

Determination of maximum non-cash payment surcharges for taxis

31 August 2022



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Contents

Summary	3
Determination	5
Statement of purpose	5
Determination of maximum amounts of non-cash payment surcharges	5
Reasons for making determination	5
Nature and effect of this determination	6
Date at which this determination takes effect	6
How to obtain a copy of this determination	6
Schedule of maximum non-cash payment surcharges for taxis in Victoria	8
Nature and scope of determination	8
Maximum surcharge for all other non-cash payment methods	8
Maximum surcharge for commercial passenger vehicle specific payment instruments	9
Non-compliance with determination	9

Summary

The determination of non-cash payment surcharges in the taxi industry will be:

- four per cent (including GST) for all non-cash payment methods except commercial passenger vehicle specific payment instruments, and
- six per cent (no GST payable) for commercial passenger vehicle specific payment instruments (such as Cabcharge payment instruments).

This determination sets out the maximum 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 in Victoria.

A non-cash payment surcharge is ‘a fee or charge:¹

- (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.’

This determination sets the maximum surcharge at:

- four per cent (including GST) for all non-cash payment methods, except commercial passenger vehicle specific payment instruments, and
- six per cent (no GST payable) for commercial passenger vehicle specific payment instruments (such as Cabcharge payment instruments).

This determination is made following a review of our existing determination of maximum amounts of non-cash payment surcharges for taxis.² The 2022 review decision is available on our website:

www.esc.vic.gov.au.

¹ Commercial Passenger Vehicle Industry Act 2017, s 112.

² Essential Services Commission 2020, Determination of maximum non-cash payment surcharges for taxis (from 1 July 2020), 24 March, amended by Essential Services Commission 2020, Amendment to determination of maximum cash payment surcharge for taxis, 3 June and Essential Services Commission 2020, Amendment to determination of maximum non-cash payment surcharge for taxis, 7 September.

This determination will take effect on 15 September 2022. A review of this determination will be undertaken no later than two years after it is made.³

³ Commercial Passenger Vehicle Industry Act 2017, s 124(4).

Determination

Statement of purpose

The Essential Services Commission (the commission) is Victoria's independent economic regulator responsible for determining 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 registered to operate in Victoria.

This determination gives effect to these commission responsibilities.

Determination of maximum amounts of non-cash payment surcharges

The commission determines that 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 registered to operate in Victoria, are those set out in the Schedule.

In summary, the determination of non-cash payment surcharges in the taxi industry will be:

- four per cent (including GST) for all non-cash payment methods, except commercial passenger vehicle specific payment instruments, and
- six per cent (no GST payable) for commercial passenger vehicle specific payment instruments (such as Cabcharge payment instruments).

Reasons for making determination

In making a price determination, the commission must adopt an approach and methodology that it considers will best meet its objectives under relevant legislation.⁴ The commission has made this determination following a review of its existing determination⁵ of maximum amounts of non-cash payment surcharges levied in Victoria's taxi industry. This included consideration of the objectives and matters to which the commission must have regard to under the *Essential Services Commission Act 2001* (Vic), the *Commercial Passenger Vehicle Industry Act 2017* (Vic) and the *Transport Integration Act 2010* (Vic). The commission's review of the maximum non-cash payment

⁴ Essential Services Commission Act 2001, s 33.

⁵ Essential Services Commission 2020, Determination of maximum non-cash payment surcharges for taxis (from 1 July 2020), 24 March, amended by Essential Services Commission 2020, Amendment to determination of maximum cash payment surcharge for taxis, 3 June and Essential Services Commission 2020, Amendment to determination of maximum non-cash payment surcharge for taxis, 7 September.

surcharge, and the objectives and matters the commission must have regard to when making a determination, are detailed in the final decision, available on our website: www.esc.vic.gov.au

The reasons for making this determination are set out in the commission's final decision dated 31 August 2022.⁶

Nature and effect of this determination

This determination is made under Part 6, Division 3 of the Commercial Passenger Vehicle Industry Act 2017 (Vic), together with Part 3 of the Essential Services Commission Act 2001 (Vic).

The determination is binding on the non-cash payment transaction industry.⁷

This determination sets 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. It revokes the commission's previous determination made on 7 September 2020.

Date at which this determination takes effect

This determination will take effect on 15 September 2022. This determination has effect until it is amended or revoked by a later determination.⁸

How to obtain a copy of this determination

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

www.esc.vic.gov.au

Alternatively, a copy may be requested by contacting the commission by post (Essential Services Commission, Level 9, 570 Bourke Street, Melbourne Victoria 3000), by phone (+61 3 9032 1300 or 1300 664 969) or by email: transport@esc.vic.gov.au

⁶ Essential Services Commission, Taxi Non-Cash Payment Surcharge Review 2022 – Final Decision, 31 August 2022.

⁷ Essential Services Commission Act 2001, s 35(7).

⁸ Essential Services Commission Act 2001, s 35(6)(a).

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



Date: 5 September 2022

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

Kate Symons
Chairperson

Schedule of maximum non-cash payment surcharges for taxis in Victoria

Nature and scope of determination

This determination is binding on the non-cash payment transaction industry.⁹ The maximum amounts of non-cash payment surcharges (maximum surcharges) in this schedule are set under Part 3 of the Essential Services Commission Act 2001 (Vic) and Part 6, Division 3 of the Commercial Passenger Vehicle Industry Act 2017 (Vic).

They apply from 15 September 2022 to a fee or charge:¹⁰

- (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.

The determination applies from 15 September 2022 to:¹¹

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

Maximum surcharge for all other non-cash payment methods

The maximum surcharge for all non-cash payment methods other than commercial passenger vehicle specific payment instruments is **four per cent** (including GST).

⁹ Essential Services Commission Act 2001, s 35(7).

¹⁰ Commercial Passenger Vehicle Industry Act 2017, s 112(1).

¹¹ Commercial Passenger Vehicle Industry Act 2017, s 113(5).

Maximum surcharge for commercial passenger vehicle specific payment instruments

The maximum surcharge for commercial passenger vehicle specific payment instruments (such as the Cabcharge payment instrument) is **six per cent** (no GST payable).

Definitions

A 'commercial passenger vehicle specific payment instrument' means a non-cash payment instrument designed for use only in commercial passenger vehicles. An example of this is the Cabcharge payment instrument issued by A2B Australia (ABN: 99 001 958 390) for use in taxis.

Non-compliance with determination

Sections 113 and 114 of the Commercial Passenger Vehicle Industry Act 2017 (Vic) makes non-compliance with this determination an offence. If a body corporate commits an offence against one of these provisions an officer of the body corporate also commits an offence against the provision (subject to the exceptions outlined in section 285 of the Commercial Passenger Vehicle Industry Act 2017).¹²

Section 113

Section 113 states that a person must not impose, whether directly or indirectly, a non-cash payment surcharge to which the section applies, or directly initiate the collection in the commercial passenger vehicle of a non-cash payment surcharge to which the section applies or of an amount that includes such a surcharge.¹³

Section 113 applies to a non-cash payment surcharge that:¹⁴

- exceeds the prescribed amount, or
- results in the prescribed amount being exceeded in circumstances where 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 two or more persons.

¹² Commercial Passenger Vehicle Industry Act 2017, s 285(1).

¹³ Commercial Passenger Vehicle Industry Act 2017, s 113(3).

¹⁴ Commercial Passenger Vehicle Industry Act 2017, s 113(1)-(2).

A person does not commit an offence against section 113 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:¹⁵

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

The reference to a 'person' in section 113 includes:¹⁶

- 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,
- any person who manages or administers the whole or any part of a system under which non-cash payment transactions may be made, and
- the owner and driver of the commercial passenger vehicle.

In the case of an individual, the penalty is 240 penalty units. In the case of a body corporate, the penalty is 1200 penalty units.¹⁷

Section 114

Section 114 states that a person, including the owner or driver of the commercial passenger vehicle or a booking service provider, must not:¹⁸

- enter into a contract, arrangement or understanding with any person that has the purpose or effect of 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, or
- agree to give effect to a contract, arrangement or understanding entered into by any other persons that has that purpose or effect.

¹⁵ Commercial Passenger Vehicle Industry Act 2017, s 113(4).

¹⁶ Commercial Passenger Vehicle Industry Act 2017, s 113(5).

¹⁷ Commercial Passenger Vehicle Industry Act 2017, s 113(3).

¹⁸ Commercial Passenger Vehicle Industry Act 2017, s 114(1)-(2).

In the case of an individual, the penalty is 60 penalty units. In the case of a body corporate, the penalty is 300 penalty units.¹⁹

¹⁹ Commercial Passenger Vehicle Industry Act 2017, s 114(1).