



**Restriction of Publication of Part Claimed**  
Confidential information on pages 4 and 5

## Overview

The purpose of this submission is to respond to the submission of Uber dated 18 February 2016 (the **Uber submission**), which was provided to ihail on 23 February 2016.

In short, the principal theme of Uber's submission continues to proceed on an assumption of ihail success built upon the combination of:

- acquiring drivers by leveraging an alleged 'privileged position'; and
- consumers necessarily following the large driver network.

This submission should be rejected for the reasons set out below.

Further, Uber relies on factual inaccuracies and in a number of respects seems to have mischaracterised ihail's supplementary submission dated 4 February 2016 (**ihail submission**) and Frontier's report of February 2016 as relied upon by ihail (**Frontier report**). These matters are also addressed below.

## An assumed significant driver network

Uber submits in section 3.1 that ihail will acquire its drivers by leveraging a privileged position.

This is incorrect for a number of reasons.

- 1 **Encouragement vs Obligation:** ihail's proposed driver opt-in procedure is described in section 5.3 of the ihail submission. As noted, ihail expects that all taxi networks that are signed up to ihail will encourage drivers to opt-in to ihail to the extent that ihail provides a quality booking service. There can be no economic harm in taxi networks encouraging drivers to avail themselves of a new booking service that has the potential to connect drivers with passengers. Taxi networks pay ihail for each completed booking and any promotion of ihail is to be seen as part of that subscription.

Importantly, however, no aspect of the conduct for which authorisation is sought by ihail imposes any obligation on networks to secure driver acceptance of ihail or involves any actions by the networks to require driver participation in ihail. Ihail has neither the intention nor the ability to require networks to secure driver acceptance.

- 2 **No exclusivity:** as outlined in section 4.1 of the ihail submission, the proposed ihail commercial arrangements do not impose any exclusivity obligations on ihail's taxi networks or taxi drivers accessing ihail. Networks are free to develop, promote and align themselves with other apps (or indeed any non-app channels). Similarly, drivers are free to utilise any channel they choose to secure passengers. Hence the likelihood of multi-homing as stated in the ihail submission and the Frontier Report.

In those circumstances – without obligation or exclusivity – it cannot be said that ihail has a 'privileged position' from which it can 'leverage' in relation to the taxi networks.

- 3 **Ongoing driver acceptance must be won:** Irrespective of the driver opt-in process, the quality of the ihail service will be the ultimate determinant of success. Securing drivers opting-in to ihail is not the end of the story. ihail's success will ultimately be dependent on whether drivers are retained (i.e. whether they utilise ihail). For instance, if a driver does not wish to use ihail, they could opt-out or simply choose to not accept ihail jobs, which would lead to low acceptance levels and de-registration from the ihail fleet.



- 4 **Motivations of ihail's taxi network shareholders:** the Uber submission discounts the fact that a shareholder is not required to participate in ihail and participation is completely at the discretion of the network. This is perplexing given the explanation in section 4.1(a) of the ihail submission, including the fact that networks will have incentives to favour their own white label apps.
- Uber suggests that taxi network shareholders not supporting ihail is *'...not a tenable or realistic choice given that it is clearly in the shareholder's interest to join both for financial reasons (a larger ihail fleet contributes to a more successful ihail service) and in order to, and be seen to, support its own service.'*
- While ihail might hope that Uber's submission was a reality, the fact of the matter is that it is not. Each taxi network will strive to provide its taxi drivers the best chance of securing taxi bookings, whether that be through ihail or other booking services. Taxi networks will continue to develop and invest in their own apps, enter into joint ventures and acquire companies that offer the same or similar services to ihail. ihail's commercial arrangements do not restrict this. If these other apps and booking services offer superior commercial returns and service then the taxi networks are likely to preference these over ihail.
- 5 **Alleged driver power over networks:** Uber submits that its conclusion that ihail will obtain a significant driver network because of its ability to leverage its privileged position:
- '...is exacerbated by the fact that if a driver is not part of a taxi network that participates in ihail, they are unable to use the ihail app as a driver. In those circumstances, drivers who wish to use the app would pressure their networks to participate. With a view to facilitating booking opportunities for its drivers (which is in the driver's and the network's interest), networks would need to participate in ihail and for each network that participates the pool of drivers who are 'encouraged' to join ihail would significantly increase.'*
- This argument is nonsensical and inconsistent with Uber's primary argument. If networks are in such a strong position and can 'pressure' drivers to join ihail, how does it follow that drivers in networks that are not part of ihail will be able to successfully pressure their networks to join?
- Furthermore, ihail bookings will comprise only a very small fraction of a driver's total bookings. As noted in section 4.4 of the ihail submission, ihail will face strong competition from a range of alternative booking and point-to-point transport services. If ihail was able to achieve the same number of bookings as goCatch, each ihail driver would, on average, receive just 28 bookings via the ihail app per year. Given these numbers, it is fanciful to expect a groundswell of support for ihail amongst drivers from unaffiliated networks.

## The importance of consumer acceptance

Uber submits that *'[c]onsumers will follow ihail's driver network.'*

Firstly, while network density will be a key determinant of waiting times, Uber's submission fails to recognise the importance of consumer acceptance and the fact that this acceptance is not only related to the presence of an extensive network of drivers (see sections 4.3(a) and (b) of the ihail submission and section 3.3.1 of the Frontier report). Consumers will be influenced by their competitive options, not only from taxis but also ride sharing options. Uber's experience in Australia is a case-in-point – while it has a low network density compared to other alternatives (e.g. 13Cabs, Silvertop and goCatch) it is currently the most downloaded and used point-to-point transport booking app Australia wide. This is a clear demonstration that customers are looking for factors beyond network density when choosing which point-to-point transport service to use.





Secondly, there is and will continue to be a range of alternatives to the ihail app (see section 4.4 of the ihail submission).

Thirdly, the barriers to entry in the app market are relatively low (see section 4.4(a) of the ihail submission). This means that ihail will continue to face ongoing competitive pressure going forward.

### **It is unclear why competitive pressure from competing platforms will lessen upon ihail's entry**

Uber foreshadows a squeezing out of established and nascent competitors of ihail. Uber submits that there is a 'cycle' that will 'perpetuate' and allow ihail to consolidate a dominant position. The problem with this submission, however, is the assumption that consumers will automatically follow the network with the largest number of drivers regardless of the quality of the consumer experience.

Uber argues that ihail's submissions regarding multi-homing '*miss the point*' because '*there needs to be a viable alternate 'home' to begin with*'. This argument is difficult to follow because it is the incumbent booking and rideshare services (e.g. goCatch, phone bookings and Uber) that presently provide consumers with a 'home'. As the new market entrant, it is ihail that will be attempting to provide consumers with a 'viable alternate home'. Uber's submissions are based on a hypothetical and uncertain future state.

The Freelancer example only serves to illustrate how difficult this task will be for ihail. The prospectus makes clear that '*it is difficult for a late mover in the space to create network value when an established market has already been created*', meaning ihail will need to differentiate itself via a superior product offering if it is to overcome its position as a late mover.

Furthermore, the assertion in the Uber submission that the market will move from a position of multi-homing to dominance runs contrary to accepted economic forces. It is important to understand that if consumers and drivers can multi-home, markets are unlikely to tip into dominant or monopoly positions and, even if they do, competition can re-emerge because of low barriers to entry. As stated in section 2.3 of the Frontier report, it is for this reason that competition can be consistent with strong network effects.

### **Uber's submissions in section 4.4 and 4.5 on alleged dominance**

Firstly, Uber submits that the aggregation of Uber and goCatch driver numbers (rather than analysing the particular locations where drivers operate) is a flaw in the analysis. While it is not explicitly stated, it appears that Uber is contending that ihail's operations will not be limited to specific geographic locations. The fact of the matter is that ihail's shareholders have minimal regional reach with significant blackspots including, but not limited to, rural Victoria, rural WA, rural SA, rural NSW (with the exception of Newcastle), Gold Coast, Hobart, Launceston and Townsville.

Secondly, Uber submits that the Frontier report establishes a '*...straw man position of assessing the likelihood that ihail will become a monopoly, without full consideration of the likely effects, when that service becomes dominant*'. Putting aside the flawed assumption that ihail will inevitably become dominant, Uber's submission should be rejected as the difference between monopoly and dominance is a matter of degree. The points raised in the Frontier report are equally relevant to establishing a dominant position or a monopoly.

Thirdly, Uber asserts that a number of ihail's shareholders have '*...a consistent history of resisting competition and stifling new entrants*.' The two examples provided have no relevance to the ACCC's consideration of ihail's authorisation application.

Fourthly, and most importantly, the point-to-point transport market is highly fluid and ever changing due to technological developments and changes in the regulatory framework (see section 2 of the ihail submission). Businesses that may have been dominant in the past no longer enjoy this position. Furthermore, the taxi industry will continue to



experience competition from ride sharing services going forward (see section 4.4(b) of the ihail submission).

The recent launch of 'goCar', a new ridesharing service provided by goCatch, illustrates the rapidly changing and highly competitive environment in which ihail will operate.<sup>1</sup> goCar is building its fleet of rideshare drivers from goCatch's existing network of taxi drivers,<sup>2</sup> providing further evidence that the line between taxi and ride sharing services is becoming increasingly blurred. goCatch is backed by numerous well known investors including James Packer, Paul Bassat (Co-founder of SEEK and founder of Square Peg Capital), David Paradise (founder of Paradise Investment Management), Alex Turnbull (son of Prime Minister Turnbull) and the Liberman family.

## **ihail's examples are useful case studies**

### **Australia Wide Taxis**

The Uber submissions assert that ihail '*...will be promoted heavily by its affiliated taxi network shareholders.*' This is not certain, particularly given the fact that no exclusivity requirements are imposed on ihail's network shareholders (see section 4.1 of the ihail submission).

Furthermore, Australia Wide Taxis highlights the difficulties associated with a joint venture between competing taxi networks. Initially, ihail will have nine shareholders with equal shareholdings. Many of these shareholders have interests in other joint ventures (e.g. 13 Cabs and Australia Wide Taxis) as well as in the success of their own white label apps. In ihail's view it is incorrect to assert that ihail's shareholders will have more of an interest in the success of ihail compared to other apps.

Uber also asserts that Australia Wide Taxis is a poor example as there is little evidence that the application was marketed at all. This is an extraordinary claim. Australia Wide Taxis is towards the top of the results list when the terms 'taxis Australia' and 'taxi app Australia' are typed into Google. Furthermore, the Australia Wide Taxis website prominently advertises the existence of the Australia Wide Taxis app on its homepage. Refer to the screenshots (accessed 25 February 2016) in Attachment 1.

### **goCatch**

The Uber criticism of the goCatch example misses the point of ihail's submission. Uber's fundamental criticism of ihail is that it will be in a position to establish a large driver network and this in turn will lead to customers seeking to use the ihail app.

According to Uber, goCatch's affiliated driver network now exceeds 35,000. As outlined in the ihail submission, it cannot be assumed that the potential number of drivers with access to ihail (approximately 42,000) will lead to ihail becoming a dominant taxi app, particularly where goCatch has failed to do so with a similar number of drivers (see section 4.3 of the ihail submission). Uber tries to dispute this argument by describing this as over-simplified and again stating that ihail is in a privileged position because of its network affiliations.

[REDACTED]

ihail is a new booking service rather than a substitute booking service from the perspective of the taxi network shareholders. Furthermore, Uber's assertion makes little sense in circumstances where ihail has an independent marketing team.

<sup>1</sup> Patrick Durkin, *GoCatch to take on Uber, taxi industry in Australia* (The Age) 22 February 2016 (<http://www.smh.com.au/business/consumer-affairs/qocar-to-take-on-uber-taxi-industry-in-australia-20160222-qn017i.html>).

<sup>2</sup> Ibid.



## Overseas

The Uber submission claims that the e-Cab and Curb apps *'are not useful case studies because ... these aggregator apps do not include affiliated taxi networks as shareholders'*. The shareholding of e-Cab and Curb is beside the point. Both apps operate by entering into partnership agreements with taxi networks in the same way that networks who wish to use ihail's services are required to enter into a Licence and Services Agreement (see section 4.1(b) of the ihail submission).

Uber's assertion that Vancouver's four main taxi companies have not continued to invest and improve their apps since the introduction of e-Cab in September 2015 is factually inaccurate. [REDACTED]

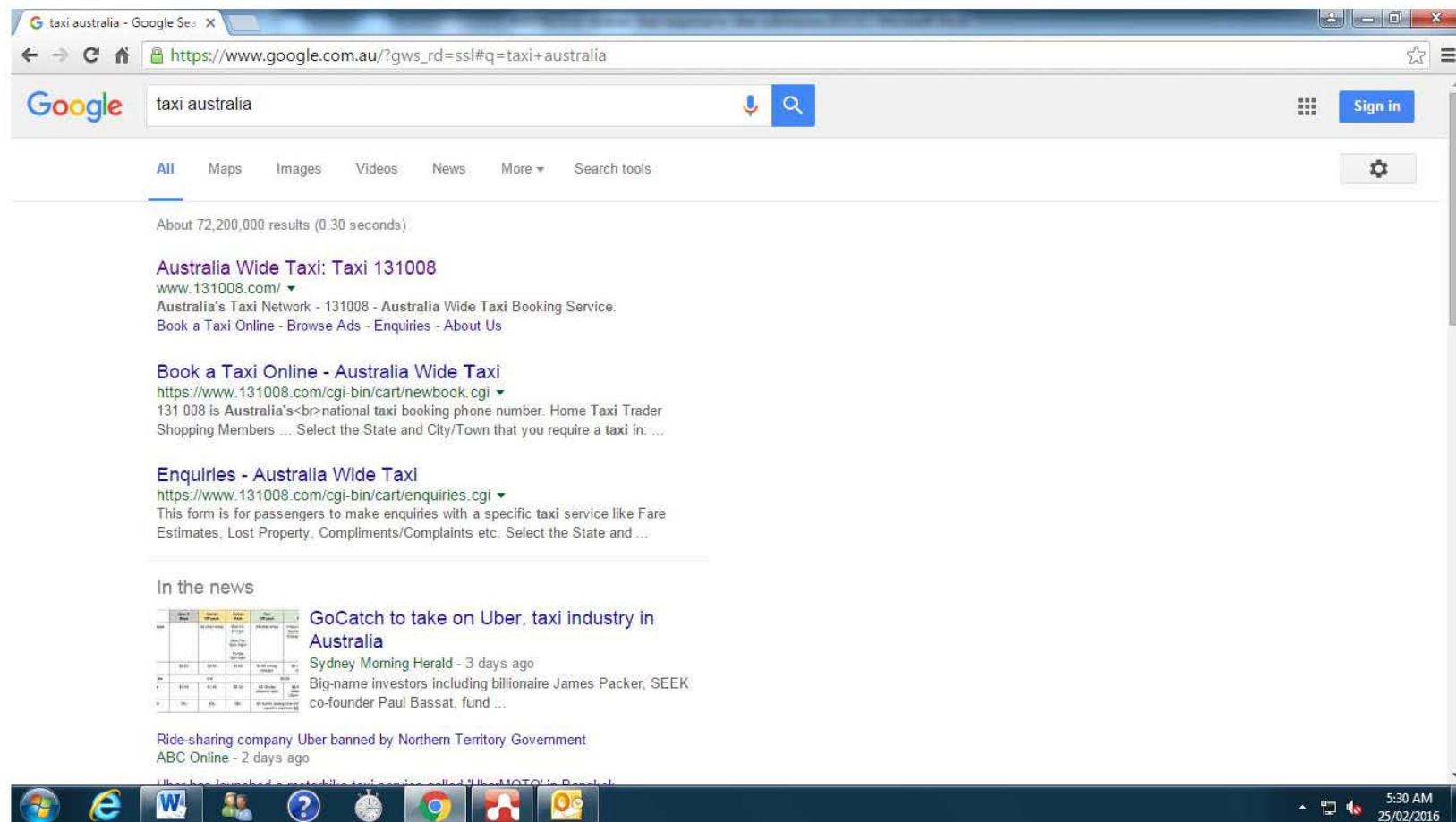
[REDACTED] In these circumstances, Uber's mere assertion that the Canadian experience shows *'...that white label apps will receive less attention, fewer updates, limited management focus and provide an ongoing overall poor consumer experience'* should be rejected.

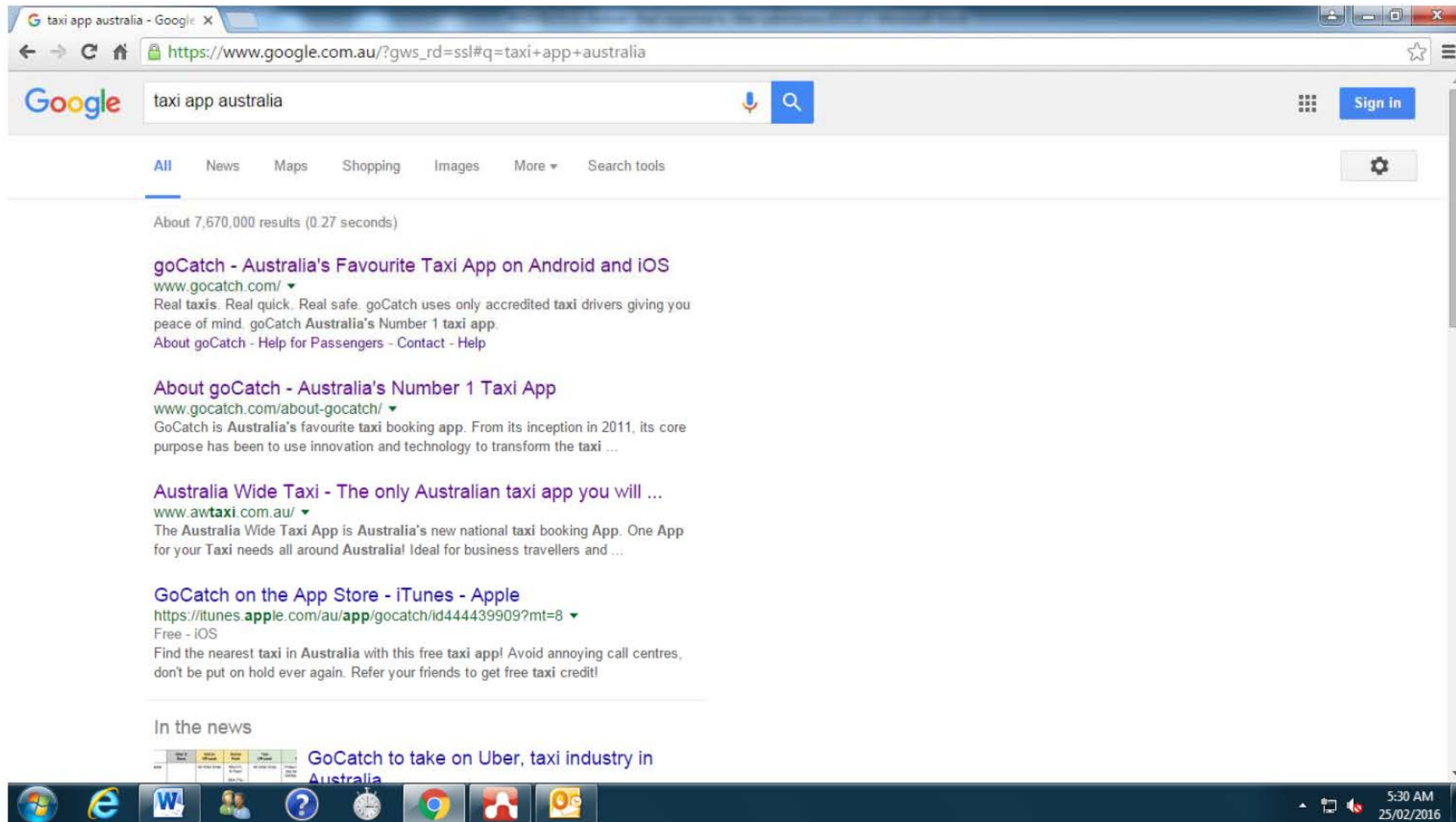
26 February 2016



## Attachment 1

### AWT screenshots





The screenshot shows a Google search for "taxi app australia" in a web browser. The search results page displays several links related to taxi apps in Australia. The top result is for "goCatch - Australia's Favourite Taxi App on Android and iOS" with a link to [www.gocatch.com/](http://www.gocatch.com/). Below this is a link for "About goCatch - Australia's Number 1 Taxi App" with a link to [www.gocatch.com/about-gocatch/](http://www.gocatch.com/about-gocatch/). The third result is for "Australia Wide Taxi - The only Australian taxi app you will ..." with a link to [www.awtaxi.com.au/](http://www.awtaxi.com.au/). The fourth result is for "GoCatch on the App Store - iTunes - Apple" with a link to <https://itunes.apple.com/au/app/gocatch/id444439909?mt=8>. At the bottom, there is a section titled "In the news" with a link for "GoCatch to take on Uber, taxi industry in Australia". The browser's address bar shows the URL [https://www.google.com.au/?gws\\_rd=ssl#q=taxi+app+australia](https://www.google.com.au/?gws_rd=ssl#q=taxi+app+australia). The Windows taskbar at the bottom shows the time as 5:30 AM on 25/02/2016.

taxi app australia - Google X

[https://www.google.com.au/?gws\\_rd=ssl#q=taxi+app+australia](https://www.google.com.au/?gws_rd=ssl#q=taxi+app+australia)

Google taxi app australia

All News Maps Shopping Images More Search tools

About 7,670,000 results (0.27 seconds)

**goCatch - Australia's Favourite Taxi App on Android and iOS**  
[www.gocatch.com/](http://www.gocatch.com/)  
Real taxis. Real quick. Real safe. goCatch uses only accredited taxi drivers giving you peace of mind. goCatch Australia's Number 1 taxi app.  
[About goCatch](#) - [Help for Passengers](#) - [Contact](#) - [Help](#)

**About goCatch - Australia's Number 1 Taxi App**  
[www.gocatch.com/about-gocatch/](http://www.gocatch.com/about-gocatch/)  
GoCatch is Australia's favourite taxi booking app. From its inception in 2011, its core purpose has been to use innovation and technology to transform the taxi ...

**Australia Wide Taxi - The only Australian taxi app you will ...**  
[www.awtaxi.com.au/](http://www.awtaxi.com.au/)  
The Australia Wide Taxi App is Australia's new national taxi booking App. One App for your Taxi needs all around Australia! Ideal for business travellers and ...

**GoCatch on the App Store - iTunes - Apple**  
<https://itunes.apple.com/au/app/gocatch/id444439909?mt=8>  
Free - iOS  
Find the nearest taxi in Australia with this free taxi app! Avoid annoying call centres, don't be put on hold ever again. Refer your friends to get free taxi credit!


**In the news**

**GoCatch to take on Uber, taxi industry in Australia**




Taxi 131008 - Australia Wi x

www.131008.com



**131 008** is Australia's national taxi booking phone number.

To book a local taxi, just call **131 008** anywhere in Australia.



Home Taxi Trader Shopping Members Area


- About Us
- Book a Taxi Online
- Our Taxi Services
- FAQs
- Directory
- Enquiries

Book a Taxi anywhere in Australia for the cost of a local call\*

**131 008**


It's the only Taxi phone number you will ever need

Save it in your mobile NOW!  
\*Calls from mobile phones higher



Booking your taxi just got easier!

The new AUSTRALIA WIDE taxi booking app is now available for download



www.awtaxi.com.au

Website by: Marketing Mechanics | Terms & Conditions | Privacy & Security | Shipping & Returns | Feedback

© 2009 Taxi 131-008 Limited. All rights reserved

5:31 AM 25/02/2016