, 67 per cent of medallion taxi fares were paid by credit card from 2016 to 2018.⁸¹ In

⁷⁵ This is based on the average fare in London in 2014; <https://consultations.tfl.gov.uk/tph/taxi-fare-and-tariff-review-2016/results/taxi-fares-and-tariff-review-2016-report.pdf> (last accessed 17 April 2019).

⁷⁶ <http://content.tfl.gov.uk/09-16-changes-to-taxi-fares-and-accepting-payment-by-card-in-all-london-taxis.pdf> (last accessed 17 April 2019).

⁷⁷ http://home2.nyc.gov/html/tlc/downloads/pdf/annual_report_2008.pdf

⁷⁸ [http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/therulesofthecityofnewyork?f=templates\\$fn=default.htm\\$3_0\\$vid=amlegal:newyork_ny](http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/therulesofthecityofnewyork?f=templates$fn=default.htm$3_0$vid=amlegal:newyork_ny) (last accessed 17 April 2019).

⁷⁹

<https://static1.squarespace.com/static/5086f19ce4b0ad16ff15598d/t/52af61e1e4b0871946c07a41/1387225569980/Rule+403.pdf> (last accessed 17 April 2019).

⁸⁰ <http://archives.sfmta.com/cms/cmta/documents/6-5-12item11creditcardfees.pdf> (last accessed 17 April 2019).

⁸¹ https://www1.nyc.gov/assets/tlc/downloads/pdf/2018_tlc_factbook.pdf (last accessed 17 April 2019).

contrast, in Las Vegas, where acceptance of non-cash payments is optional and non-cash payment surcharging is allowed, 25 per cent of taxi fares were paid by credit card in 2015.⁸²

⁸² <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/9916> (last accessed 17 April 2019).

Appendix B: our bottom-up cost assessment

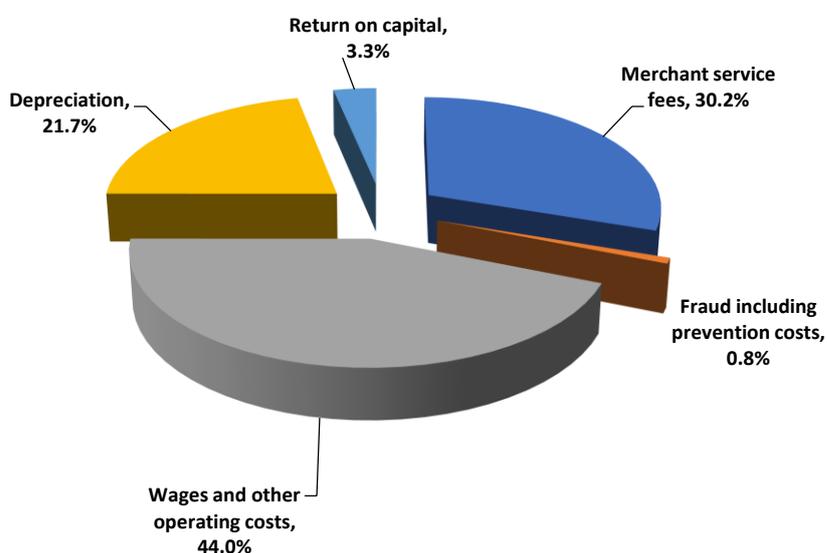
We signalled in our consultation paper that we would use bottom-up cost assessment as one approach to inform our view as to the maximum surcharge.

In this appendix, we discuss what our bottom-up cost assessment suggests about the current maximum surcharge, the methodology we used, and the payment processing costs we included and excluded.

Our bottom-up cost assessment suggests that the current maximum surcharge is too high

Our bottom-up cost assessment suggests that the current maximum surcharge is too high – in the sense that it is higher than it needs to be in order to promote efficiency and to ensure that persons facilitating the making of non-cash payment transactions are able to recover reasonable costs. We assessed taxi payment processors' actual costs and did a bottom-up cost assessment to see what surcharge would be necessary for the taxi payment processors to recover the reasonable cost of processing non-cash payments. Figure B.1 shows the average makeup of taxi payment processors' costs.

Figure B.1: Breakdown of costs associated with non-cash payment processing for taxis



In carrying out our bottom-up cost assessments, we made some adjustments to exclude cost items related to non-regulated services (i.e. costs not associated with non-cash payments). The costs included and excluded are discussed in detail in the last section of this appendix. All surcharges presented in this chapter are inclusive of GST.

Our assessment of taxi payment processors shows that the reasonable cost of processing non-cash payments ranges from 2.7 to 4.3 per cent. This implies that a maximum surcharge of around 4.3 per cent would be sufficient for all taxi payment processors to recover the reasonable costs of processing non-cash payments. This is because if the least profitable taxi payment processor can recover its reasonable costs with this surcharge then all taxi payment processors should be able to recover such costs.

The weakness of this approach is that it relies on information provided to us by regulated businesses. We have not always been able to obtain the information that we would like. How regulated businesses keep their information may not align with the information required by a regulator for the purposes of setting regulated charges.

For example, we have not been able to isolate all costs related to non-regulated services. The level of detail provided to us by taxi payment processors does not allow us to isolate all of those costs with precision.

We sent information requests to a number of taxi payment processors to better understand the costs of processing non-cash payments in taxis.⁸³ Compliance with this request was voluntary, and taxi payment processors did not or were unable to provide us with all of the information that we requested.

As noted above, following the completion of this determination process, we will reflect on how our decision making may be improved in the future by the nature of information provided to us and the form in which it is provided.

We also note that one taxi payment processor submitted costs that implied the surcharge should be increased to roughly eight per cent. These costs appear to be excessive. They are almost double the costs submitted by other taxi payment processors. This payment processor appears to have allocated a significant amount of costs from unregulated parts of their business to the taxi payments part of their business. This taxi payment processor also had previously made representations that they subsidise unregulated parts of their business with their taxi payments processing business. For these reasons we do not consider the costs submitted by this payment processor represent reasonable costs.

⁸³ Essential Services Commission, Information request: Taxi non-cash payment surcharge review 2019, December 2018. Source: <https://www.esc.vic.gov.au/transport/commercial-passenger-vehicles/commercial-passenger-vehicle-prices/taxi-non-cash-payment-surcharge-review-2019#tabs-container2> (accessed on 14 March 2019).

We used a building block model to assess taxi payment processors' costs

This section provides some information on the composition of the building blocks used in our bottom-up cost assessment. For a brief explanation of the building block method please see chapter two.

Operating expenditure

Operating expenditure averaged around 75 per cent of taxi payment processors' total regulatory costs.

Merchant service fees

Merchant service fees are transaction based fees charged to a merchant by an acquirer. Merchant service fees will depend on the type of card used.

Merchant service fees are one of the key costs faced by taxi payment processors. It accounts for between 16 to 44 per cent of their operating expenditure.

Wages

Wages or employee costs are another key cost item for taxi payment processors. They account for about 23 to 35 per cent of their total operating expenditure. Wages include direct and indirect labour costs associated with processing non-cash payments.

Payment terminal maintenance and rental

Payment terminal maintenance and rental involves the ongoing costs of renting and maintaining payment terminals.

Payment processors can rent or purchase payment terminals. If they rent them they are treated as operating expenditure, but if they purchase them then they recover their costs as capital expenditure through the asset base.

Payment processors either maintain their payment terminals themselves or sub-contract to external service providers. Regardless of who undertakes the maintenance of payment terminals, we consider maintenance costs to be a cost of processing non-cash payments.

Taxi payment processors presented these costs differently, but for taxi payment processors that clearly separated these costs from their other costs they accounted for around 15 per cent of operating expenditure.

Fraud

Payment processors' fraud related costs include the costs associated with preventing fraud and chargebacks. Fraud costs account for about 1.7 per cent of the least profitable taxi payment processor's operating costs.

There are different types of fraud associated with using cards but taxi payment processors suggest that chargebacks are the most common in taxis.⁸⁴ A chargeback happens when a passenger contests or denies the fare or the trip.⁸⁵ If the passenger's claim is proven after an investigation, the fare will be reversed and the passenger will get a refund. Chargebacks have two components: the disputed amount and the chargeback fee.

Taxi payment processors also install specialised fraud detection systems, develop software, and provide training to help protect drivers and passengers from fraud.

Other operating expenses

Taxi payment processors have identified other operating costs necessary for processing non-cash payments in taxis. These include, among other things, administration expenses, office and warehouse rental and marketing and advertising expenses.

Return of capital (depreciation)

We have included an allowance for taxi payment processors to recover the purchase price of their non-cash payment assets. Depreciation costs for taxi payment processors averaged around 21 per cent of their total regulatory costs.

The level of depreciation cost is influenced by the assumed economic lives of the assets and the depreciation method used. From the submissions taxi payment processors made to us, there are two main groups of assets:

- payment equipment: which includes payment terminals and associated assets and
- infrastructure assets: which are used to receive information from payment terminals.

The economic life for these assets ranged from one to five years.

⁸⁴ Common causes for chargebacks: no authorisation for fares over the limit; wrong pickup or drop off details on the receipt; the passenger (cardholder) questions the fare and no record was kept by the operator, driver; the cardholder did not authorise the transaction; wrong date and time listed on the cardholder's statement for the trip. Source: Cabcharge, Fraud protection training (<http://merchants.cabcharge.com.au/wp-content/uploads/2015/06/Fraud-presentation-May-2015.pdf>).

⁸⁵ Cabcharge, Fraud protection training. (Source: <http://merchants.cabcharge.com.au/wp-content/uploads/2015/06/Fraud-presentation-May-2015.pdf>)

Taxi payment processors generally used straight line depreciation. We have noted our preference for this method in other industries.⁸⁶

Return on capital

The return on capital on average accounted for 3.3 per cent of taxi payment processors' building block costs. This is low compared to most other regulated industries as taxi payments are less capital intensive than water or electricity networks.

Given the relatively minor impact of the rate of return on A2B's costs, we have not undertaken an extensive investigation into an appropriate return for a business such as A2B and other payment processors. However, using available information for A2B and information provided by A2B's advisers, PWC, we have applied a standard weighted-average cost of capital framework to derive an estimate of 9.5 per cent (pre-tax, nominal) at the current time. This estimate is derived from:

- an estimate of A2B's equity beta using the CAPM framework, which varies around 0.8 depending on the particular time periods used in the estimation. For periods of five and 10 years, using weekly and monthly data, A2B's beta varies between a low of 0.7 (weekly 10 year) and a high of 0.85 (weekly five year). The average of the estimates is 0.82.
- A2B's gearing (proportion of debt in total sources of funds) is currently close to zero, but has a longer term average of around 15 per cent according to PWC.
- A2B does not have a credit rating from major rating agencies so we assume a BBB (lowest investment grade) credit rating and a debt risk premium of a little over two per cent.

Using current 10 year risk free rates, and taking the average WACC across gearing of zero to 15 per cent, we estimate A2B's nominal pre-tax WACC to be in the range of nine to 10 per cent. We use 9.5 per cent in our bottom up cost assessment as the midpoint of this range. Our estimate for equity beta using monthly data appears lower than that of PWC over the same time period. This may be due to a difference in the day-of-the-month selection for the estimation or the more recent time period we used (we use the period to April 2019).

We excluded costs that are not reasonable costs of processing non-cash payments

In assessing the costs submitted to us by taxi payment processors we noticed that a number of costs were included which are not traditionally considered to be associated with processing non-cash payments. Where possible we have excluded these from our bottom-up cost analysis.

⁸⁶ Essential Services Commission, *2018 Water price review: Guidance paper*, p.42.

However, we note that we have not been able to exclude all of these costs as the data provided by taxi payment processors do not allow us to isolate them all.

Commissions paid to drivers and networks

Taxi payment processors provide commissions or rebates to drivers and networks ranging from 0.5 to 2.25 per cent.⁸⁷ Commissions are provided to attract more drivers and networks to use a payment processor's services. For some taxi payment processors, commissions are subject to a threshold performance.

We do not consider commissions to be a reasonable cost of processing non-cash payments. While currently the cost of commissions provided by taxi payment processors to drivers and networks is passed on to passengers in the form of the surcharge, we do not consider this cost to be a reasonable cost of processing non-cash payments.

This reflects the view of the Taxi Industry Inquiry to reduce the maximum surcharge to the resource cost of processing non-cash payments.⁸⁸ This reduction was made on the basis that half of the surcharge was being rebated to drivers as commissions. These rebates were not considered to be part of the resource cost of providing non-cash payment services.

We note that the Victorian Government accepted the Taxi Industry Inquiry's recommendation to bring the 10 per cent service fee levied on the processing of electronic payments under regulation, and set the fee at five per cent of transaction value as a maximum amount that can be charged. This suggests that commissions to drivers should not be considered part of the reasonable cost of processing non-cash payments.

There is one exception to this. In regional and country areas, taxi networks sometimes maintain and repair payment terminals on behalf of some taxi payment processors. This arrangement replaces the workshops that taxi payment processors have in larger cities. We have included an allowance for these commissions to regional networks in our bottom-up cost assessment for taxi payment processors with these kinds of arrangements. Maintenance and repair of payment terminals is a reasonable cost of processing non-cash payments.

Other incentives provided to drivers

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

⁸⁷ <https://www.ingogo.com.au/driver> (accessed on 17 April 2019).

⁸⁸ Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p.217.

Cashing booths

Some taxi payment processors also provide services which allow drivers to withdraw their non-cash payment takings in cash immediately so they do not need to wait until the next business day to receive their funds in their bank account. Taxi payment processors have small booths and offices at Melbourne Airport and other parts of the city where drivers can withdraw their takings in cash. Some taxi payment processors also allow withdrawals from Australia Post and Western Union. Taxi payment processors charge drivers a fee to use these services.

We have excluded these costs. They are not reasonable costs of processing non-cash payments. Further, taxi payment processors charge drivers for these services. Any costs associated with these services should be recovered through those charges.

Driver payment cards

Some taxi payment processors provide drivers with a driver payment card. Payments to drivers are deposited on to this card.

This cost is not a reasonable cost of processing non-cash payments. Taxi payment processors could avoid this cost by depositing payments directly to taxi drivers' bank accounts.

Booking services

A payment processor's costs include the costs associated with its booking services across Australia. Booking services are not part of regulated non-cash payment services.

Lost property

Some taxi payment processors note that they provide a lost property service. We consider this service duplicates the lost property services already provided by taxi networks. This is paid for through the fees drivers pay to taxi networks. As a result this cost is already recovered through taxi fares.

Donations

Some taxi payment processors also noted they provide donations to charities. Donations to charities are not a reasonable cost of processing non-cash payments.

Issuing costs

A2B Australia issues its own payment instruments: Cabcharge products. Where possible we have excluded the cost of issuing Cabcharge products (for example card printing, account management, working capital to fund account holder credit). In payment systems these costs are generally recovered through account fees and interest charges. Although we have excluded issuing costs we have included a notional interchange between the issuing and acquiring side of the business. This

notional interchange has been set to the RBA regulated weighted average (50 basis points) and included as a cost of payments acceptance.

Tax

We have not included an allowance for tax in the building block approach adopted. We have already provided an allowance for tax by using a pre-tax WACC.

Appendix C: our benchmarking assessment

In our consultation paper, we said we would use benchmarking as part of our approach to determine the reasonable cost of processing non-cash payments.

Benchmarking uses information on prices or costs from comparable markets to assess reasonable costs. An obvious benchmark for the cost of processing non-cash payments in taxis is the charge for similar services outside of the taxi payments industry. The underlying cost of processing non-cash payments should be quite similar and the market in which such services are supplied is likely to be competitive. The technology in payment terminals is almost identical and (with the exception of Cabcharge payment instruments) the same kinds of payment instruments are used in taxis as for other small businesses.

In our benchmarking, we have looked at charges from payment processors to small businesses for processing non-cash payments. Those charges represent the **cost** of processing non-cash payments for small businesses with revenues similar to taxis. We have used those costs as our benchmarks. Our benchmarking does not include the costs of issuing payment instruments or costs of blended services (for example, providing payment processing **with** credit services).

Our analysis shows that the current maximum surcharge is higher than the benchmarks, which suggests that the current maximum surcharge is too high in the sense that it is higher than it needs to be in order to promote efficiency and to ensure that persons facilitating the making of non-cash payment transactions are able to recover reasonable costs. Our analysis considers both EFTPOS and mPOS terminals. The main difference between these terminals is that an EFTPOS terminal is a standalone terminal, while an mPOS terminal is a card reader that connects to a smartphone or tablet to process non-cash payments.

This appendix contains our analysis of cost benchmarks for non-cash payment services on offer to small businesses across the entire Australian economy. All surcharges presented in this chapter are inclusive of GST.

The current maximum surcharge is high compared to our benchmark

We estimate the reasonable cost of processing non-cash payments for taxis could be as low as 2.5 per cent.

Our benchmark includes two terminals. Our review revealed that many taxis have two terminals for processing non-cash payments. As a condition of their vehicle registration, all taxis must have a

terminal that can process MPTP subsidies.⁸⁹ These primary terminals are provided by the taxi's network. However, many drivers also have a secondary terminal. This is often to access better terms; including incentives and commissions offered by other taxi payment processors. Drivers sometimes also choose to have a secondary terminal as a backup in case the primary terminal breaks. Some drivers also choose to use a secondary terminal so they can control their cash flows. Taxi networks can automatically deduct their fees from payments processed through primary terminals. Due to this administrative process payment through primary terminals also tends to take longer to arrive in drivers' bank accounts. To address the impact of this practice on our benchmarking, we have halved the value of transactions processed through payment terminals to calculate the monthly revenue in our two terminal benchmarking analysis.

While we assessed offers for mPOS terminals we have not included these offers to estimate the reasonable cost of processing non-cash payments. EFTPOS terminals have a number of key features which mPOS terminals do not have. The most important is that the majority of mPOS terminals do not allow automatic surcharging. This is problematic because if a taxi driver were to use an mPOS terminal they would need to manually calculate the surcharge each time they used the terminal. This process would be time consuming, potentially inaccurate and could introduce opportunities for fraud.

We consider that the practice of having two payment terminals significantly increases the costs of the taxi payments industry. If we only allowed for a single terminal in our benchmarking then the benchmark costs would be much lower. Our benchmarking analysis suggests that with a single EFTPOS terminal it would be possible for a taxi to recover the cost of processing non-cash payments with a surcharge of as little as 1.7 per cent.

However, since we are required to ensure that taxi payment processors are able to recover reasonable costs, and on the information presently before us those reasonable costs include two terminals, we allowed for two payment terminals in our benchmarking. This is also consistent with our obligation, under section 8A of the Essential Services Commission Act 2001, to have regard to the degree of and scope for competition within the taxi payments industry.

If we did not allow for two terminals in our benchmarking the consequences might be that taxi drivers would have no choice but to use the terminals provided by their networks. Taxis must have

⁸⁹ CPVV, commercial passenger vehicle registration conditions – definitions, available at: <https://cpv.vic.gov.au/vehicle-owners/registration-conditions/commercial-passenger-vehicle-registration-conditions-definitions> (last accessed 4 April 2019).

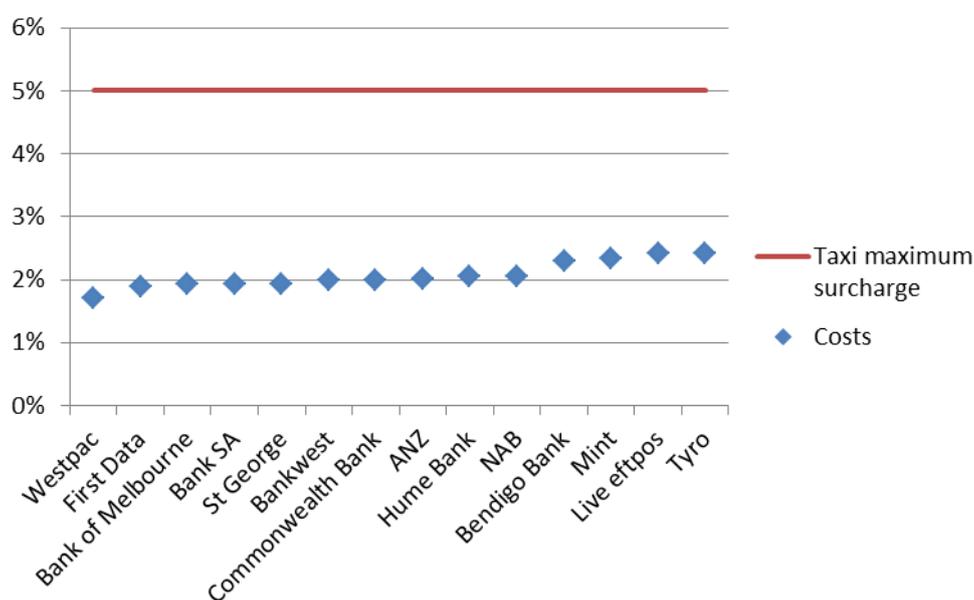
a payment terminal that can process MPTP subsidies under their registration conditions.⁹⁰ A2B Australia provides MPTP enabled payment terminals to almost all taxis in Victoria.

The current maximum surcharge is high compared to the cost of EFTPOS terminals

Our analysis shows that, if there is one EFTPOS terminal per taxi, the cost of processing non-cash payments (for a small business processing \$4,276 a month) ranges from 1.7 to 2.4 per cent. If there are two terminals per taxi costs range from 2.5 to 3.6 per cent.

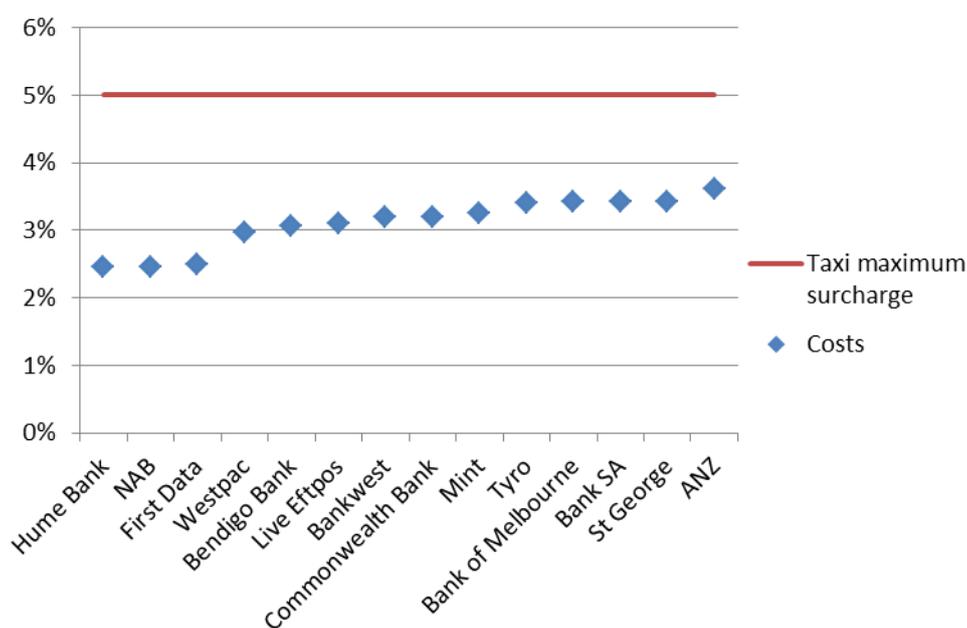
Figures C.1 and C.2 show a comparison of the current maximum surcharge and offers for EFTPOS terminals available to small businesses assuming one and two terminals per taxi, respectively.

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



⁹⁰ CPVV, commercial passenger vehicle registration conditions – definitions, available at: <https://cpv.vic.gov.au/vehicle-owners/registration-conditions/commercial-passenger-vehicle-registration-conditions-definitions> (last accessed 4 April 2019).

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



The current maximum surcharge is high compared to the cost of mobile POS terminals

A mobile point-of-sale (mPOS) terminal is a card reader which connects to a smartphone or tablet to process non-cash payments. The merchant downloads an app on their smartphone or tablet, which may be used to manage transactions and receipts. The merchant may also send receipts via email or SMS, or print receipts via a Bluetooth printer.

We have included our analysis for mPOS terminals separately as we recognise that they are not directly comparable to the service provided by the standard 3G EFTPOS terminals currently used in the taxi payments industry.

Our analysis shows that, if there is one mPOS terminal per taxi, the cost of processing non-cash payments (for a business processing \$4,276 a month) ranges from 1.8 to 2.6 per cent. If there are two terminals per taxi, the cost ranges from 1.8 to 3.2 per cent.

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

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

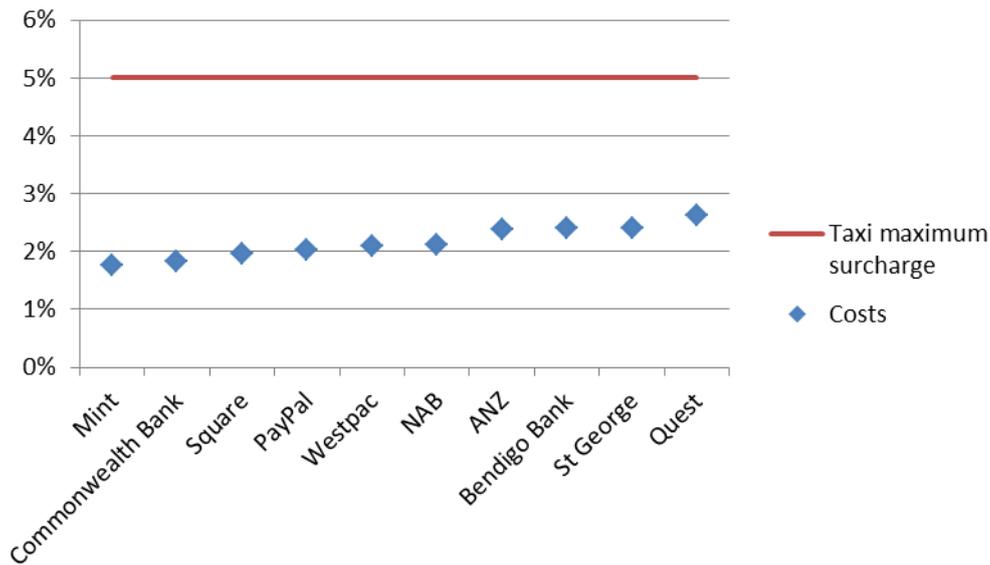
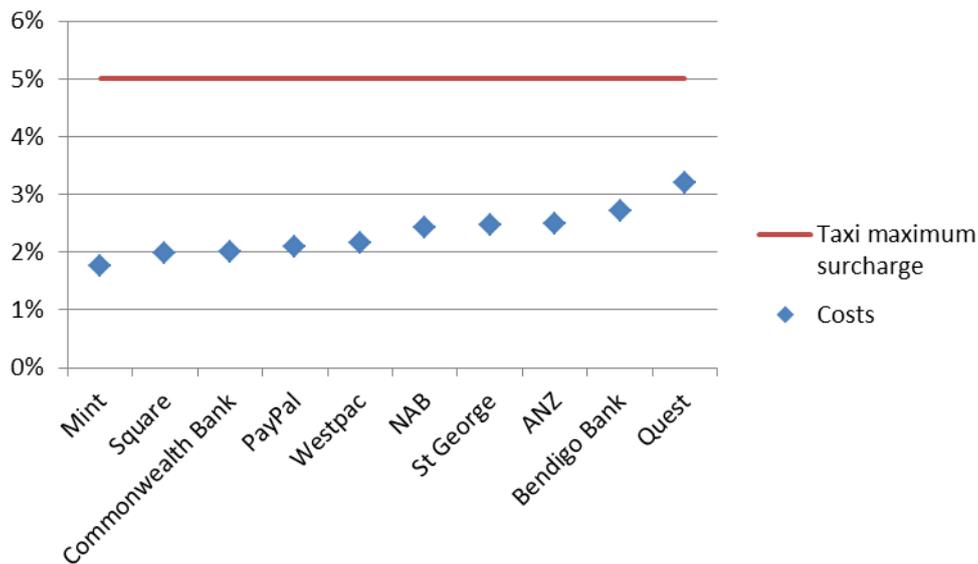


Figure C.4: offers for mPOS terminals (two terminals per taxi)



We used revenue data and EFTPOS terminal offers in our benchmarks

For our benchmarking, we estimated the monthly revenue from non-cash payments and the monthly cost of processing non-cash payments for the **typical taxi**. There are often fixed monthly costs associated with payment processing. We then divided the monthly cost of processing by the monthly revenue. This provides an estimate of what percentage of monthly revenue the typical taxi would need to spend on processing non-cash payments.

To estimate the monthly cost for a typical taxi, we used publicly available information on EFTPOS terminal offers from 14 payment processors. This information includes the fees and charges that may apply to a merchant who has an EFTPOS terminal with the payment processor. We have used these payment processors because:

- they provide EFTPOS and or mPOS terminals to small businesses in Australia processing about \$4,276 of non-cash payments per month, and
- information on their fees and charges is publicly available on their websites.⁹¹

Some of the costs associated with processing non-cash payments vary according to the value of transactions processed (i.e. monthly revenue). It is important for us to understand the monthly revenue for the typical taxi to estimate these costs.

To estimate the monthly non-cash payment revenue for the typical taxi, we used information provided by taxi payment processors.

We estimated the monthly non-cash payment revenue for the typical taxi

To estimate the monthly non-cash payment revenue for the typical taxi, we used the average monthly revenue per payment terminal provided to us by taxi payment processors. We then multiplied that figure by two to account for the fact that many taxi drivers use two payment terminals.

If the monthly revenue is higher or lower than what we have assumed, the monthly cost as a percentage of the monthly revenue may be different from our benchmarks.

The impact on the benchmark would depend on the magnitude of the change in revenue for taxis. However, our sensitivity analysis suggests that the impact on the average benchmark is likely to be minimal. For example, if the monthly revenue was 10 per cent lower than our estimate, the average benchmark cost (assuming two EFTPOS terminals) would increase by 0.2 percentage points. If the monthly revenue was 10 per cent higher than our estimate, the average benchmark cost would decrease by 0.2 percentage points.

In submissions, some stakeholders noted that the revenue for the average taxi may be decreasing.⁹² As our monthly revenue calculations are based on actual fares processed per terminal our benchmarking accounts for this.

⁹¹ The only exception to this was ANZ. We used quotes provided over the phone. We included ANZ in our sample as we know that ANZ provides EFTPOS terminals to some taxi operators and at least one taxi payment processor in Victoria.

⁹² A2B, submission received 1 March 2019, p.7.

We also note that there is a trend of increasing use of non-cash payments and decreasing cash payments.⁹³ We expect this trend to continue. This trend is likely to decrease the impact of reduced taxi revenue on the volume of fares paid by non-cash means in taxis.

We estimated the monthly cost for the typical taxi

To estimate the monthly cost of processing non-cash payments for the typical taxi, we used the following information from EFTPOS terminal contracts:

- Monthly fee
- Merchant service fee
- Business account fee
- Card reader fee.

We included the monthly fee, merchant service fee, business account fee and card reader fee, as we consider that these are the main costs of processing non-cash payments.

We excluded costs, such as cancellation fees and terminal replacement fees as these costs are recovered through separate charges, not standard charges related to processing non-cash payments.

We have not included chargeback fees as we do not have information on the average number of chargebacks per terminal to estimate the cost of chargebacks for the typical taxi on standard EFTPOS terminal offers. Further, the cost data we have received from taxi payment processors suggest the cost of card fraud in the taxi payments industry is not material. Therefore, even if we could, including these costs would not affect the outcome of our analysis.

Some stakeholders have also noted that other payment processors charge a number of other fees such as cancellation fees, terminal non-return fees, establishment fees, additional outlet fees, and stationary fees. These fees differ significantly in type and structure between service providers. We also note that some of these fees are not relevant to taxis and for those that are, in the context of three years of payment processing (the standard life for an EFTPOS terminal) they are not material. Nonetheless we acknowledge and have taken into consideration the fact that our benchmarking slightly underestimates the charges associated with EFTPOS terminals.

⁹³ RBA, Payments Data, available at: <https://www.rba.gov.au/payments-and-infrastructure/resources/payments-data.html> (last accessed 4 May 2019).

Monthly fees

The monthly fee is a flat fee charged **per month**. It covers the terminal rental⁹⁴ and administrative costs of providing the EFTPOS terminal. In some cases, the monthly fee also covers the costs of processing a certain value of non-cash payments.

Merchant service fees

The merchant service fee is a fee charged **per transaction**. This is charged by the acquiring entity for processing non-cash payments.

Some payment processors charge the merchant a percentage of dollar value per eftpos, Visa and MasterCard transaction. Other payment processors charge the merchant a flat fee per eftpos transaction and percentage of dollar value per Visa and MasterCard transaction. Typically, payment processors charge the merchant a percentage of dollar value per American Express and Diners Club transaction.

Some payment processors offer **included value** which is the total maximum dollar value of eftpos, Visa and MasterCard transactions included in the monthly fee. This means that if the total dollar value of eftpos, Visa and MasterCard transactions is within the included value, the merchant is not charged merchant service fees for these transactions (in other words the incremental cost of processing a transaction is zero). If the total dollar value of eftpos, Visa and MasterCard transactions exceeds the included value, the merchant is charged merchant service fees for these transactions, however only for the transactions that exceed the included value.

Typically, the publicly available information on merchant service fees applies to eftpos, Visa and MasterCard transactions only.⁹⁵ Other card types such as American Express and Diners Club are often subject to separate pricing which is not publicly available, so we have used information from taxi payment processors on merchant service fees for American Express and Diners Club.

Based on information from taxi payment processors, we have estimated the share of the value of non-cash payments (for a typical taxi) for each payment type is:

- eftpos: 9 per cent
- Visa: 43 per cent
- MasterCard: 32 per cent
- American Express: 15 per cent

⁹⁴ A payment processor that offers mPOS terminals may charge an upfront fee for the card reader. In this case, the monthly fee does not cover terminal rental.

⁹⁵ There are some exceptions. For example, Live eftpos includes American Express and Diners Club in its flat fee and Square includes American Express in its flat fee.

- Diners Club: 1 per cent.

Our calculations vary slightly depending on whether the payment processor charges the same or different merchant service fees for different card types, and whether the payment processor offers included value. These calculations are shown below.⁹⁶

Key calculations: merchant service fees

Merchant Service Fee type	Method of calculation
<ul style="list-style-type: none"> • The merchant service fee is the same for eftpos, Visa and MasterCard transactions, and • There is included value. 	$= (a \times b) + (c \times d) + (e \times f)$ <p>where</p> <p>a = monthly revenue from eftpos, Visa and MasterCard transactions less included value b = eftpos, Visa and MasterCard merchant service fees c = monthly revenue from American Express transactions d = merchant service fee for American Express e = monthly revenue from Diners Club transactions f = merchant service fee for Diners Club</p>
<ul style="list-style-type: none"> • The merchant service fee is the same for eftpos, Visa and MasterCard transactions, and • There is no included value. 	$= (g \times h) + (i \times j) + (k \times l)$ <p>where</p> <p>g = monthly revenue from eftpos, Visa and MasterCard transactions h = eftpos, Visa and MasterCard merchant service fee i = monthly revenue from American Express transactions j = merchant service fee for American Express k = monthly revenue from Diners Club transactions l = merchant service fee for Diners Club</p>
<ul style="list-style-type: none"> • The merchant service fee for eftpos transactions is different from the merchant service fee 	$= (m \times n) + (o \times p) + (q \times r) + (s \times t)$ <p>where</p>

⁹⁶ We note that some payment processors do not offer default acceptance of Diners Club cards. If the merchant wishes to accept Diners Club cards, the merchant must enter into an agreement with Diners Club. Our calculations reflect what the merchant service fees would be if the merchant does accept Diners Club cards.

for Visa and MasterCard transactions, and

- There is no included value.

m = number of trips paid by eftpos
n = merchant service fee for eftpos transactions
o = value of trips paid by Visa and MasterCard
p = Visa and MasterCard merchant service fee
q = value of trips paid by American Express
r = merchant service fee for American Express
s = value of trips paid by Diners Club
t = merchant service fee for Diners Club

Where the merchant service fee is a flat fee for eftpos transactions, and a percentage of dollar value for other card types, we need to know the **number** of eftpos transactions and the **value** of other card type transactions. To estimate the number of eftpos transactions, we divided the value of transactions for eftpos by the average fare.

Business account fees

The business account fee is a flat fee charged **per month**. Payment of this fee facilitates the supply of a bank account for the payment processor to settle funds to and debit fees and charges from the merchant.

Some payment processors require the merchant to hold and settle funds to a business account with them. These payment processors typically offer more than one type of business account with varying fees and inclusions.

We have assumed that the typical taxi would choose the lowest cost option if it is required to hold a business account with the payment processor. Generally, this is a business account with no monthly fee and free online banking.

Card reader fees

The card reader fee is a flat fee charged **upfront**. It is a charge for the supply of the card reader for mPOS terminals. This fee does not apply to EFTPOS terminals. We have assumed that the typical taxi would choose the lowest cost option if the payment processor offers more than one type of card reader.

To estimate the card reader fee, we divided the card reader fee by its useful life in months. Stakeholders have reported that the useful life of a card reader is three years (i.e. 36 months).

Key calculation: card reader fees

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

Monthly cost of processing non-cash payments for the typical taxi

To estimate the monthly cost of processing non-cash payments for the typical taxi, we summed the monthly fee, merchant service fees, business account fee and card reader fee.

Key calculation: monthly cost for the typical taxi

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

We calculated the monthly cost as a percentage of monthly revenue

We calculated the monthly cost as a percentage of the monthly revenue for the typical taxi. This tells us what share of monthly revenue the typical taxi would need to spend on processing non-cash payments.

Key calculation: share of monthly revenue spent on non-cash payments

$$\text{Share of monthly revenue spent on non-cash payments} = \frac{\text{Monthly cost of processing non-cash payments} \times 100}{\text{monthly revenue from non-cash payments}}$$

We note that some payment processors offer more than one EFTPOS terminal contract. Generally, as the monthly fee increases, the included value increases. Sometimes, the merchant service fees may also decrease. While we have had regard to all EFTPOS terminal offers from each payment processor, in this appendix we have only presented the EFTPOS terminal offer from each payment processor that is lowest cost for the typical taxi given our estimates of monthly revenue.

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

In submissions to our consultation paper, and in meetings, stakeholders identified a number of costs that they considered other payment processors in the broader economy do not incur. Many of the costs identified are incurred by all payment processors. However, there were some costs incurred by taxi payment processors that appeared unusual. These costs included:

- Multiple payment terminals
- Mobile payment processing
- Taxi non-cash payment surcharge record keeping requirements⁹⁷
- Taxi receipt requirements⁹⁸
- Integration of payment terminal and taxi meter⁹⁹
- Multi Purpose Taxi Program subsidy processing¹⁰⁰
- Providing passenger credit
- High rate of fraud in the taxi payments industry¹⁰¹
- High transaction costs of dealing with taxi drivers¹⁰²
- High merchant fees for taxis
- Taxi payment processors do not have the scale of other payment processors.

Our consideration of whether our benchmarking requires adjustments to account for these differences is set out in the following sections.

We have included an adjustment for multiple payment terminals

As discussed at the beginning of this appendix, it is common practice in the taxi payments industry for taxi drivers to have two payment terminals. For the reasons set out in that earlier section we have adjusted our benchmarking to account for this.

⁹⁷ CabFare, submission received 1 February 2019, p. 13.

⁹⁸ CabFare, submission received 1 February 2019, p. 13.

⁹⁹ Commercial Passenger Vehicle Association of Australia, submission received 4 February 2019.

¹⁰⁰ A2B, submission received 1 March 2019, p. 16.

¹⁰¹ CabFare, submission received 1 February 2019.

¹⁰² A2B, submission received 1 March 2019, p. 5.

Mobile payment processing is a common service

In our benchmarking we have only used EFTPOS terminals with mobile network connectivity. This is a common feature of payment terminals which is used by many businesses. As a result our benchmarking already accounts for the cost of mobility enabled devices.

To the extent that taxi drivers do face cost differences, due to taking payment in places where mobile coverage is poor, these costs are not likely to be material. If a payment terminal cannot connect to its mobile network, then it takes a payment in offline mode. The consequence of this is that the terminal takes the payment without it being authorised by the issuing bank and thus there is a higher risk of the payment being declined and a chargeback occurring. The cost data that we have received from taxi payment processors show chargeback costs are not a material cost driver for taxi payment processors. As a result we have not made further adjustments for mobility costs.

CPV non-cash payment surcharge record keeping requirements and tax record keeping requirements are similar

Under the Commercial Passenger Vehicle Industry Regulations 2018 (Vic) (CPVI regulations), records of non-cash payment surcharges must be kept. These records include, among other things:

- The amount of the non-cash payment surcharge
- The amount that would have been payable by the hirer if the hiring had been paid for in cash
- The date on which the transaction was processed.¹⁰³

The records to be kept are outlined in more detail in appendix I.

The records that taxi payment processors are required to keep under the CPVI regulations are the type of records that other payment processors keep as part of normal business management requirements for tax purposes.¹⁰⁴ Therefore it is unlikely that the record keeping requirements under the CPVI regulations impose material costs on taxi payment processors compared to other payment processors. For this reason, we have not adjusted our benchmarking for non-cash payment surcharge record keeping requirements.

¹⁰³ Commercial Passenger Vehicle Industry Regulations 2018 (Vic), regulation 36.

¹⁰⁴ Transport for Victoria, Commercial Passenger Vehicles Industry Regulations 2018: Regulatory Impact Statement, March 2018, p. 15, available at: http://www.betterregulation.vic.gov.au/files/a03ee23b-d20d-4761-8d2d-a8b000fa34bb/Commercial_Passenger_Vehicle_Industry_Regulations_-_RIS.pdf (last accessed 2 April 2019).

Receipts are a business administration cost

Under the CPVI regulations, the driver or booking service provider must provide the hirer with a receipt if requested. The receipt must include, among other things, the following information which is not generally included on a tax invoice:

- the registration number of the commercial passenger vehicle and
- the number of the certificate of accreditation of the driver.¹⁰⁵

While these requirements may be different to those for other small businesses, providing tax invoices is a general cost associated with the administration of a business. Taxi drivers are required to produce receipts even if a customer pays in cash. This means the costs associated with these additional receipt requirements are not costs of processing non-cash payments. Further, any additional costs associated with the provision of registration and accreditation numbers are likely to be immaterial. As a result we have not made an adjustment to our benchmarking differences in receipt requirements.

Taxis can process non-cash payments without taxi meter integration

Some taxi payment processing devices are physically connected to the taxi meter. This allows the payment terminal to identify where the trip began, where it ended, and how much it cost without any input from the driver.

While some taxi payment processors' terminals have this feature, many taxi payment processors' terminals do not. Also, there is no legislative requirement for taxi drivers to have a payment terminal that is integrated with their meter. As a result, meter integration is not required for drivers to process non-cash payments.

The only payment method that does require the meter and payment terminal to be integrated is the Cabcharge payment instrument. We note that the additional cost of meter integration would be offset by the fact that Cabcharge pays no interchange fees on its own payment instrument. Also, it is our understanding that due to difficulties other taxi payment processors have in connecting their payment terminals to A2B Australia taxi meters, Cabcharge Payments processes almost all Cabcharge payments instruments.

For these reasons we have not made an adjustment to our benchmarking to account for integration of payment terminals and taxi meters.

¹⁰⁵ Commercial Passenger Vehicle Industry Regulations 2018 (Vic), regulation 22.

The Multi Purpose Taxi Program is funded by the Victorian Government

The Multi Purpose Taxi Program (MPTP) assists with the travel needs of people with severe and permanent disabilities. As part of this program, the Victorian government provides subsidised taxi travel to MPTP members. All taxis are required by Commercial Passenger Vehicles Victoria to have a payment terminal that can process MPTP subsidies.¹⁰⁶ As a result taxi drivers must be able to process MPTP subsidies.

Only Cabcharge Payments¹⁰⁷ and Oiii¹⁰⁸ have commercial agreements with the Victorian Government for the supply of MPTP services. To the extent that Cabcharge and Oiii incur costs in processing MPTP subsidies, these costs should be covered by the amount agreed with the Victorian Government. As MPTP costs should be recovered through taxi payment processors' agreements with the Victorian Government, we have not adjusted our benchmarking to reflect the additional costs associated with processing MPTP subsidies.

Although our benchmarking does not include an adjustment for the cost of MPTP subsidy processing, our bottom-up cost assessment includes those costs (and revenues). This is due to difficulties with accurately separating data associated with processing MPTP subsidies.

Provision of credit is not a cost of processing non-cash payments

Some taxi payment processors (for example, Ingogo and Cabcharge) provide credit to passengers that hold accounts with them. Account holders can use this line of credit to pay taxi drivers either by using an app (Ingogo and Cabcharge) or by using an account card (Cabcharge). Cabcharge and Ingogo keep track of these payments and send monthly invoices to account holders.

In a traditional four party payment system (such as Visa or MasterCard) where the card issuer extends the card holder credit (for example, bank issued credit cards), providing credit is treated as a cost of issuing a payment method and charges are levied on card holders that access credit. It is not a cost of processing non-cash payments.

Similarly, the extension of credit to passengers via non-cash payment instruments is not a cost of processing non-cash payments. It is a cost of issuing a non-cash payment method and should be recovered from those customers that access the credit service. We also note that not all taxi

¹⁰⁶ CPVV, commercial passenger vehicle registration conditions – definitions, available at: <https://cpv.vic.gov.au/vehicle-owners/registration-conditions/commercial-passenger-vehicle-registration-conditions-definitions> (last accessed 4 April 2019).

¹⁰⁷ A2B, submission received 1 March 2019, P. 16.

¹⁰⁸ Oiii, Net-cabs launches new technology for processing Multi Purpose taxi Program cards in Melbourne, available at: <https://www.oiii.com/mptp.php> (last accessed 3 April 2019).

payment processors provide passengers credit. For these reasons we have not made an adjustment for the cost of providing credit to passengers in our benchmarking.

The taxi payments industry has a similar fraud risk to other industries

Historically, when non-cash payments were processed manually with dockets and imprints, fraud may have been more frequent in the taxi payments industry. However, in discussions with banks, we have been told that with contemporary payments technology, payment fraud has become much less frequent in taxis. As a result, the taxi payments industry does not have a materially different risk of fraud when compared to other industries.

Further, to the extent that it is different, the cost of that difference to taxi payment processors is not material. The cost information provided to us by taxi payment processors suggest that fraud related costs make up between 0.25 and 1.7 per cent of taxi payment processors' costs. If we assume that the current maximum surcharge of 5 per cent was reflective of taxi payment processors costs, this would mean that fraud costs account for less than one tenth of a percentage point of the surcharge (0.09%). Any difference in fraud related costs between taxi payment processors and other payment processors would only be a fraction of this.

For these reasons, we have not made an adjustment for differences in fraud risk in our benchmarking.

The big four banks service taxi drivers indirectly

Some stakeholders submitted that banks, and other payment processors operating in the broader economy, do not want to deal with taxi drivers due to the perceived risk associated with the taxi payments industry (generally attributed to fraud). A2B Australia also noted that the taxi industry is highly fragmented and the costs of servicing a large number of relatively small businesses are relatively high.¹⁰⁹

As noted above, the information provided to us suggests fraud is not a material cost of processing non-cash payments in the taxi payments industry. Further, banks and merchant aggregators service many small businesses using less than four terminals. However, we accept that the major banks in Australia have not attempted to market products specifically aimed at taxi drivers. But we also note that there is little reason for the big four banks to do so while all of the major taxi payment processors use the major banks as their acquirers. The major banks effectively already serve the taxi payments industry.

Despite the fact that major banks are not marketing products directly to taxi drivers, in meetings, banks indicated that they use the same assessment processes for taxi drivers as they do for other

¹⁰⁹ A2B, submission received 1 March 2019.

payment terminal applicants. They also indicated that some drivers can and do use their payment terminals.

Taxi payment processors are of a smaller scale than other payment processors

We acknowledge that taxi payment processors are of a smaller scale than some other payment processors included in our benchmarking, and as a result may face higher costs in some areas. We have not adjusted our benchmarking to reflect this for two main reasons:

- the purpose of our benchmarking is to understand the cost of comparable services available, and
- we do not have information on the scale of taxi payment processors and other payment processors.

We used benchmarks from Australian banks and merchant aggregators

Payment terminals that are generally available to small businesses provide the same service to consumers that payment terminals in taxis provide to passengers. We consider that payment terminals from banks and merchant aggregators, in Australia, are the appropriate services to consider when benchmarking drivers' reasonable cost of processing non-cash payments.

In its submission to our consultation paper, CabFare submitted that the services provided by ticketing agents and Afterpay are similar to those provided by taxi payment processors, and gave some examples of the fees charged in those industries.¹¹⁰

We consider that the services provided by booking agents and Afterpay are not appropriate benchmarks for the cost to drivers of processing non-cash payments. In particular:

- The fees charged by ticketing agencies are for booking rather than for processing non-cash payments. Ticketing agencies sell tickets for events on behalf of event organisers. Ticketing agencies sometimes charge a booking fee for providing the booking service. This is different from the surcharge, which is an additional charge for processing non-cash payments.
- Afterpay is more than a payment processor. In addition to processing payments, Afterpay allows the consumer to receive goods now and pay for them later. Afterpay charges merchants for this service, so its merchant fees are higher than other payment processors. This means Afterpay is not a reasonable benchmark for standalone non-cash payment processing services.

¹¹⁰ CabFare, submission received 1 February 2019.

Appendix D: how we have assessed the maximum surcharge

Our approach to this review

In coming to our draft decision on the maximum surcharge, we undertook benchmarking and bottom-up cost assessment. This is consistent with the approach we set out in our consultation paper.¹¹¹ We consider this approach best meets our objectives.

Benchmarking and bottom-up costs assessment helped us establish whether the five per cent maximum surcharge is reasonable. As we discussed in our consultation paper, we consider the term 'reasonable cost' to mean costs incurred in processing non-cash payments, which are moderate, not excessive, and within the limits of what it would be rational or sensible to expect for the given level of service quality and reliability.¹¹²

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

In our benchmarking, we looked at charges from payment processors to small businesses for processing non-cash payments. We considered the similarities and differences in processing non-cash payments between taxi payment processors and payment processors in the broader economy. Our benchmarking provided us some insight into whether the five per cent maximum surcharge was reasonable compared to costs in the broader economy. See appendix C for details.

We analysed the costs of taxi payment processors

Through an information request, we collected information from taxi payment processors about their services, assets, costs and revenues. This information allowed us to understand the types of costs taxi payment processors incur and what reasonable quantum may be.

For our bottom-up cost assessment, we calculated taxi payment processors' costs using the building block methodology. This methodology allows for the recovery of reasonable operating costs, depreciation cost and a return on investment. Following our initial analysis, we used taxi payment processors actual costs to estimate reasonable costs using our building block model. To the extent the data available allowed us, we only included the costs and revenues of the taxi payment processors' regulated services.

¹¹¹ Essential Services Commission, Taxi non-cash payment surcharge review 2019: consultation paper, December 2018, pp.11-12.

¹¹² Essential Services Commission, Taxi non-cash payment surcharge review 2019: consultation paper, December 2018, p.9.

This helped us to establish whether the five per cent maximum surcharge was equal to, higher than or less than the amount required for taxi payment processors to recover the reasonable costs of processing non-cash payments. See appendix B for details.

We note that not all taxi payment processors responded to our requests. Those that did respond provided us with information of varying levels of detail. While it would have been ideal to work with information from all taxi payment processors, we estimate that the data we collected covers more than 70 per cent of the market (in terms of the value of fares processed).

Our assessment approach helps us meet our legislated requirements

Our objectives

In setting the maximum non-cash payment surcharge (maximum surcharge) our objectives are to:

- Promote efficiency in the non-cash payment transaction industry by regulating the amount that may be imposed by way of a non-cash payment surcharge. In seeking to achieve this objective, we must ensure that taxi payment processors are able to recover the reasonable cost of processing non-cash payments.¹¹³
- Promote the long term interests of Victorian consumers. In seeking to achieve this objective we must have regard to the price, quality and reliability of essential services.¹¹⁴

Promoting efficiency

We signalled in our consultation paper that for the purpose of this review, efficiency means:

- the right amount of non-cash payment services are provided to consumers (that is, there is no excess demand or excess supply)
- there are the right incentives for investment and innovation by service providers and
- unnecessary costs are not incurred by customers when making non-cash payments.¹¹⁵

To promote these outcomes the maximum surcharge should not be set too low or too high. If the maximum surcharge is set too low then taxi payment processors will not be able to recover their costs, including a reasonable return on their investment. This could lead to under-investment in payment processing services which could see passengers wanting to make non-cash payments for taxi travel finding they are unable to do so (meaning there is excess or unmet demand for these services). On the other hand, if the maximum surcharge is set too high, customers will be paying

¹¹³ Commercial Passenger Vehicle Industry Act 2017 (Vic) s.122.

¹¹⁴ Essential Services Commission Act 2001 (Vic), s. 8.

¹¹⁵ Essential Services Commission, Taxi Non-Cash Payment Surcharge Review 2019: Consultation Paper, p.8.

more than would otherwise be necessary. Further, it could lead to over-investment in payment processing (excess supply) which might eventually be 'stranded' if the recoverable value of the surcharge falls through regulation or competition.

Both our benchmarking and bottom-up cost assessments suggest that the current five per cent maximum surcharge is more than the amount required for taxi payment processors to recover the reasonable cost of processing non-cash payments. The bottom-up cost assessment also shows that a surcharge of 4.5 per cent (including GST) would allow taxi payment processors to recover at least reasonable costs.

Promoting the interests of Victorian consumers

A maximum surcharge that promotes efficiency in the non-cash payment transaction industry will also promote the long term interests of consumers. A surcharge that promotes the efficient provision of services will provide the financial incentives taxi payment processors require to provide an affordable service at the level of quality and reliability that consumers expect.

See appendices B and C for details.

Having regard to other relevant matters

We must also have regard to a range of other matters to the extent they are relevant: such as the financial viability of the industry, the degree and scope of competition, and consistency in regulation between States. Among other things we considered the following:

Efficiency in the industry and incentives for long term investment: As mentioned earlier, we consider that a maximum surcharge of 4.5 per cent promotes efficiency and is also at a level which ensures that taxi payment processors can recover at least reasonable costs.

Financial viability of the industry: Our bottom-up cost assessment shows that taxi payment processors require a surcharge of between around 2.7 and 4.3 per cent to recover their reasonable costs. Under our proposed maximum surcharge of 4.5 per cent they would be financially viable.

Degree and scope of competition: Competition in the wider commercial passenger vehicle market has been taken into consideration. Reduced taxi revenues were accounted for in our benchmarking and bottom-up cost assessment.

Also, our decision to allow two payment terminals in our benchmarking is a result of our consideration of allowing taxi payment processors to recover reasonable costs. If we did not allow for two terminals in our benchmarking then taxi drivers would have no choice but to use the terminals provided by their networks. Taxi drivers must have a payment terminal that can process

MPTP subsidies.¹¹⁶ A2B Australia provides MPTP enabled payment terminals to almost all taxis in Victoria. See appendix C for details.

Relevant health, safety, environmental and social legislation applying to the industry: We took into account the various regulations applying to the industry. Among other things we considered vehicle registration conditions and anti-money laundering legislation.¹¹⁷

The benefits and costs of regulation: We note that the decrease in the surcharge would be a transfer of wealth from taxi payment processors to passengers, but it would also improve price signals in the economy.

The proposed reduction in the surcharge will provide passengers with a saving of roughly three million dollars. The cost of changing the maximum surcharge will be comparatively low. Changing the surcharge on payment terminals will be a straightforward change to the terminals' software that can be made via the terminals' mobile data connections. The cost of reprinting fare stickers is also likely to be immaterial compared to the total savings for passengers.

We consider that the improvement in economic efficiency due to better price signals will outweigh the relatively small costs of changing the maximum surcharge.

Consistency in regulation on a national basis: We looked at regulation of non-cash payments in taxis on a national basis and overseas. We observed a wide range of surcharges applying from zero to 10 per cent. Except for where surcharging has been banned, little reason was given to justify the quantum of surcharges.

While most states in Australia apply a five per cent maximum surcharge in taxis, other jurisdictions have not made public why this surcharge has been adopted. We observe that these maximums were all adopted after Victoria implemented a maximum surcharge of five per cent.

The particular circumstances of the industry: Our benchmarking and bottom-up cost assessment both take into consideration the particular circumstances of the regulated industry and the services for which the determination is being made. They do so by, among other things, taking into account the cost differences between taxis and other merchants processing non-cash payments. They also take into account the actual costs and revenues of taxi payment processors.

¹¹⁶ CPVV, commercial passenger vehicle registration conditions – definitions, available at: <https://cpv.vic.gov.au/vehicle-owners/registration-conditions/commercial-passenger-vehicle-registration-conditions-definitions> (last accessed 4 April 2019).

¹¹⁷ See appendix C.

The efficient costs of supplying regulated services: Our benchmarking and bottom up cost analysis consider the reasonable cost of providing the regulated service at length. Further detail can be found in chapters one, two, three, and appendices B and C.

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

Trade-offs between costs and service standards: Our draft decision will allow taxi payment processors to recover reasonable costs through the maximum surcharge. As a result it is unlikely that service standards will suffer.

Appendix E: our legislative considerations

The commission's statutory power to determine the maximum surcharge

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

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

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

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

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

The CPVI Act requires the commission to make a price determination no later than 2 July 2019.¹¹⁸

The commission's objectives

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

¹¹⁸ Commercial Passenger Vehicle Industry Act 2017 (Vic), s. 124.

cash payments.¹¹⁹ 'Reasonable cost' is defined in the CPVI Act to include 'any fees payable for the acquisition of transactions involving the use of debit, credit or charge cards'.¹²⁰

The ESC Act states that in performing its functions and exercising its powers, the objective of the commission is to promote the long term interests of Victorian consumers. In performing its functions and exercising its powers in relation to essential services, the commission must in seeking to achieve this objective have regard to the price, quality and reliability of essential services.¹²¹ Without derogating from this obligation and the requirements under section 8A of the ESC Act outlined below, the commission must also when performing its functions and exercising its powers in relation to a regulated industry do so in a manner that the commission considers best achieves any objectives specified in the empowering instrument, in this case being the CPVI Act.¹²²

In making a price determination, the commission must adopt an approach and methodology which the commission considers will best meet the objectives specified in the ESC Act and any relevant legislation.¹²³ Section 33(5) of the ESC Act states that a price determination by the commission may regulate a prescribed price for prescribed goods and services in any manner the commission considers appropriate. Section 124 of the CPVI Act provides that the commission may regulate prescribed prices by determining different prices according to the circumstances specified in the determination if it considers it necessary to do so in order for it to comply with its obligation to ensure that taxi payment processors are able to recover the reasonable cost of processing non-cash payments.

Factors the commission must have regard to

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

- efficiency in the industry and incentives for long term investment;
- the financial viability of the industry;
- the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;
- the relevant health, safety, environmental and social legislation applying to the industry;

¹¹⁹ Commercial Passenger Vehicle Industry Act 2017 (Vic), s.122(1)-(2).

¹²⁰ Commercial Passenger Vehicle Industry Act 2017 (Vic), s.122(3).

¹²¹ Essential Services Commission Act 2001 (Vic), s. 8.

¹²² Essential Services Commission Act 2001 (Vic), s. 8A(2).

¹²³ Essential Services Commission Act 2001 (Vic), s. 33(2).

- the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for consumers and users of products or services (including low income and vulnerable consumers) and regulated entities;
- consistency in regulation between States and on a national basis;
- any matters specified in the empowering instrument (i.e. the CPVI Act).

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

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

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

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

We will set the maximum surcharge in taxis

We will determine the maximum surcharge in taxis. We do not regulate non-cash payment surcharges for rideshare and hire car services.¹²⁴ Rideshare and hire car non-cash payment surcharges are regulated by the Reserve Bank of Australia under the national payment systems framework.¹²⁵

¹²⁴ Commercial Passenger Vehicle Industry Act 2017 (Vic), s. 112(2).

¹²⁵ RBA 2016, Standard No. 3 of 2016: Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions, May.

Appendix F: regulation of non-cash payment surcharging in other industries

The Reserve Bank of Australia is responsible for regulating non-cash payment surcharging in every industry except the taxi industry. Under the Payment Systems (Regulation) Act 1998 the RBA has the power to:

- designate payment systems, and in those designated payment systems
- impose an access regime on the participants
- determine standards to be complied with by the participants.

The RBA regulates non-cash payment surcharges through its standard on *Scheme rules relating to merchant pricing for credit, debit and prepaid card transactions* (the standard).¹²⁶

It is important for us to understand the RBA's role as the Commercial Passenger Vehicle Industry Act 2017 specifically states that we do not have the power to set fees and charges regulated by the RBA.¹²⁷

Surcharging is allowed in Australia

In Australia, merchants may surcharge for non-cash payments if they choose, provided the surcharge is not excessive.¹²⁸ A surcharge is considered excessive if it exceeds the 'cost of acceptance'. The standard allows surcharging that reflects the average cost to a business of accepting different payment methods.

The Competition and Consumer Act 2010 (Cth) covers surcharges on the following card payment systems:

- eftpos (debit and prepaid)
- MasterCard (credit, debit and prepaid)
- Visa (credit, debit and prepaid), and

¹²⁶ Available at: <https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/regulations.html>

¹²⁷ Commercial Passenger Vehicle Industry Act 2017, s.112(2)(a-b).

¹²⁸ Competition and Consumer Act 2010 (Cth), s. 55B(1).

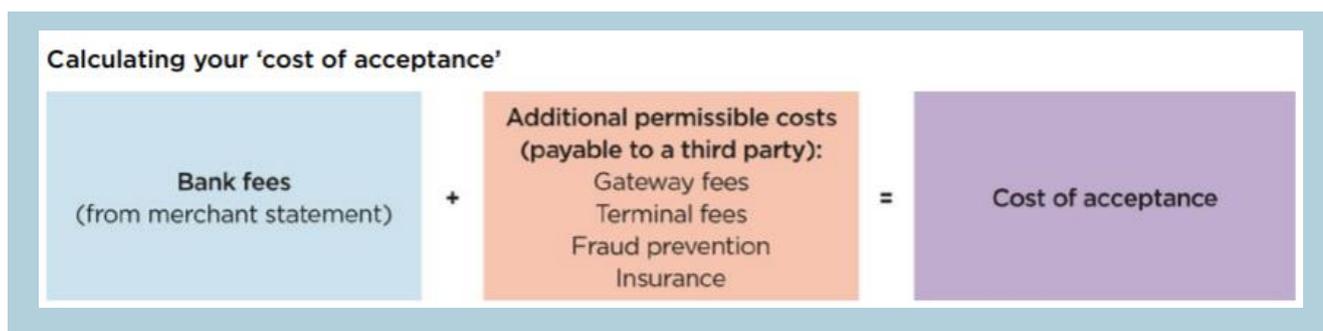
- American Express companion cards.¹²⁹

From 1 September 2017, all businesses, except taxis, that impose surcharges on card transactions have been required to comply with the prohibitions introduced by the Competition and Consumer Amendment (Payment Surcharges) Act 2016 (Cth). Taxi-specific payment instruments, including Cabcharge, are not designated payment systems under the standard. The RBA excluded the taxi industry from the standard as surcharging in taxis was already regulated by state regulators.¹³⁰

A surcharge must not exceed the average cost of acceptance

Under the RBA's standard, a merchant's surcharge for a particular type of card should not exceed the average cost of acceptance over the most recent 12 month period for that type of card. For example, if the average cost of acceptance for Visa Credit is 1 per cent then the merchant can only surcharge 1 per cent on Visa credit card payments. Box F.1 shows the allowable cost of acceptance under the RBA standards.

Box F.1: Cost of acceptance under the standard



Source: ACCC 2018, Payment surcharges: only charge what it costs you, January, p.2

Bank fees

The standard requires the merchant's acquirer (bank) or payment processors to provide an annual statement showing the average cost of acceptance for each payment method. The average cost of acceptance is expressed in percentage terms.

The statement must include:

- merchant service fees paid to an acquirer (bank) or payment processor

¹²⁹ Issued through an Australian financial service provider, rather than directly through American Express. American Express proprietary cards (issued directly by American Express) are not presently covered by the ban. Source: ACCC 2018, Payment surcharges: only charge what it costs you, January, p.1.

¹³⁰ RBA 2016, Review of Card Payments Regulation: Conclusions Paper, May, p. 37.

- fees paid to an acquirer or payment processor for the rental and maintenance of payment card terminals
- fees paid to an acquirer or payment processors for providing gateway or fraud prevention services
- any other fees paid to an acquirer or payment processor incurred in processing card transactions, including cross-border transaction fees, switching fees and fraud related chargeback fees.¹³¹

Other allowable costs

There are other allowable costs paid to third parties but merchants must calculate these costs themselves. These other costs include:

- gateway fees
- the cost of fraud prevention services paid to an external provider
- any fees for the rental or maintenance of card terminals paid to a provider other than the merchant's acquirer or payment processor
- the cost of insuring against forward delivery risk.¹³²

These costs must be supported by contracts, statements or invoices.

Internal costs are not allowed

Merchants' internal costs such as labour or electricity costs are not allowed to be recovered via the surcharge.¹³³

The ACCC is responsible for enforcing the surcharging standard

Economy-wide concerns over excessive surcharges resulted in the Government giving the Australian Competition and Consumer Commission (ACCC) the power to enforce a ban on excessive surcharges under the Competition and Consumer Act 2010 (Cth). The ACCC has investigation and enforcement powers in cases of possible excessive surcharging. If the ACCC has reasonable grounds to believe that a merchant has breached the ban, it can issue an infringement notice or take court action against the merchant.

¹³¹ RBA 2016, Standard No. 3 of 2016: Scheme rules relating to merchant pricing for credit, debit and prepaid card transactions, May, pp.6-9.

¹³² RBA 2016, Standard No. 3 of 2016: Scheme rules relating to merchant pricing for credit, debit and prepaid card transactions, May, pp.6-7. RBA, <https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/q-and-a/card-payments-regulation-qa-conclusions-paper.html> (accessed on 15 October 2018); ACCC 2018, Payment surcharges: only charge what it costs you, January, p.2.

¹³³ RBA, <https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/q-and-a/card-payments-regulation-qa-conclusions-paper.html> (accessed on 15 October 2018); ACCC 2018, Payment surcharges: only charge what it costs you, January, p.2.

The RBA's guidance on surcharge rates

The RBA acknowledges that merchants have a wide range of payment costs depending on their size and which industry they belong to. But as a guide, the RBA has stated that surcharges could range from 0.5 per cent to 2 percent depending on the type of card used.

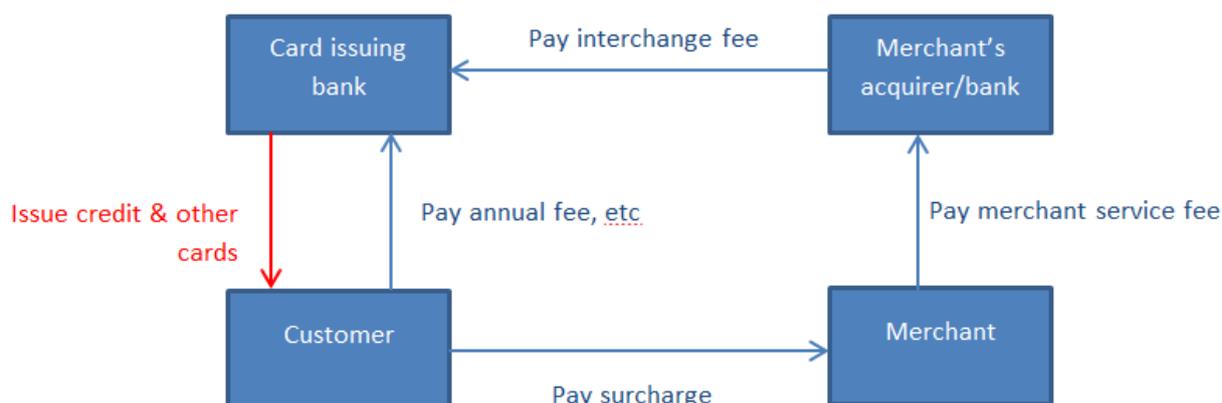
The RBA also notes that in general smaller merchants face higher payment costs than larger merchants and may also have higher costs than the above ranges.

Interchange fees are also regulated by the RBA

Interchange fees are paid between banks for the acceptance of card-based transactions. The merchant's acquirer or bank pays the customer's bank (the card issuing bank) an interchange fee for each card transaction. The interchange fee is relevant to surcharging because it eventually forms part of the merchant service fee paid by merchants to their acquirer or bank. On a typical credit card transaction, the interchange fee makes up roughly 60 per cent of the merchant service fee.¹³⁴

Figure F.1 shows a simple illustration of the flow of payments between customers and merchants. Acquirers/banks pass on the interchange fees they are charged to merchants in merchant service fees.¹³⁵ Merchants may then pass merchant service fees on to customers in their non-cash payment surcharges.

Figure F.1: Payment system cash flows



¹³⁴ RBA 2018, A Journey Towards a Near Cashless Payments System: <https://www.rba.gov.au/speeches/2018/sp-gov-2018-11-26.html> (accessed on 4 December 2018).

¹³⁵ For eftpos transactions it is the cardholder's bank which pays the merchant's bank an interchange fee.

Interchange fees are set by card payment schemes such as MasterCard, Visa and American Express. Interchange fees might differ depending on jurisdiction,¹³⁶ the type of card used¹³⁷ and the type of transaction (e.g. card present or not present, etc.).¹³⁸

While payment systems set interchange fees, the RBA places some limits on the interchange fees that may be charged in Australia. The limits are outlined in the RBA's standards for interchange fees on debit and credit cards.¹³⁹ These standards set weighted average benchmarks on interchange fees and also put caps on any individual interchange fee (table F.1).

Table F.1: Cap on interchange fees, RBA¹⁴⁰

Type of card	Weighted average benchmark	Cap on individual interchange fee
Credit card	0.5 per cent	Should not exceed 0.8 per cent
Debit card	8 cents	Should not exceed 15 cents if levied as fixed amount or 0.2 per cent if levied as percentage amount

¹³⁶ RBA 2015, Review of Card Payments Regulation: Issues Paper, March, p. 7.

¹³⁷ RBA 2015, Review of Card Payments Regulation: Issues Paper, March, p. 6.

¹³⁸ RBA 2015, Review of Card Payments Regulation: Issues Paper, March, p. 20.

¹³⁹ RBA 2016, Standard No.1 of 2016: The setting of interchange fees in the designated credit card schemes and net payments to issuers; Standard No.2 of 2016: The setting of interchange fees in the designated debit and prepaid card schemes and net payments to issuers.

¹⁴⁰ RBA, <https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/q-and-a/card-payments-regulation-qa-conclusions-paper.html> (accessed on 15 October 2018).

Appendix G: origin of the non-cash payment surcharge

Prior to the Victorian Taxi Industry Inquiry (the inquiry), the non-cash payment surcharge was unregulated. Standard industry practice for taxis was to add a 10 per cent surcharge (excluding GST) for non-cash payments. Following the inquiry the surcharge was regulated and the maximum non-cash payment surcharge amount was set at five per cent (including GST). It has remained at that level to this day.

The surcharge was first introduced for processing paper dockets

Prior to the introduction of electronic payments, taxi booking services provided paper-based (docket) charge account services to corporate and government customers. These services charged a 10 per cent service fee on each docket processed. In 1976 Cabcharge began offering a docket based system that could be used in any capital city in Australia. This service also charged a 10 per cent service fee. Cabcharge rebated a share of its 10 per cent fee to networks. When Cabcharge began processing third-party cards such as American Express, Diners Club and MotorPass in 1982 and bank-issued cards such as Visa, MasterCard and Bankcard in the late 1990s, it extended the 10 per cent service fee to all electronic transactions processed using its facilities.¹⁴¹ This 10 per cent surcharge became a standard industry practice.

The taxi industry inquiry set the maximum surcharge at five per cent

The surcharge was considered at length by the inquiry.

The inquiry identified a market failure, in that competition between taxi payment processors had failed to lead to reduced costs for customers.¹⁴² It recommended the surcharge be regulated.

The inquiry found that the 10 per cent surcharge did not reflect the cost of service provision. Up to five per cent of the fee was rebated to operators and drivers as incentive payments. This showed that the cost of providing the service was not more than five per cent.¹⁴³ The inquiry recommended that the surcharge be set at a maximum fee that reflected the resource costs of

¹⁴¹ Taxi Industry Inquiry, *Customers First: Service, Safety, Choice*, Draft Report, May 2012, p.252.

¹⁴² Taxi Industry Inquiry, *Customers First: Service, Safety, Choice*, Final Report, September 2012, p.208.

¹⁴³ Taxi Industry Inquiry, *Customers First: Service, Safety, Choice*, Draft Report, May 2012, pp 258-9.

providing that service, and recommended the maximum surcharge be set at five per cent of transaction value until subject to a further evaluation by the Essential Services Commission.¹⁴⁴

The maximum regulated surcharge of five per cent took effect in Victoria in 2014. Any non-cash payment surcharge that exceeds the prescribed amount attracts a penalty under the Commercial Passenger Vehicle Industry Act 2017 (Vic).

Other states have followed Victoria's example on the surcharge

Following the introduction of surcharge regulation in Victoria, action was taken in other jurisdictions to regulate payment surcharges in other Australian states and territories. Currently, only in Tasmania do taxis charge a 10 per cent surcharge for non-cash payments.¹⁴⁵ The other states and territories have a regulated five per cent maximum.

¹⁴⁴ Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p.217.

¹⁴⁵ Department of State Growth Transport (accessed on 10 October 2018), <https://www.transport.tas.gov.au/passenger/taxi/fares>

Appendix H: the legislation governing our non-cash payment surcharge role

This appendix includes the key sections of the Acts relevant to the price regulation of the non-cash payment surcharge. The legislation can be found in full online at: <http://www.legislation.vic.gov.au/>

Table H.1: Relevant sections of the Commercial Passenger Vehicle Industry Act 2017

Section detail	
s. 3	<p>Definitions</p> <p>non-cash payment processing device means a device—</p> <ul style="list-style-type: none">(a) used, or intended to be used, to process a non-cash payment transaction; or(b) that enables a non-cash payment transaction to be processed; <p>Examples</p> <p>EFTPOS machine, smartphone, computer tablet.</p> <p>non-cash payment processing service means a service that facilitates the processing of a non-cash payment transaction but does not include a service relating to a fee or charge imposed in respect of the use of a credit card, charge card or debit card levied—</p> <ul style="list-style-type: none">(a) by a participant in a designated payment system within the meaning of the Payment Systems (Regulation) Act 1998 of the Commonwealth and is of a kind covered by a standard in force under section 18 of that Act; or(b) by a person who acts consistently with a voluntary undertaking given by the person to, and accepted by, the Reserve Bank of Australia; <p>non-cash payment transaction means the payment, other than by cash, of any amount due in respect of the hiring of a commercial passenger vehicle;</p> <p>prescribed amount of a non-cash payment surcharge is—</p> <ul style="list-style-type: none">(a) the maximum amount of the surcharge as determined by the ESC under Division 3 of Part 6; or(b) until the first such determination, 5% of the amount that would be payable in respect of the hiring to which the surcharge relates if that amount were paid in cash;

s.112 Meaning of non-cash payment surcharge

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

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

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

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

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

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

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

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

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

s. 113 Cap on non-cash payment surcharges

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

(a) exceeds the prescribed amount; or

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

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

Section detail

(3) A person must not—

(a) impose, whether directly or indirectly, a non-cash payment surcharge to which this section applies; or

(b) directly initiate the collection in the commercial passenger vehicle of a non-cash payment surcharge to which this section applies or of an amount that includes such a surcharge.

Penalty: In the case of an individual, 240 penalty units;

In the case of a body corporate, 1200 penalty units.

Notes

Section 285 (criminal liability of officers of bodies corporate—failure to exercise due diligence (evidential burden of proof)) applies to an offence against this subsection.

(4) A person does not commit an offence against subsection (3) because of a non-cash payment surcharge charged or collected, or to be charged or collected, by another person in respect of the hiring of a commercial passenger vehicle if—

(a) the person presents or points to evidence that suggests a reasonable possibility that the person did not know, and could not reasonably be expected to have known, that the other person had charged or collected, or was to charge or collect, a non-cash payment surcharge in respect of that hiring; and

(b) the contrary is not proved (beyond reasonable doubt) by the prosecution.

(5) The reference in subsection (3) to a person includes—

(a) any person who provided or maintains any equipment (whether or not installed in the commercial passenger vehicle) or any application or software that enabled the non-cash payment transaction to be made; and

(b) any person who manages or administers the whole or any part of a system under which non-cash payment transactions may be made; and

(c) the owner and driver of the commercial passenger vehicle.

s.114 **Offence to enter into certain contracts etc.**

(1) A person, including the owner or driver of the commercial passenger vehicle or a booking service provider, must not—

(a) enter into a contract, arrangement or understanding with any person that has the purpose or effect specified in subsection (2); or

(b) agree to give effect to a contract, arrangement or understanding entered into by any other persons that has that purpose or effect.

Section detail

Penalty: In the case of an individual, 60 penalty units;

In the case of a body corporate, 300 penalty units.

Note

Section 285 (criminal liability of officers of bodies corporate—failure to exercise due diligence (evidential burden of proof)) applies to an offence against this section.

(2) The purpose or effect is directly or indirectly causing a non-cash payment surcharge to which section 113 applies to be paid in respect of a hiring of a commercial passenger vehicle.

s.115 **Civil penalties**

(1) The Supreme Court may order that a person pay, as a debt due to the State, a civil penalty of an amount not exceeding \$1 000 000 for an individual or \$5 000 000 for a body corporate.

(2) The Supreme Court may make an order under subsection (1) if satisfied, on an application made by the regulator, that the person has—

(a) contravened section 113(3); or

(b) attempted to contravene section 113(3); or

(c) aided, abetted, counselled or procured a person to contravene section 113(3); or

(d) induced, or attempted to induce, whether by threats, promises or otherwise, a person to contravene section 113(3); or

(e) been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 113(3); or

(f) conspired with others to contravene section 113(3).

(3) The regulator may make an application under this section at any time within 6 years after the contravention or other conduct covered by subsection (2).

(4) The Supreme Court may relieve a person, other than a body corporate, from liability to a civil penalty in a proceeding under this section if it appears to it that—

(a) the person has, or may have, engaged in conduct in contravention of section 113(3) or conduct referred to in subsection (2)(b), (c), (d), (e) or (f) that relates to a contravention of section 113(3); but

(b) the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused.

s.116 **Preference must be given to compensation**

Section detail

The Supreme Court must give preference to making an order for compensation if it considers that—

- (a) it is appropriate to order a person (the defendant) to pay a civil penalty under section 115(1) in relation to—
 - (i) a contravention of section 113(3); or
 - (ii) conduct referred to in section 115(2)(b), (c), (d), (e) or (f) that relates to a contravention of section 113(3); and
- (b) it is appropriate to order the defendant to pay compensation under section 120 to a person who has suffered loss or damage because of that contravention or conduct; and
- (c) the defendant does not have sufficient financial resources to pay both the civil penalty and the compensation.

s.117 **Interplay between civil penalties and criminal proceedings**

- (1) An application cannot be made to the Supreme Court under section 115 in relation to a contravention of section 113(3) if the person has been convicted or acquitted of an offence constituted by conduct that is substantially the same as the conduct to which the application relates.
- (2) The Supreme Court must stay a proceeding under section 115 against a person if a criminal proceeding is or has been commenced against the person for an offence constituted by conduct that is substantially the same as the conduct to which the application under that section relates.
- (3) A proceeding stayed in accordance with subsection (2) must be dismissed by the Supreme Court if the person is convicted or acquitted of the offence but otherwise may be resumed by it.
- (4) A criminal proceeding may be commenced against a person for conduct that is substantially the same as conduct to which an application under section 115 relates or in respect of which an order has been made under that section.
- (5) Evidence of information given, or evidence of the production of documents, by a person is not admissible in a proceeding against the person for an offence if—
 - (a) the person previously gave the evidence or produced the documents in a proceeding against the person under section 115; and
 - (b) the conduct alleged to constitute the offence is substantially the same as the conduct to which the proceeding under that section related.
- (6) Subsection (5) does not apply to a criminal proceeding in respect of the falsity of evidence given in a proceeding under section 115.

s.118 **Non-cash payment surcharge may be recovered as a debt**

Section detail

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

s.119 **Proceeding for damages**

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

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

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

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

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

s.120 **Compensation orders**

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

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

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

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

(a) the injured person; or

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

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

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

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

Section detail

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

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

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

s. 121 **Application of Essential Services Commission Act 2001**

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

(a) this Division is relevant legislation; and

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

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

s. 122 **Objective of the ESC**

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

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

(3) In this section—

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

s. 123 **Powers in relation to non-cash payment service regulation**

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

(a) non-cash payment transactions are prescribed services; and

(b) the maximum amounts of non-cash payment surcharges are prescribed prices.

s. 124 **Exercise of regulatory functions**

(1) The ESC may regulate prescribed prices by determining different prices

Section detail

according to circumstances specified in the determination if it considers it necessary to do so in order for it to comply with section 122(2).

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

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

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

Schedule 2, s.25 **Subject matter for regulations**

Non-cash payment surcharges

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

- (a) non-cash payment surcharges charged or collected by persons using the services;
- (b) the operation and programming of equipment that enables non-cash payment transactions to be made;
- (c) the retention and storage of information, data and electronic communications relating to non-cash payment surcharges;
- (d) the structure of, setting of and receipt of non-cash payment surcharges;
- (e) commercial arrangements supporting non-cash payment surcharges.

Table H.2: Relevant sections of the Essential Services Commission Act 2001

Section detail

s. 8 (1) **Objective of the Commission**

In performing its functions and exercising its powers, the objective of the Commission is to promote the long term interests of Victorian consumers.

s. 8 (2) Without derogating from subsection (1), in performing its functions and exercising its powers in relation to essential services, the Commission must in seeking to achieve the objective specified in subsection (1) have regard to the price, quality and reliability of essential services.

s. 8A (1) **Matters the Commission must have regard to**

Appendix H: the legislation governing our role in setting the maximum non-cash payment surcharge

Section detail

In seeking to achieve the objective specified in section 8, the Commission must have regard to the following matters to the extent that they are relevant in any particular case—

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

- s. 8A (2) Without derogating from section 8 or subsection (1), the Commission must also when performing its functions and exercising its powers in relation to a regulated industry do so in a manner that the Commission considers best achieves any objectives specified in the empowering instrument.

S.32 **Price Regulation**

The Commission may regulate prescribed prices for or in respect of prescribed goods and services supplied by or within a regulated industry.

- S.32(2) In this section –

prescribed goods and services means any goods or services made, produced or supplied by or within a regulated industry which goods or services are specified in the empowering instrument as being goods or services in respect of which the Commission has power to regulate prices;

prescribed price means the price or price-range however designated for the supply or sale of any goods or services by or within a regulated industry or particular factors used in price-fixing or terms and conditions relating to the price at which particular goods or services are supplied or sold, being a price, price-range, factor or term and condition specified in the empowering instrument as being a price, price-range, factor or term and condition which the Commission has power to regulate.

S.33(1) **Price determinations**

(1) This section is subject to anything to the contrary in the empowering instrument specifying the prescribed prices or prescribed goods and services in respect of which the Commission is exercising its power of regulation.

- S.33(2) In making a price determination, the Commission must adopt an approach and

Section detail

methodology which the Commission considers will best meet the objectives specified in this Act and any relevant legislation.

- s. 33(3) In making a determination under this section, the Commission must have regard to—
- (a) the particular circumstances of the regulated industry and the prescribed goods and services for which the determination is being made;
 - (b) the efficient costs of producing or supplying regulated goods or services and of complying with relevant legislation and relevant health, safety, environmental and social legislation applying to the regulated industry;
 - (c) the return on assets in the regulated industry;
 - (d) any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries;
 - (e) any other factors that the Commission considers relevant.
- s. 33(4) In making a determination under this section, the Commission must ensure that—
- (a) the expected costs of the proposed regulation do not exceed the expected benefits; and
 - (b) the determination takes into account and clearly articulates any trade-offs between costs and service standards
- s. 33(5) A price determination by the Commission may regulate a prescribed price for prescribed goods and services in any manner the Commission considers appropriate.
- s. 33(6) Without limiting the generality of subsection (5), the manner may include—
- (a) fixing the price or the rate of increase or decrease in the price;
 - (b) fixing a maximum price or maximum rate of increase or minimum rate of decrease in the maximum price;
 - (c) fixing an average price for specified goods or services or an average rate of increase or decrease in the average price;
 - (d) specifying pricing policies or principles;
 - (e) specifying an amount determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor;
 - (f) specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the rate or supply of the goods or services;
 - (g) fixing a maximum average revenue or maximum rate of increase or minimum rate of decrease in the maximum average revenue in relation to specified goods or services;
 - (h) monitoring the price levels of specified goods and services.

Collection and use of information

s.36 Application of this Part

Subject to any provisions to the contrary in any relevant legislation, this Part

Section detail

applies to or in respect of any information or document that is provided to the Commission.

S.36A **Commission must have regard to certain matters**

In exercising the powers conferred on the Commission under this Part, the Commission must have regard to—

- (a) the relevance of the information or document; and
- (b) the estimated compliance costs.

S.37 **General power to obtain information and documents**

(1) If the Commission considers that it is necessary to do so for the purposes of performing its functions or exercising its powers, the Commission may require a person that the Commission has reason to believe has any relevant information or document to provide that information or document to the Commission.

(1A) For the purposes of subsection (1), the Commission may require the person to appear before the Commission to provide the information or document.

(2) A requirement must be made in a written notice specifying—

- (a) the information or document required; and
- (b) the period of time within which the requirement must be complied with; and
- (c) the form in which the information or copy of the document is to be given to the Commission; and
- (ca) whether or not the person is required to appear before the Commission; and
- (d) that the requirement is made under this section.

(3) The notice must include a copy of this Part.

(4) A person who without lawful excuse fails to comply with any requirement made under this section in a notice given to the person is guilty of an offence.

Penalty: 120 penalty units.

(5) It is a lawful excuse for the purposes of subsection (4) that compliance may tend to incriminate the person or make the person liable to a penalty for any other offence.

(6) A person must not, in purported compliance with a requirement, knowingly give the Commission information that is false or misleading.

Penalty: 120 penalty units or imprisonment for 6 months.

(7) A person must not—

- (a) threaten, intimidate or coerce another person; or
- (b) take, threaten to take, incite or be involved in any action that causes another person to suffer any loss, injury or disadvantage— because that other person complied, or intends to comply, with a requirement made under this section.

Penalty: 120 penalty units.

Section detail

(8) A person is not liable in any way for any loss, damage or injury suffered by another person because of the giving in good faith of any information or a document to the Commission under this section.

S.37A **Provision of information relating to regulated Entities**

(1) A regulated entity must provide information relating to the regulated entity requested by the Commission by written notice to the Commission in the manner and form specified in the notice.

(2) If information relating to a regulated entity is held by a third party, the Commission may require the regulated entity to enter into an arrangement with the third party under which the third party is to provide the information to the Commission.

(3) The Commission may specify the kind or class of information which a regulated entity must maintain for the purposes of this section in a Code of Practice.

S.38 **Restriction on disclosure of confidential information**

(1) This section applies if—

(a) information or a document is given to the Commission under—

(i) section 37, 37A or 51; or

(ii) section 212E of the Accident Towing Services Act 2007; and

(b) at the time the information or document is given, the person giving it states that it is of a confidential or commercially-sensitive nature.

(1A) Before the Commission makes a decision under subsection (2), the Commission must—

(a) give the person giving the information or document an opportunity to make a submission to the Commission specifying—

(i) why the information or document is of a confidential or commercially sensitive nature; and

(ii) the detriment that would be caused by the disclosure of the information or document; and

(b) consider any submission made by that person.

(2) The Commission must not disclose the information or the contents of the document to any person unless—

(a) the Commission is of the opinion—

(i) that the disclosure of the information or document would not cause detriment to the person supplying it; or

(ii) that although the disclosure of the information or document would cause detriment to the person supplying it, the public benefit in disclosing it outweighs that detriment; and

(b) the Commission is of the opinion, in relation to any other person who is aware of the information or the contents of the document and who might be detrimentally affected by the disclosure—

Section detail

- (i) that the disclosure of the information or document would not cause detriment to that person; or
 - (ii) that although the disclosure of the information or document would cause detriment to that person, the public benefit in disclosing it outweighs that detriment; and
- (c) the Commission gives the person who supplied the information or document a written notice—
- (i) stating that the Commission wishes to disclose the information or contents of the document, specifying the nature of the intended disclosure and setting out detailed reasons why the Commission wishes to make the disclosure; and
 - (ii) stating that the Commission is of the opinion required by paragraph (a) and setting out detailed reasons why it is of that opinion; and
 - (iii) setting out a copy of this section and section 55, and as the case requires, section 45 of this Act or section 212F of the Accident Towing Services Act 2007; and
- (d) if the Commission is aware that the person who supplied the information or document in turn received the information or document from another person and is aware of that other person's identity and address, the Commission gives that other person a written notice—
- (i) containing the details required by paragraph (c); and
 - (ii) stating that the Commission is of the opinion required by paragraph (b) in relation to him, her or it and setting out detailed reasons why it is of that opinion; and
- (e) no notice of appeal is lodged in respect of any notice given under paragraph (c) or (d) within the time permitted by section 55(3).

Penalty: 120 penalty units.

- (3) Subsection (2) does not prevent the Commission—
- (a) from disclosing information or the contents of a document to—
 - (i) an employee employed under section 24(1); or
 - (ii) a member of staff referred to in section 24(2); or
 - (iii) a consultant engaged under section 25; or
 - (iv) a member of a Division, committee or panel acting under a delegation under section 26; or
 - (b) from using information or a document for the purposes of an inquiry or investigation; or
 - (c) from disclosing information or the contents of a document to the Minister in a report prepared in the form required by section 45(2) of this Act or section 212F(2) of the Accident Towing Services Act 2007; or
 - (d) from supplying the information or document to the members of any appeal panel hearing an appeal in relation to the information or document.
- (4) If an appeal is lodged under section 55 and the appeal—
- (a) is withdrawn or dismissed, the Commission may disclose any information, or the contents of any document, that was the subject of the appeal in the manner set out in the notice given under subsection (2)(c);
 - (b) is granted, the Commission may disclose anything that the appeal panel permits it to disclose under section 56(7)(b)(ii) in the manner specified by the appeal panel.

Section detail

(5) For the purposes of this section, the disclosure of anything that is already in the public domain at the time the Commission wishes to disclose it can not cause detriment to any person referred to in subsection (2)(a) or (2)(b).

S.39 **Commission must not disclose exempt freedom of information documents**

(1) The Commission must not disclose to any person any document that it has obtained from any agency (as defined in the Freedom of Information Act 1982) or Minister that is an exempt document under the Freedom of Information Act 1982 in the hands of the agency or Minister.

(2) Subsection (1) does not prevent the Commission from doing anything specified in section 38(3).

Appendix I: records to be kept on non-cash payment surcharges

Under the Commercial Passenger Vehicle Industry Act 2017¹⁴⁶ and the Commercial Passenger Vehicle Industry Regulations 2018, taxi payment processors are required to keep records.

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

If you have questions in relation to these requirements, you should contact Commercial Passenger Vehicles Victoria, which is responsible for the implementation of the Commercial Passenger Vehicle Industry Regulations 2018.

Table I.1: Records to be kept for non-cash payment surcharges

Section detail	
s. 36	<p>Records to be kept for non-cash payment surcharges</p> <p>(1) This regulation applies to a person who provides a relevant service that facilitates the processing of a non-cash payment transaction that is a payment of an amount that includes a non-cash payment surcharge (a relevant transaction).</p> <p>(2) A person to whom this regulation applies must keep records sufficient to identify—</p> <p>(a) in respect of each relevant transaction facilitated by the relevant service—</p> <ul style="list-style-type: none">(i) the amount of the non-cash payment surcharge; and(ii) the amount that would have been payable by the hirer in respect of the hiring to which the transaction relates if the hiring had been paid for in cash; and(iii) the date on which the transaction was processed; and <p>(b) in respect of each day on which the relevant service facilitated the processing of a relevant transaction—</p> <ul style="list-style-type: none">(i) the total amount of the non-cash payment surcharges that were added to the relevant transactions on that day; and(ii) the total amount that would have been payable if the relevant transactions on that day were instead paid for in cash; and

¹⁴⁶ Commercial Passenger Vehicle Industry Act 2017, schedule 2, section 25.

Section detail

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

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

Penalty: 10 penalty units.

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

Note

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

Appendix J: Detailed list of matters raised by stakeholders

We received a total of 55 submissions from consumers, commercial passenger vehicle owners and/or drivers, CPV associations, taxi payment processors, and card scheme providers. We considered all submissions made. The following table provides a summary of the matters raised by stakeholders in response to the consultation paper we released in December 2018 on maximum surcharge for taxis,¹⁴⁷ and our responses. We note that the public version of this document does not contain matters that were raised in confidence, or our responses to those matters.

Table J.1: Summary of stakeholder submissions and our response

Theme	Submission summary	ESC response
Views on the current 5 per cent maximum surcharge	<ul style="list-style-type: none"> 5 per cent maximum surcharge is too high¹⁴⁸ 	We used benchmarking and bottom-up cost analyses to assess whether the 5 per cent maximum surcharge is too high, too low or at the right level. Our draft decision is to reduce the maximum surcharge to 4.5 per cent (including GST).
	<ul style="list-style-type: none"> 5 per cent maximum surcharge is too low¹⁴⁹ 	
	<ul style="list-style-type: none"> 5 per cent maximum surcharge is at the right level¹⁵⁰ 	See chapters 1-4 and appendix B and C for further detail.

¹⁴⁷ ESC, Taxi non-cash payment surcharge review 2019: consultation paper, 11 December 2018.

¹⁴⁸ Five anonymous submissions received 11 December 2018; two anonymous submissions received 13 December 2018; Neil Gilford, submission received 19 December 2018; Anonymous, submission received 21 December 2018; Anonymous, submission received 24 December 2018; two anonymous submissions received 2 January 2019; Anonymous, submission received 7 January 2019; Anonymous, submission received 9 January 2019; Anonymous, submission received 10 January 2019, Anonymous, confidential submission received 17 January 2019; John Mizzi, submission received 18 January 2019; Petrina Alexander, submission received 22 January 2019; Namatullah Ibrahim, submission received 28 January 2019; four anonymous submissions received 28 January 2019; Anonymous, submission received 31 January 2019; Visa, submission received 1 February 2019, p.1.

¹⁴⁹ Anonymous, submission received 13 December 2018; Robert Tulloh, submission received 14 December 2018; Anonymous and confidential, submission received 29 January 2019; CabFare, submission received 1 February 2019, p.42; Anonymous and confidential, submission received 4 February 2019; Anonymous, submission received 28 January 2019. Two taxi payment processors suggested a level of maximum surcharge but requested they be treated in confidence.

¹⁵⁰ Anonymous, confidential submission received 22 December 2018; Four anonymous and confidential, submissions received 28 January 2019; Michael Jools, submission received 28 January 2019; Anonymous and confidential,

<p>RBA's guidance on surcharges for other industries is lower than 5 per cent</p>	<ul style="list-style-type: none"> • The ACCC and RBA suggest charges between 0.05 and 1.5 percent. Taxi payments industry should be brought into line with other services.¹⁵¹ • 'As per ACCC, other industries cannot charge more than what the bank charges them'.¹⁵² • Compared to the RBA's data, the maximum 5 per cent surcharge is significantly above the cost of acceptance.¹⁵³ 	<p>We undertook a benchmarking analysis of the cost to small businesses (with similar revenues to taxis) of processing non-cash payments. We estimated that the reasonable cost of processing non-cash payments is 4.3 per cent. This is lower than the current five per cent maximum surcharge but higher than the 0.05 to 1.5 per cent surcharge indicated by the RBA.</p> <p>The details of our analysis are contained in chapters 1 and 2 and appendix C.</p>
<p>Surcharges in other industries are lower</p>	<ul style="list-style-type: none"> • Ride share vehicles do not apply a non-cash payment surcharge,¹⁵⁴ UBER charges \$1 regardless of what the fare is.¹⁵⁵ • ALDI's surcharge is 0.5 per cent;¹⁵⁶ ALDI applies a mix of 	<p>Surcharging is not mandatory in Australia; therefore some rideshare providers do not surcharge. But, if a merchant chooses to surcharge, then it must not be excessive pursuant to the Competition and Consumer Act 2010 (Cth) and the RBA's surcharging standards. Our draft decision to set a maximum surcharge of 4.5 per cent reflects</p>

submission received 29 January 2019; Anonymous and confidential, submission received 30 January 2019; VTA, submission received 30 January 2019; CPVAA, submission received 4 February 2019, p.2; Confidential, submission received 4 February 2019.

¹⁵¹ Neil Gilford, submission received 19 December 2018.

¹⁵² Anonymous, submission received 13 December 2018.

¹⁵³ Visa, submission received 1 February 2019, p.1.

¹⁵⁴ Anonymous, submission received 11 December 2018; Anonymous, submission received 13 December 2018; Anonymous, submission received 2 January 2019; Anonymous and confidential, submission received 28 January 2019.

¹⁵⁵ Anonymous, submission received 11 December 2018.

¹⁵⁶ Anonymous, submission received 11 December 2018.

charges (no surcharge for eftpos, with surcharge for credit cards)¹⁵⁷; supermarkets surcharge 0.27 per cent¹⁵⁸.

the results of our benchmarking and bottom-up cost analyses.

See chapters 1, 2, 3 and appendices B and C for further detail.

- Westpac's surcharge for the government is 0.5 per cent, why charge 10 times that for taxis?¹⁵⁹
- Many other businesses have no surcharge¹⁶⁰; no surcharging would be a good starting point for taxis to have a point of difference on pricing.¹⁶¹
- The 5 per cent maximum surcharge is far beyond the incidental surcharge of most other industries.¹⁶²

Difference between non-cash payment processing in the taxi

- Transactions are made in vehicles which rely on mobile data; it is essential that payment terminals are of a standard to enable the best

See appendix C

¹⁵⁷ Anonymous, submission received 11 December 2018.

¹⁵⁸ Anonymous, submission received 11 December 2018.

¹⁵⁹ Anonymous, submission received 11 December 2018.

¹⁶⁰ Two anonymous submissions received 11 December 2018; Anonymous, submission received 13 December 2018; Anonymous, confidential submission received 17 January 2019; Anonymous and confidential, submission received 29 January 2019.

¹⁶¹ Two anonymous submissions received 11 December 2018; Anonymous, submission received 13 December 2018; Anonymous, submission received 21 December 2018.

¹⁶² Anonymous, submission received 2 January 2019.

<p>payments industry and other industries¹⁶³</p>	<p>possible services because there is no back-up landline service available¹⁶⁴.</p>	<p>All payment processors must invest in systems development and maintain their assets. To the extent that taxis are subject to unique requirements, we have considered these in our benchmarking analysis. These costs are also captured in our bottom-up cost assessment.</p>
<ul style="list-style-type: none"> • Taxi payment processors face significant systems development and maintenance costs due to regulatory and systems requirements and ongoing compliance and reporting costs.¹⁶⁵ • Major banks do not provide services to the taxi payments industry.¹⁶⁶ 	<p>See appendix C.</p>	<p>Anti-money laundering and counter terrorism financing regulations require any provider of merchant services to positively identify their customers (the merchants or in this case taxi operators). This check must be performed either through online identity verification services (e.g. GreenID) or through face-to-face checking of identity documents by a person authorised under the legislation. The most common agent used for this purpose is Australia Post.</p>
<ul style="list-style-type: none"> • Taxi payment processors comply with regulatory requirements related to anti-money laundering and counter terrorism financing legislation.¹⁶⁷ 	<p>There are no regulatory or compliance</p>	

¹⁶³ Three taxi payment processors provided us with information about differences between payments processing in the taxi industry and other industries but requested we treat their submissions as confidential.

¹⁶⁴ VTA, submission received 30 January 2019.

¹⁶⁵ CabFare, submission received 1 February 2019, p.13.

¹⁶⁶ A2B, submission received 1 March 2019, p.5.

¹⁶⁷ CabFare, submission received 1 February 2019, p.13.

reasons why the processes that taxi payment processors would use to perform these checks would be any different to those of any other payment service provider (like the merchant acquiring business of the banks).

- Taxi payment processors incur costs to comply with ATO requirements.¹⁶⁸

All administrators of electronic payment systems must report the transactions they process on behalf of businesses. They must provide a “Business Transactions Through Payment Systems (BTTPS)” report to the ATO of the gross monthly payment amounts processed during the year on behalf of each business together with details of the business and other data such as corrections, refunds, chargebacks and cash-out payments. These regulations are not specific to taxi payment processors, but apply equally to all merchant acquirers.

- 1) The cost of interfacing from a terminal (other terminal provider) to a taxi meter (either physical or virtual); 2) The willingness or otherwise of the current meter providers to share that access.¹⁶⁹

While some taxi payment processing devices are physically connected to the taxi meter others are not. There is no legislative requirement for taxi drivers to have a payment terminal that is integrated with their meter. As a result, meter integration is not required for drivers to process non-cash payments.

The only payment method that does require the meter and payment terminal to be integrated is the Cabcharge payment instrument. Our bottom-up cost assessment shows that a maximum surcharge of

¹⁶⁸ CabFare, submission received 1 February 2019, p.13.

¹⁶⁹ CPVAA, submission received 3 February 2019, p.3.

		4.5 per cent is sufficient for A2B Australia to recover the at least the reasonable cost of accepting and processing non-cash payments transactions using Cabcharge payment instruments.
	<ul style="list-style-type: none"> • Taxi payment processors are the market facing party and assume all market risks from cardholders, drivers and operators.¹⁷⁰ 	<p>Market risks are part of payment processing not just in the taxi payments industry but also in the broader economy.</p> <p>See chapters 1 and 3 and appendix C for details.</p>
	<ul style="list-style-type: none"> • There is no difference between payments processing in taxis and other industries:¹⁷¹ <ul style="list-style-type: none"> – most EFPTOS machines are now mobile and internet data is inexpensive hence there should be no reason for a higher surcharge;¹⁷² – no difference apart from the cartel behaviour of the taxi industry.¹⁷³ 	<p>As discussed above, our draft decision is to set the maximum surcharge at 4.5 per cent (including GST).</p> <p>The taxi payments industry has some requirements unique to it such as processing MPTP cards and Cabcharge cards. Taxis generally also have two payment terminals. This means less value is processed through each terminal so the costs are spread across a smaller total value of transactions. Our draft decision takes these matters into account.</p> <p>See chapters 1-4 and appendices B and C for more detail.</p>
ESC methodology and approach	<ul style="list-style-type: none"> • Four stakeholders generally support our proposed approach.¹⁷⁴ 	<p>We used both benchmarking and bottom-up cost analyses to assess the maximum surcharge as signalled in our consultation</p>

¹⁷⁰ CabFare, submission received 1 February 2019, p.14.

¹⁷¹ Anonymous, submission received 11 December 2018; Namatullah Ibrahim, submission received 28 January 2019; Anonymous, submission received 9 January 2019; John Mizzi, submission received 18 January 2019.

¹⁷² Anonymous, submission received 9 January 2019.

¹⁷³ John Mizzi, submission received 18 January 2019.

for assessing the maximum surcharge

- Methodology is okay, but inefficient businesses should not be able to charge more than efficient businesses. Commission needs to encourage best practice.¹⁷⁵

- Four stakeholders disagree with our proposed approach.¹⁷⁶

- Incorrect. Use the RBA's methodology.¹⁷⁷

paper. See chapters one to three and appendices B and C for further detail.

As noted above, to the extent one provider submitted costs that were around double that of other providers, we did not consider that those costs represent reasonable costs. We consider that, having regard to the benchmarking analysis and the bottom up assessment, a maximum surcharge of 4.5 per cent is consistent with the objective of promoting efficiency and ensuring that taxi payment processors are able to recover the reasonable cost of processing non-cash payments.

The RBA surcharging standard allows merchants to charge a surcharge that does not exceed the cost of acceptance. It provides a mechanism to assist merchants to determine the cost of accepting non-cash payments, for example, acquirers are required to provide merchants with statements setting out the average cost of

¹⁷⁴ Anonymous, submission received 11 December 2018; Pretrina Alexander, submission received 22 January 2019; Neil Gilford, submission received 19 December 2018; CabFare, submission received 1 February 2019, p.37.

¹⁷⁵ Neil Gilford, submission received 19 December 2018.

¹⁷⁶ John Mizzi, submission received 18 January 2019; Two anonymous submissions received 11 December 2018; VTA, submission received 30 January 2019.

¹⁷⁷ John Mizzi, submission received 18 January 2019.

acceptance for each card payment system. There is no equivalent requirement under the CPVI Act, which may make it difficult to ascertain the cost of acceptance. Also, the CPVI Act requires us to regulate the maximum surcharge therefore we cannot leave it to taxi payment processors to determine their own cost of acceptance.

- Market forces should determine the surcharge.¹⁷⁸

We are required under the CPVI Act to set a maximum surcharge. Deregulating the maximum surcharge is a matter for policy makers.

- Surcharges should be included in taxi fares and not charged separately.¹⁷⁹

We do not have the power to include the non-cash payment surcharge in setting the maximum fares for unbooked taxi services. This would be inconsistent with the legislative scheme.

- Approach is ‘very city centric’.¹⁸⁰

Our bottom-up cost analysis uses the actual costs of taxi payment processors to identify the reasonable cost of processing non-cash payments in Victoria. This will ensure that taxi payment processors will be able to recover the reasonable costs of processing non-cash payments; including those costs for servicing country and regional areas.

See chapter two and appendix B for details.

- Bottom-up cost assessment has advantages and

¹⁷⁸ Anonymous, submission received 11 December 2018.

¹⁷⁹ Anonymous, submission received 11 December 2018.

¹⁸⁰ VTA, submission received 30 January 2019.

disadvantages.

- The ESC should consider the investment, risk exposure.¹⁸¹

We provided an allowance for return of capital and return on capital in our bottom-up cost analysis.

See chapter two and appendix B for details.

- There is no advantage to this approach as it would require us to audit every provider to get an accurate result.¹⁸²

We undertook a bottom-up cost assessment of the costs of processing non-cash payments for a number of taxi payment processors. We have also engaged an auditor to review the non-cash payment costs submitted.

See chapter two and appendix B for details of our bottom-up cost assessment.

- Benchmarking analysis has advantages and disadvantages.

- It would be quick compared to the bottom-up cost assessment.¹⁸³

See chapter three and appendix C for our benchmarking analysis.

- It enables comparison not only within the taxi payments industry but with other industries too.¹⁸⁴

- International benchmarks are unlikely to be highly

While we considered international benchmarks, we did not include them in our

¹⁸¹ CabFare, submission received 1 February 2019, p.37.

¹⁸² CPVAA, submission received 4 February 2019, p.3.

¹⁸³ CPVAA, submission received 4 February 2019, p.3.

¹⁸⁴ CabFare, submission received 1 February 2019, p.39.

comparable given 'recent structural changes and particular circumstances prevailing for facilitating non-cash in-taxi payments in Victoria.'¹⁸⁵

benchmarking results. They are subject to different payments policy environments and thus will have different costs.

- CabFare considers that our methodology should:

- encourage customers to use the service¹⁸⁶
- ensure that costs and revenues are not mixed with unregulated services such as booking, network and payment instrument related services.¹⁸⁷

Under our draft decision, the maximum surcharge that passengers could be charged is 4.5 per cent which is lower than the current five per cent surcharge.

To the extent that data provided by taxi payment processors allowed, we included only the reasonable costs of processing non-cash payments in taxis.

Commission's approach should not be limited to considering the reasonable cost of processing non-cash payments

- Section 122(2) of the CPVI Act 'is not an exhaustive statement of what the ESC must consider'. If the ESC only allows 'for the recovery of the reasonable costs of accepting and processing non-cash payment transactions' the ESC will make an error from failing to

See chapter 1 for our overall reasoning on our draft decision on the maximum surcharge.

We have considered all of our statutory objectives and the matters we must have regard to under legislation. We consider our draft decision best meets our objectives taking these matters into account.

A2B appears to be requesting that we give

¹⁸⁵ A2B, submission received 1 March 2019, p.18.

¹⁸⁶ CabFare, submission received 1 February 2019, p.37.

¹⁸⁷ CabFare, submission received 1 February 2019, p.37.

allocate proper weight to its statutory objectives'.¹⁸⁸

particular consideration to the financial viability of the industry provider.

Our bottom-up cost assessment shows that taxi payment processors require a surcharge of between 2.7 and 4.3 per cent to recover the reasonable costs of processing non-cash payments.

Our benchmarking analysis also shows that there are offers that would allow taxi drivers to process non-cash payments at a cost of as little as 3.9 per cent, even with the practice of using two payment terminals.

A maximum surcharge of 4.5 per cent would not threaten the financial viability of the taxi payment industry.

The cost of acceptance approach in the RBA's surcharging standard

- Yes, the RBA's approach is a preferable regulatory approach as compared to the price cap approach currently being adopted in Victoria for maximum surcharges in taxis.¹⁸⁹
- No, the RBA's cost of acceptance approach is not reflective of payment processor costs for taxis

We did not adopt the RBA's approach in its surcharging standard.

The RBA surcharging standard provides a mechanism to assist merchants to determine the cost of accepting non-cash payment transactions, as outlined above. However, there is no equivalent mechanism under the CPVI Act.

Also, the CPVI Act requires us to regulate the maximum surcharge. We cannot leave it to taxi payment processors to determine their

¹⁸⁸ A2B, submission received 1 March 2019, p.14.

¹⁸⁹ CabFare, submission received 1 February 2019, p.6.

	<p>because:</p> <ul style="list-style-type: none"> – they do not include Diners and Cabcharge cards.¹⁹⁰ 	<p>own cost of acceptance.</p>
	<ul style="list-style-type: none"> • Commission should not limit its approach to the RBA’s approach in its surcharging standard because: <ul style="list-style-type: none"> – the RBA’s objectives are limited and do not consider the viability of the sector – taxi payment processors do not sell the underlying service (the taxi fare).¹⁹¹ 	<p>We did not adopt the RBA’s approach in its surcharging standard for the reasons discussed immediately above.</p> <p>Our bottom-up cost assessment takes into account the industry’s financial viability by ensuring that taxi payment processors are able to recover the reasonable cost of processing non-cash payments.</p>
<p>Adverse consequences of decreasing or not increasing the maximum surcharge</p>	<ul style="list-style-type: none"> • Not increasing the maximum surcharge could lead to non-recovery of payment processors’ efficient costs and further pressure on their margins. This would discourage long term investment and innovation in the industry and could also cause them to eventually exit the market.¹⁹² • Not increasing the surcharge would increase barriers to 	<p>We observe from the cost information provided to us that our draft decision will provide enough revenue for taxi payment processors to recover the reasonable costs of processing non-cash payments.</p> <p>In making our determination, we have also had regard to a number of matters such as the financial viability of the industry, the degree of and scope for competition within the industry, and efficiency in the industry and incentives for long term investment.</p> <p>See chapters 1 to 3 and appendices B and C for further detail.</p>

¹⁹⁰ CPVAA, submission received 4 February 2019, pp.2-5. Two taxi payment processors provided us comments on why the RBA approach is not reflective of payments processing costs for taxis but requested we treat their submissions as confidential.

¹⁹¹ A2B, submission received 1 March 2019, p.14.

¹⁹² CPVAA, submission received 4 February 2019, p.4; A2B, submission received 1 March 2019, p.15. One payment processor also commented on the adverse consequences of decreasing the maximum surcharge but requested we treat its submission as confidential.

entry because ‘a large market share and substantial economies of scale would be required to have a competitive price/service offering’.¹⁹³

- Not increasing the surcharge would further disadvantage low income and vulnerable consumers because services they are willing to pay for will not be provided.¹⁹⁴
- Not increasing the surcharge would put at risk the continued provision of services to the disability community under the MPTP because Cabcharge Payments would be forced to withdraw from the MPTP to remain viable.¹⁹⁵
- Other States and Territories would be likely to follow the commission’s lead, resulting in adverse consequences for A2B and other payment processors within Australia.

A2B and Oiii have contracts with the Victorian government for the processing of MPTP payments. The costs of processing MPTP related payments should be recovered through these agreements. See appendix C for more details.

We note, however, that taxi payment processors did not give us sufficient information to remove MPTP costs from their other costs. As a result, our bottom-up cost assessment does include the cost of MPTP subsidy processing.

This matter is not within our control. The maximum surcharge in other jurisdictions is a matter for the relevant regulators in those jurisdictions. However, we note that a higher number of non-cash payments are likely to be made per terminal in other jurisdictions

¹⁹³ A2B, submission received 1 March 2019, p.15.

¹⁹⁴ A2B, submission received 1 March 2019, pp.15-16.

¹⁹⁵ A2B, submission received 1 March 2019, p.17.

As a result, the commission would negatively affect provision of transportation services to regional areas and marginalised and disabled passengers across Australia".¹⁹⁶

due to the lower number of taxis per capita elsewhere in the country. This could mean that the maximum surcharge in other jurisdictions is likely to be materially lower than in Victoria.

- Taxi operators' limited income will be affected when driver commissions from payment processors are removed.¹⁹⁷
- If payment processors exit the market, the cost of the surcharge would simply be hidden in the fares.¹⁹⁸

We do not consider driver commissions to be a reasonable cost processing non-cash payments. See chapter two and appendix B for details.

Our maximum surcharge will provide the revenue required for taxi payment processors to recover the reasonable cost of processing non-cash payments.

Consequences of increased competition are not yet fully understood

- Taxi payment processors are under pressure to be as efficient as possible given intense competition. The maximum surcharge can be reduced by providers if they so choose.¹⁹⁹

The non-cash payment system in taxis is a two-sided market. Taxi payment processors offer services to two groups of users: taxi drivers and taxi passengers. However, there is limited competition between taxi payment processors for passengers. Passengers do not choose which payment processor they use. Taxi drivers make this choice. As a result, there is competition between taxi payment processors for drivers.²⁰⁰ To attract taxi drivers to use their services, some taxi

¹⁹⁶ A2B, submission received 1 March 2019, p.1.

¹⁹⁷ CPVAA, submission received 4 February 2019, p.4. One payment processor also commented on the adverse consequences on taxi drivers of decreasing the maximum surcharge but requested we treat its submission as confidential.

¹⁹⁸ CPVAA, submission received 4 February 2019, p.4.

¹⁹⁹ A2B, submission received 1 March 2019, p.8.

²⁰⁰ Taxi industry Inquiry, Customers First – Services, Safety, Choice, Final report, September 2012 p. 208

payment processors provide additional ‘free’ services to drivers.

For these reasons, there is little incentive for taxi payment processors to compete for passengers on price.

Also, the surcharge we set is only a maximum. Taxi payment processors are free to lower their surcharge.

- Cabcharge Payments faces competition from a number of fully integrated booking, dispatch and payment systems, including Uber, GoCatch, Rydo and DiDi.²⁰¹

The impact of competition in the wider commercial passenger vehicle market has been taken into consideration. Reduced taxi revenues were included in our benchmarking and bottom-up cost assessments. Further, it is likely that increasing use of non-cash payments will offset, at least in part, decreasing taxi revenues.

Surcharge should be GST exclusive

- CPVV’s (formerly Taxi Services Commission) interpretation of the current 5 per cent maximum surcharge as inclusive of GST is at odds with the Australian Tax Office’s view (GSTR 2014/2).²⁰²

Our understanding is that the ATO rules on credit card and debit card surcharges mean that taxi fares are considered a taxable supply. As a result, the surcharge should include GST.²⁰³

Service fee vs surcharge

- The taxi non-cash payment surcharge is intended to cover more than just the costs associated with accepting

The CPVI Act requires us to set the maximum surcharge for processing non-cash payments in taxis. We must ensure that the maximum surcharge allows taxi payment

²⁰¹ A2B, submission received 1 March 2019, p.8.

²⁰² CabFare, submission received 1 February 2019, p.21.

²⁰³ [https://www.ato.gov.au/business/gst/in-detail/gst-issues-registers/financial-services---questions-and-answers/?anchor=Is the surcharge part of the consideration#Is the surcharge part of the consideration](https://www.ato.gov.au/business/gst/in-detail/gst-issues-registers/financial-services---questions-and-answers/?anchor=Is%20the%20surcharge%20part%20of%20the%20consideration#Is%20the%20surcharge%20part%20of%20the%20consideration)

card payments. Because of this, the amount the ESC allows to be levied on non-cash payments for taxis should be more accurately described as a service fee for the provision of payments services.²⁰⁴

- A surcharge is applied by a merchant to a card payment for the product it has sold to a consumer. A service fee is charged by a merchant aggregator (that is, a taxi payment processor) for a bundle of services it provides to both a consumer and a sub merchant (i.e. a driver/operator).²⁰⁵

processors to recover the reasonable costs of processing non-cash payments. We are not required to take into account costs that are not associated with processing non-cash payments.

The service fees currently charged by taxi payment processors include charges for other services provided to taxi drivers. These other services provide benefits to drivers but not to passengers. Where possible we have removed the costs of these additional services from our determination of the maximum surcharge. The costs of these other services are not reasonable costs of accepting and processing non-cash payment transactions.

To the extent that these additional services (cashing facilities, car washing facilities, etc.) provide benefits to drivers, taxi payment processors may charge a service fee for them to drivers.

Single maximum surcharge or multiple maximum surcharges

Fifteen stakeholders support a single maximum surcharge. A single surcharge is easier to understand, easier to implement, easier to enforce compliance with and makes it more difficult for drivers to commit fraud.²⁰⁶

Our draft decision is to have a single maximum surcharge.

This has the benefit of being easy to understand and implement.

See chapter 4 for further detail.

²⁰⁴ Mastercard, submission received 14 February 2019, pp.2-3.

²⁰⁵ CabFare, submission received 1 February 2019, p.16.

²⁰⁶ Two anonymous submissions received 11 December 2018; Neil Gilford, submission received 19 December 2018; Anonymous, submission received 21 December 2018; Anonymous, submission received 2 January 2019; Anonymous, submission received 9 January 2019; two anonymous and confidential submissions received 28 January 2019; Michael Jools, submission received 28 January 2019; Anonymous and confidential, submission received 29 January 2019; VTA, submission received 30 January 2019; CabFare, submission received 1 February 2019, p.47; CPVAA, submission

- Some stakeholders favour multiple maximum surcharges because: it would allow pass through of actual costs;²⁰⁷ different cards have different charges²⁰⁸ including the interchange fee;²⁰⁹ it would allow a tiered system so consumers have fee-free card payment options.²¹⁰
- For high fares, surcharge should be lower and for low fares surcharge should be 5 per cent.²¹¹
- Just apply surcharge during busy times and public holidays.²¹²

Other matters we should consider in setting the

- Stakeholders suggested we:
 - consider bank fees charged to merchants²¹³ Merchant fees are included in our bottom-up cost assessment. See appendix B for details.

received 4 February 2019, p.4; two confidential submissions received 4 February 2019. One payment processor also commented on the disadvantages of multiple maximum surcharges but requested we treat its submission as confidential.

²⁰⁷ One stakeholder suggested a situation when multiple surcharge should apply but is unwilling for us to disclose this information in public (Confidential, submission received 4 February 2019); Anonymous, submission received 11 December 2018.

²⁰⁸ Anonymous, submission received 11 December 2018; Anonymous, submission received 10 January 2019.

²⁰⁹ John Mizzi, submission received 18 January 2019.

²¹⁰ Anonymous, submission received 11 December 2018.

²¹¹ Anonymous, submission received 13 December 2018.

²¹² Anonymous, submission received 28 January 2019.

²¹³ Anonymous, submission received 11 December 2018.

maximum surcharge

- allow cost recovery with no profit²¹⁴

In seeking to achieve our objective of promoting the long term interests of Victorian consumers, we considered the financial viability of the industry. Without profit, there is no incentive to provide and invest in non-cash payments services. Our bottom-up cost assessment has included an allowance for a return on capital. See appendix B for details.
 - encourage transitioning to a cashless society²¹⁵

Our objective under the CPVI Act is to promote efficiency by regulating the amount that may be imposed by way of a non-cash payment surcharge. In seeking to achieve this objective, we must ensure that taxi payment processors are able to recover the reasonable cost of processing non-cash payments.

By setting the maximum surcharge at a level that allows recovery of the reasonable costs of processing non-cash payments, our draft decision allows consumers to decide if they value non-cash payments and businesses to decide if they value providing the non-cash payment services.
 - do not disallow surcharging.²¹⁶

It is for the Victorian government to decide on whether to allow or disallow surcharging in taxis. The CPVI Act requires us to set the maximum surcharge for taxis.
 - allow a blanket exemption
- We do not consider that this approach best

²¹⁴ Anonymous, submission received 11 December 2018.

²¹⁵ Anonymous, submission received 21 December 2018.

²¹⁶ Anonymous, submission received 2 January 2019.

for the elderly, and people with disabilities and mental illness.²¹⁷

meets our legislative objectives. A cross-subsidy from other passengers to certain groups of passengers would not promote efficiency in the taxi payments industry. It is the role of policy makers to decide if such a change is desirable.

- Account fees should be charged on the number of trips taken rather than the distance travelled.²¹⁸

Account fees are paid to booking services for administration and recording their clients' usage. Account fees are not non-cash payment surcharges as they are not fees or charges added to the amount otherwise payable because a fare has been paid using non-cash payment. As such, account fees for booking services are beyond the scope of this review.

- Some stakeholders noted that:

- our objective of promoting the long term interests of Victorian consumers is insufficient. We should also protect the long term interests of CPV providers.²¹⁹

We have considered all of our statutory objectives and the matters we must ensure and have regard to under legislation, including efficiency in the industry and incentives for long term investment, and the financial viability of the industry.

We consider our draft decision best meets our objectives taking these matters into account.

- we should also consult consumer groups, Transport for Victorian, the

We have engaged with all of these stakeholders. We have considered their views in our draft decision.

²¹⁷ Anonymous, submission received 2 January 2019.

²¹⁸ Mrs Noel Rumbold, submission received 12 December 2019, p. 1.

²¹⁹ CPVAA, submission received 1 February 2019, p.1.

ACCC, industry peak bodies and the RBA.²²⁰

- We should consider other sources of information such as:

- The 2012 Taxi Industry Inquiry's 0.65 per cent margin over identified costs; costs data from existing payment processors; surcharging in other industries with similar characteristics such as the ticketing industry.²²¹

We have considered these suggested sources of information.

Other matters raised by stakeholders which are more policy related

- Regulation of the maximum surcharge in taxis is no longer necessary given increased competition in the taxi industry and taxi payments industry.²²²
- Surcharges should be abolished for all commercial passenger vehicles. Affordable travel should be the number one priority.²²³

We do not make legislation. The parliament of Victoria has decided that regulation is required.

²²⁰ CabFare, submission received 1 February 2019, p.9; CPVAA, submission received 4 February 2019, p.2. Two payment processors also gave us some suggestions on which stakeholders and sources of information we should consider but requested we treat their submissions as confidential.

²²¹ CabFare, submission received 1 February 2019, p.30; Anonymous, submission received 11 December 2018; Anonymous, submission received 13 December 2018.

²²² A2B, submission received 1 March 2019, p.8.

²²³ Dominic Villarosa, submission received 13 December 2018.

- The surcharge seems to privilege cash payment over card payment.²²⁴

Our proposed maximum surcharge ensures that taxi payment processors are able to recover the reasonable cost of processing non-cash payments in taxis.

- Commission should consult with the RBA, ACCC, and Victorian Government to bring all CPV trips within the national regulatory framework for card payments.²²⁵

Our role under the CPVI Act is to set the maximum surcharge for non-cash payment transactions in taxis.

It is up to the Government to make decisions on policy matters. Nonetheless, we have forwarded these suggestions to Transport for Victoria and the RBA.

²²⁴ Anonymous, submission received 11 December 2018.

²²⁵ CabFare, submission received 1 February 2019, p.9. One payment processor also gave some suggestions related to policy but requested we treat its submission as confidential.

Glossary

Term	Definition
A2B Australia	<p>A2B Australia is an Australian company listed on the ASX specialising in personal transport services and digital payment software. Its clients include corporate clients, passengers, drivers and booking service providers.</p> <p>A2B Australia also owns and operates 13cabs, Australia's largest booking service provider, which supports over 9000 taxis across Australia.</p>
Australian Competition and Consumer Commission	<p>The ACCC is an independent Commonwealth statutory authority whose role is to enforce the Competition and Consumer Act 2010 and a range of additional legislation.</p> <p>The ACCC is responsible for enforcing the ban on excessive surcharging on credit, debit and prepaid card payments, under the Competition and Consumer Act 2010.</p>
Acquirer	An institution that provides a merchant with facilities to accept card payments.
Booked services	Booked services are trips booked via an application, or over the phone or website.
Booking service provider	A person, company or association who provides a service that reserves CPVs to transport passengers at a certain time, departure point, and destination. Previously called network service provider.
Cabcharge Australia	A2B Australia was formerly known as Cabcharge Australia
Cardholder	Individual who owns and uses a card in paying for goods and services. In the supply chain, a cardholder is the consumer.
Commercial Passenger Vehicle (CPV)	Any motor vehicle used or intended to be used for carrying passengers for hire or reward, excluding a bus used to provide a bus service.
Commercial Passenger Vehicles Victoria	Commercial Passenger Vehicles Victoria, formerly the Taxi Services Commission, is the new regulator of the commercial passenger vehicle industry.

Charge back	This is when the acquirer removes/holds the funds of a disputed transaction. For example a merchant makes a sale of \$20, one month later the customer disputes the transaction and claims the credit card was stolen. The acquirer will remove the \$20 from the merchant's account and apply a charge back fee. A charge back fee is usually charged at a premium.
Charge card	It is a card whose holder has been granted a non-revolving credit line enabling the cardholder to make purchases and possibly make cash advances. A charge card does not offer extended credit; the full amount of any debt incurred must be settled at the end of a specified period.
Clearing	The process of transmitting, reconciling and in some cases confirming payment instructions prior to settlement.
Credit card	It is a card whose holder has been granted a revolving credit line enabling the cardholder to make purchases and/or cash advances up to a pre-arranged limit. The credit granted can be settled in full by the end of a specified period or in part, with the balance taken as extended credit. Interest may be charged on the transaction amounts from the date of each transaction or only on the extended credit where the credit granted has not been settled in full.
Debit card	Debit card is a card that enables the holder to access funds in a deposit account at an authorised deposit-taking institution.
Direct debit	A pre-authorised debit on the payer's (cardholder) bank account initiated by the recipient (merchant).
eftpos	Electronic funds transfer at point of sale. The eftpos system is a domestic debit card system managed by eftpos Payments Australia Limited.
Financial institution	A company whose primary function is to intermediate between lenders and borrowers in the economy.
Interchange fee	A fee paid between card issuers and acquirers when cardholders make transactions.
Issuer	An institution that provides its customers with debit or credit cards.
Meter	A mechanical, electrical or electronic device

	that calculates, records or displays information about fares and charges for the provision of unbooked commercial passenger vehicle services. Commercial Passenger Vehicles Victoria is responsible for specifying the functional requirements of fare devices.
Merchant	Person or business that accepts a card for payment for goods or services.
Merchant service fee	A transaction-based fee charged to a merchant by an acquirer for acquiring, or by a payment processor for arranging the acquisition of, one or more types of card transactions from that merchant.
Multi Purpose Taxi Program (MPTP)	A government program that subsidises taxi fares for people with severe and permanent disabilities. MPTP members receive a 50 per cent subsidy on taxi fares up to a maximum of \$60 per trip and \$2180 per year. Some MPTP members, for example those using wheelchairs, are exempt from the annual cap.
mPOS terminal	A payment terminal which connects to a smartphone or tablet to process non-cash payments.
Non-cash payment surcharge	<p>A non-cash payment surcharge is a fee or charge:</p> <ul style="list-style-type: none"> • added to the amount otherwise payable by the hirer in respect of the hiring of a commercial passenger vehicle because the payment of the amount otherwise payable is made wholly or partly by means of a non-cash payment transaction; or • payable by the owner or driver of a commercial passenger vehicle or by all or any of them because the payment of an amount payable in respect of the hiring of the vehicle is made wholly or partly by means of a non-cash payment transaction.
Payment processor	An entity that is not a related entity of the merchant that provides services and/or equipment to the merchant in connection with, the acceptance by that merchant of cards for payment for goods or services.

Payment terminal	<p>Refers to the terminal or facility provided by banks to merchants to enable the latter to accept payments by cards.</p> <p>In the taxi payments industry, taxi payment processors supply the payment terminal to drivers, booking service providers or taxi operators.</p>
Payment system	<p>Refers to arrangements which allow consumers, businesses and other organisations to transfer funds usually held in an account at a financial institution to one another. It includes payment instruments like cash, cards, cheques and electronic fund transfers which customers use to make payments, and the unseen arrangements that ensure funds move from accounts at one financial institution to another.</p>
Price determination	<p>A price determination is the legislative instrument we use to set prescribed prices for prescribed goods and services.</p>
Reserve Bank of Australia	<p>The RBA is Australia's central bank. It determines and implements monetary policy, fosters financial stability, undertakes a range of activities in financial markets, acts as a banker to the Australian Government, issues Australia's banknotes and has policy, supervisory and operational roles in the payments system.</p> <p>The RBA sets interchange fees in designated debit, prepaid and credit card schemes. It also regulates merchant surcharging for credit, debit and prepaid card transactions in Australia.</p>
Rideshare services	<p>Booked commercial passenger vehicle services that use the driver's personal vehicle to provide a transport service. These services are offered to passengers through an accredited booking service: generally a smartphone application.</p>
Scheme (or card scheme)	<p>Under the RBA's standards, scheme refers to the following designated payment systems:</p> <ul style="list-style-type: none"> • MasterCard system • VISA system • American Express Companion Card system • Visa Debit system • Debit MasterCard system • eftpos system

	<ul style="list-style-type: none"> • eftpos Prepaid system • MasterCard Prepaid system • Visa Prepaid system.
Smartphone booking apps	Smartphone booking applications that connect CPV drivers with passengers through a booking interface. Some smartphone apps include both booking and payment processing functionalities. App providers include 13CABS, GoCatch, Ingogo, Ola, Scooti, Sheba, Silver Top Taxis, Taxify and Uber.
Taxi	Taxis are commercial passenger vehicles that provide booked and unbooked services.
Taxi network	A provider of taxi booking and dispatch services, connecting passengers with taxi drivers through a booking service. Also referred to as booking service provider or network service provider.
Taxi Services Commission (TSC)	The TSC was responsible for regulation of the commercial passenger vehicle industry until 2 July 2018. The TSC was established on 1 July 2013 as the independent industry regulator as part of the Taxi Industry Inquiry's recommended reforms. Effective 2 July 2018, the TSC has been replaced with Commercial Passenger Vehicles Victoria as the industry regulator.
The Commission	<p>The Essential Services Commission — Victoria's independent economic regulator of certain prescribed services as determined by the Victorian Government. The commission is responsible for setting maximum:</p> <ul style="list-style-type: none"> • charges for unbooked CPV services beginning in the metropolitan and urban zones • non-cash payment surcharge for booked and unbooked services in Victoria.
Unbooked services	Unbooked services are CPV services that are provided other than as a result of the provision of a booking service. They include trips hailed from the street, hired from a recognised taxi rank or trips that have not been booked via an application, over the phone or website.