

Amendment to determination of maximum non-cash payment surcharge for taxis

7 September 2020

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Executive overview

On 24 March 2020, the Essential Services Commission made its second determination on the maximum amounts of non-cash payment surcharges for or in respect of non-cash payment transactions supplied by or within the non-cash payment transaction industry for taxis in Victoria.

On 3 June 2020, the Essential Services Commission made a determination to amend the date on which the determination made on 24 March 2020 takes effect from 1 July 2020 to 1 October 2020.

This determination amends the determination made on 3 June 2020. It amends the date on which the 24 March 2020 determination takes effect from 1 October 2020 to 1 February 2021.

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Amendment to determination of maximum non-cash payment surcharge for taxis

Essential Services Commission **Amendment to determination of maximum non-cash payment surcharge for taxis**

Statement of purpose

The Essential Services Commission is the independent economic regulator responsible for regulating the maximum amounts of non-cash payment surcharges (maximum surcharge) for or in respect of non-cash payment transactions supplied by or within the non-cash payment transaction industry, for taxis registered to operate in Victoria.

Reasons for the making of this determination

The commission has made this determination to amend the date on which the 24 March 2020 determination takes effect following a review of operational issues arising from the coronavirus pandemic. This review included consideration of the commission's legislative objectives and requirements.

The commission's determination made on 24 March 2020

On 24 March 2020, the commission made its second determination on the maximum amounts of non-cash payment surcharges for taxis following a review and consultation process. The review included consideration of the objectives and matters to which the commission must have regard as set out in the Essential Services Commission Act 2001 and the Commercial Passenger Vehicle Industry Act 2017. The commission's review of the maximum amounts of non-cash payment surcharges for taxis is detailed in its draft, further draft and final decisions available on our website: www.esc.vic.gov.au.

The changes to the maximum amounts of non-cash payment surcharges for taxis in the determination made on 24 March 2020 were to come into effect from 1 July 2020.

The commission's determination made on 3 June 2020

On 3 June 2020, the commission made a determination amending the date on which the 24 March 2020 determination takes effect from 1 July 2020 to 1 October 2020, following industry consultation on the impact of the coronavirus pandemic on the non-cash payment transaction industry. It became apparent that taxi payment processors required more time to update payment terminals to implement changes to the maximum amounts of non-cash payment surcharges for taxis.

After the commission's determination made on 3 June 2020

Since the determination made on 3 June 2020, it has become apparent to the commission that even more time is required to update payment terminals as a result of the coronavirus pandemic. In particular, the impact of stage four lockdown restrictions has severely impacted taxi operators

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and non-cash payment transaction service providers' ability to reprogram their terminals by 1 October 2020.

Taxi payment processors advised that stage four lockdowns in metropolitan Melbourne and stage three restrictions in regional Victoria resulted in:

- further staff being stood down including those responsible for reprogramming payment terminals through software development, even where these could eventually be done wirelessly over the air, resulting in less resources to dedicate to reprogramming payment terminals.
- no ability for taxi drivers to attend depots or offices to have physical hardware inspected or manually reprogrammed. This creates a significant risk that drivers who have not attended depots to have their payment terminals manually reprogrammed will recommence work and charge incorrect non-cash payment surcharges to customers, exposing them, taxi operators and payment processors to enforcement action and potentially financial penalties.

Our review indicates that providing the non-cash payment transaction industry until 1 February 2021 to update their payment terminals would best meet the commission's legislative objectives and requirements. In particular, it will provide the non-cash payment transaction industry ample time to work through the operational issues associated with the coronavirus pandemic and reprogram payment terminals once the anticipated easing in lockdown restrictions is announced and gathers pace.¹

The commission had regard to its legislative objectives and requirements

In making this determination, the commission had regard to its legislative objectives and requirements as set out in the Essential Services Commission Act 2001 and the Commercial Passenger Vehicle Industry Act 2017.

The commission has adopted an approach that best achieves its legislative objectives of:

- promoting 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, the commission 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.²

¹ Melbourne stage four lockdown restrictions are envisaged to end on 13 September 2020. See Department of Health and Human Services, Stage 4 restrictions summary, accessed 2 September 2020, <https://www.dhhs.vic.gov.au/stage-4-restrictions-summary-covid-19>.

² Commercial Passenger Vehicle Industry Act 2017, s. 122.

- promoting the long term interests of Victorian consumers. In seeking to achieve this objective, the commission must have regard to the price, quality and reliability of essential services.³

The commission is of the view that in this case, extending the implementation date of the determination made on 24 March 2020 promotes efficiency and the long term interests of Victorian consumers. It would not be efficient to put in place regulation which regulated businesses cannot comply with on account of the coronavirus pandemic. Promoting efficiency in the non-cash payment transaction industry is in the long term interests of Victorian consumers.

The commission has considered all of the matters it must ensure and have regard to under the Essential Services Commission Act 2001 and the Commercial Passenger Vehicle Industry Act 2017. This includes, amongst other matters, the following:

- the relevant health, safety, environmental and social legislation applying to the industry – the coronavirus pandemic lockdown restrictions put in place by the Victorian Government (and other governments around Australia) have had an impact on the non-cash payment transaction industry and the commercial passenger vehicle industry across Australia. These restrictions have affected their operations and demand for their services.
- 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) – the expected costs of extending the implementation date for the 24 March 2020 determination do not exceed the expected benefits. An extended implementation period will not be materially detrimental for most consumers. With so few taxi trips at present, the difference between paying a five or four per cent surcharge (as a share of the total fare paid) will be small. As multi-purpose taxi program users receive a subsidy of up to half the value of the taxi fare from the Victorian Government, the negative impact on those users will be mitigated from the delayed implementation
 - (ii) regulated entities – if taxi payment processors are practically unable to update their payment terminals, they may be unable to operate without the risk of committing an offence under sections 113 and 114 of the Commercial Passenger Vehicle Industry Act 2017, for which penalties apply.
- the particular circumstances of the regulated industry (i.e., non-cash payment transaction industry) and the prescribed goods and services (i.e. non-cash payment transactions) for which

³ Essential Services Commission Act 2001, s. 8.

the determination is being made – the commission considers that most taxi payment processors may have difficulty achieving compliance with the 1 October 2020 implementation deadline.

Nature and effect of this determination

This determination is made under Part 6 of the Commercial Passenger Vehicle Industry Act 2017 and Part 3 of the Essential Services Commission Act 2001. The determination is binding on the non-cash payment transaction industry.

This determination amends the commission's determination made on 3 June 2020 by amending the date on which the determination made on 24 March 2020 takes effect from 1 October 2020 to 1 February 2021.

This determination has effect until it is amended or revoked by a later determination.

Date at which this determination takes effect

This determination amends the determination made on 3 June 2020 on and from the date on which notice of its making is published in the Government Gazette.

How to obtain a copy of this determination

A copy of this determination may be obtained from:

- the commission's website: www.esc.vic.gov.au
- by calling 1300 664 969
- emailing publications@esc.vic.gov.au

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

Date: 8 September 2020



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

Kate Symons
Chairperson

Introduction

Essential Services Commission Amendment to determination of maximum non-cash
payment surcharge for taxis