



RESERVE BANK OF AUSTRALIA

Payment Systems (Regulation) Act 1998

Draft Standard relating to the Setting of Interchange Fees in the Designated Debit and Prepaid Card Schemes and Net Payments to Issuers

This notice is published in accordance with the requirements set out in Section 28(2)(a) of the *Payment Systems (Regulation) Act 1998* (the Act).

The Reserve Bank of Australia proposes to determine a standard to apply to designated card payment systems in Australia. The standard would replace the standards *The Setting of Interchange Fees in the Visa Debit Payment System* and *Interchange Fees in the EFTPOS System*.

The standard would apply to:

- the eftpos debit and prepaid card systems
- the MasterCard debit and prepaid card systems
- the Visa debit and prepaid card systems

Summary of purpose and effect of the draft Standard

The purpose of the proposed standard is to improve efficiency and competition in the Australian payments system by modifying some existing requirements and introducing some new requirements into the regulatory framework for interchange fees. The proposed standard would apply to interchange fees and other payments to issuers in the eftpos, MasterCard and Visa debit and prepaid card systems.

Interchange fees are fees set by card schemes that require payments between the merchant's financial institution and the cardholder's financial institution on every transaction. Where merchants do not feel able to decline to accept cards, the incentive is for schemes to raise interchange rates to induce financial institutions to issue their cards and for issuers to then use these fees to pay rewards to consumers to take and use the cards. Evidence from a range of countries suggests that competition between well-established payment card schemes can lead to the perverse result of increasing the price of payment services to merchants (and higher retail prices for consumers). In addition, differences in interchange fees between payment systems can distort payment choices and lead to a less efficient payments system overall.

The proposed standard will formally cover the Debit MasterCard system (currently, Debit MasterCard compliance is via a voluntary undertaking) in addition to the eftpos and Visa debit card systems, to which interchange standards currently apply. The eftpos, MasterCard and Visa prepaid card systems will also be covered by the standard.

The Bank proposes that the benchmark limiting weighted average interchange fees on debit cards will be lowered to 8 cents, consistent with the fall in average transaction values since the debit benchmark was introduced. Transactions on prepaid cards will be included with debit cards in the observance of the debit benchmark.

The weighted-average benchmark will be supplemented by caps on individual interchange fees. No debit or prepaid interchange fee will be able to exceed 15.0 cents if levied as a fixed amount or 0.200 per cent if levied as a percentage amount. These changes are expected to significantly reduce the extent to which small and medium-sized merchants are significantly disadvantaged relative to a group of preferred merchants in the MasterCard and Visa card systems.

There are other changes proposed to the regulatory arrangements including a shift from three-yearly compliance to quarterly compliance. In addition, all transactions at Australian merchants will be included in

calculations for observance of the benchmarks, with transactions on foreign-issued cards treated equivalently to transactions on domestic cards.

Submissions

Interested parties are invited to make submissions on the proposed Standard and the Reserve Bank's consultation document, *Review of Card Payments Regulation: Consultation Paper*, available on the Reserve Bank's website www.rba.gov.au.

Submissions should be made by 3 February 2016 to:

PYSubmissions@rba.gov.au

or

Head of Payments Policy
Reserve Bank of Australia
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Sydney NSW 2001

Signed

Glenn Stevens
Governor
Reserve Bank of Australia
Date: 8 December 2015

THE SETTING OF INTERCHANGE FEES IN THE DESIGNATED DEBIT AND PREPAID CARD SCHEMES AND NET PAYMENTS TO ISSUERS

1. Objective

The objective of this Standard is to ensure that the setting of interchange fees and payments and other transfers of valuable consideration having an equivalent object or effect to interchange fees in each designated debit card scheme and prepaid card scheme is transparent and promotes:

- *efficiency; and*
- *competition*

in the Australian payments system.

2. Application

2.1 This Standard is determined under Section 18 of the *Payment Systems (Regulation) Act 1998* (the **Act**).

2.2 This Standard applies to:

- the payment system operated within Australia known as Visa Debit, which was designated under the Act as a payment system on 23 February 2004 and which is referred to in this Standard as **Visa Debit**;
- the payment system operated within Australia known as Visa Prepaid, which was designated under the Act as a payment system on 15 October 2015 and which is referred to in this Standard as **Visa Prepaid**;
- the payment system operated within Australia known as Debit MasterCard, which was designated under the Act as a payment system on 15 October 2015 and which is referred to in this Standard as **Debit MasterCard**;
- the payment system operated within Australia known as MasterCard Prepaid, which was designated under the Act as a payment system on 15 October 2015 and which is referred to in this Standard as **MasterCard Prepaid**;
- the debit card payment system operated within Australia known as the EFTPOS payment system, which was designated under the Act as a payment system on 12 June 2012 and which is referred to in this Standard as the **EFTPOS System**; and
- the prepaid card payment system operated within Australia under the EFTPOS Scheme Rules, which was designated under the Act as a payment system on 15 October 2015 and which is referred to in this Standard as **EFTPOS Prepaid**,

each of which is referred to in this Standard as a **Scheme**.

2.3 In this Standard:

Above Benchmark Quarter has the meaning given to it in clause 4.3 of this Standard;

Acquired includes accepted;

Acquirer means a participant in a Scheme in Australia that:

- provides services, directly or indirectly, to a Merchant to allow that Merchant to accept a Card of that Scheme; or

- (b) is a Merchant that accepts, or is a Related Body Corporate of a Merchant that accepts, a Card of that Scheme and bears the risk as principal in relation to the payment obligations of the Issuer of that Card in relation to that acceptance;

Card of a Scheme or **Card of that Scheme** means a Debit Card of a Scheme or a Prepaid Card of a Scheme;

Card of a Scheme Pair means a Card of a Scheme that is part of a Scheme Pair;

Card Transaction means a Debit Card Transaction or a Prepaid Card Transaction;

Debit Card of a Scheme or **Debit Card of that Scheme** means, in relation to a Scheme, a Device that can, under the Rules of the Scheme, be used in Australia to make payments for goods or services by accessing a deposit account held at an authorised deposit-taking institution or a bank or other financial institution (irrespective of whether the Device is issued in or outside Australia);

Debit Card Transaction means, in relation to a Scheme, a transaction in that Scheme between a holder of a Debit Card of that Scheme and a Merchant involving the purchase of goods or services (whether or not it also involves the obtaining of cash) using a Debit Card of that Scheme that is Acquired by an Acquirer (but does not include any transaction to reverse such a transaction or provide a credit or make a chargeback in relation to such a transaction);

Device means any card, plate or other payment code or device, including a code or device where no physical card is issued and a code or device used or to be used for only one transaction;

EFTPOS Scheme Rules are the rules promulgated under the constitution of the EFTPOS Payments Australia Limited (ABN 37 136 180 366) and any schedule, document, specification or rule published by EFTPOS Payments Australia Limited pursuant to those rules;

Interchange Fee Category has the meaning given to it in clause 4.2 of this Standard;

Interchange Fees means in relation to a Scheme, wholesale fees, known as interchange fees which are payable between an Issuer and an Acquirer, directly or indirectly, in relation to Card Transactions in the Scheme but excluding any such fees to the extent that they are referable only to the obtaining of cash by the Card holder;

Issuer means an entity that issues Debit Cards or Prepaid Cards of a Scheme (as the case may be) to its customers;

Merchant means in relation to a Scheme a merchant in Australia that accepts a Card of that Scheme for payment for goods or services;

Prepaid Card of a Scheme or **Prepaid Card of that Scheme** means, in relation to a Scheme, a Device that can be used in Australia, under the Rules of the Scheme, to make payments for goods or services using a store of value that has been prepaid or pre-funded and is accessible to make payments for goods or services only through the use of that, or a linked or related, Device (irrespective of whether the Device is issued in or outside Australia);

Prepaid Card Transaction means, in relation to a Scheme, a transaction in that Scheme between a holder of a Prepaid Card of that Scheme and a Merchant involving the purchase of goods or services (whether or not it also involves the obtaining of cash) using a Prepaid Card of that Scheme that is Acquired by an Acquirer (but does not include any transaction to reverse such a transaction or provide a credit or make a chargeback in relation to such a transaction);

Quarter means a 3 month period ending on 30 June, 30 September, 31 December or 31 March;

Related Body Corporate has the meaning given in the *Corporations Act 2001*;

Reporting Period means a 12 month period ending 30 September;

Rules of a Scheme or **Rules of the Scheme** means the constitution, rules, by-laws, procedures and instruments of the relevant Scheme, and any other arrangement relating to the Scheme by which participants in that Scheme consider themselves bound;

Scheme Benchmark is 8.0 cents;

Scheme Pair means:

- (a) VISA Debit and VISA Prepaid;
- (b) Debit MasterCard and MasterCard Prepaid; or
- (c) EFTPOS System and EFTPOS Prepaid.

include or **including** or **such as** when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and terms defined in the Act have the same meaning in this Standard.

2.4 For the purposes of this Standard:

- (a) a provision of a plan, arrangement or agreement shall be deemed to have a particular purpose if the provision was included in the plan, arrangement or agreement by a party or parties for purposes that include that purpose and that purpose was a substantial purpose; and
- (b) conduct including the payment or receipt of a fee or other valuable consideration shall be deemed to have been made for a particular purpose if the person undertaking the conduct, payment or receipt did so for purposes that include that purpose and that purpose was a substantial purpose.

2.5 For the purposes of this Standard, an Interchange Fee paid from an Acquirer to an Issuer is to be expressed as a positive number and an Interchange Fee paid from an Issuer to an Acquirer is to be expressed as a negative number.

2.6 Each participant in a Scheme must do all things necessary on its part to ensure compliance with this Standard.

2.7 If any part of this Standard is invalid, the Standard is ineffective only to the extent of such part without invalidating the remaining parts of this Standard.

2.8 This Standard is to be interpreted:

- (a) in accordance with its objective; and
- (b) by looking beyond form to substance.

2.9 This Standard comes into force on [*effective date consistent with new credit card standard*] (the **Commencement Date**).

2.10 On the Commencement Date this Standard replaces each of the following Standards:

- (a) *The Setting of Interchange Fees in the Visa Debit Payment System*, which is referred to in this Standard as the **Visa Debit Standard**; and
- (b) *Interchange Fees in the EFTPOS System*, which is referred to in this Standard as the **EFTPOS Standard**.

3. Transition Provision

3.1 If, after the Commencement Date and prior to [], any Interchange Fee is introduced, varied, or removed in Visa Debit or the EFTPOS System, the weighted average of Interchange Fees implemented in each of the relevant Schemes in Australia on the date of that change, calculated in accordance with paragraph 12 of the Visa Debit Standard and paragraph 14 of the EFTPOS Standard in place as at the day before the Commencement Date, must not exceed the benchmark calculated in accordance with paragraphs 13 and 14 of the Visa Debit Standard.

4. Interchange Fees

- 4.1 From [] an Interchange Fee (exclusive of goods and services tax) in relation to a Card Transaction must:
- (a) where the Interchange Fee is a fixed amount per transaction, not exceed 15.0 cents; or
 - (b) where the Interchange Fee is calculated by reference to the value or amount of the transaction, not exceed 0.200 per cent of that amount or value.
- 4.2 From [], if an Interchange Fee applies in relation to a category of Card Transactions (whether that category is determined by reference to the nature of the holder, or type of the Card of the Scheme, the identity or nature of the Merchant, the means of effecting the transaction, the security or authentication that applies or any other matter, or is a residual category covering transactions not in any other category) (**Interchange Fee Category**), that Interchange Fee must be a percentage rate applying to all Card Transactions in the category or a fixed amount applying to all Card Transactions in the category, and cannot be expressed as a range of rates or amounts.
- 4.3 From [], if:
- (a) the total value of Interchange Fees (exclusive of goods and services tax) payable in relation to Card Transactions undertaken in a Scheme during a Quarter divided by the number of those Card Transactions exceeds the Scheme Benchmark; and
 - (b) for the Scheme Pair of which the Scheme referred to in sub-paragraph (a) forms part, the total value of Interchange Fees (exclusive of goods and services tax) payable in relation to Card Transactions undertaken in each of the Schemes in the Scheme Pair during the Quarter divided by the number of those Card Transactions exceeds the Scheme Benchmark;
- that Quarter will be an **Above Benchmark Quarter** for that Scheme and the participants in the Scheme referred to in sub-paragraph (a) above must take all necessary steps to vary the rates or amounts of Interchange Fees applicable under that Scheme, with effect no later than [45] days after the end of the Above Benchmark Quarter, to the rates or amounts that, had those varied rates or amounts applied under the Scheme during the Above Benchmark Quarter, that Quarter would not have been an Above Benchmark Quarter for that Scheme unless:
- (c) prior to the end of that 45 day period, a variation to the rates or amounts of Interchange Fees applicable under the other Scheme in the Scheme Pair takes effect; and
 - (d) the varied Interchange Fees referred to in paragraph (c) are such that, had they applied under that other Scheme during the Above Benchmark Quarter, the Quarter would not have been an Above Benchmark Quarter.
- 4.4 From [], if at any time any Interchange Fee applicable under a Scheme is introduced or removed, or the rate or amount of any Interchange Fee under a Scheme is varied, the Interchange Fees applicable under that Scheme following that change must be such that, had they applied for the whole of the most recent Quarter prior to the date of the change, that Quarter would not have been an Above Benchmark Quarter. Nothing in this clause 4.4 limits clause 4.3.

5. Net Payments to Issuers

- 5.1 From []:
- (a) no Issuer which is a participant in a Scheme in Australia may receive, directly or indirectly, Net Compensation in relation to Card Transactions undertaken in any of the Schemes in the Scheme Pair of which that Scheme forms part (**Scheme Pair Transactions**). **Net Compensation** is received by such an Issuer if the Issuer Receipts of the Issuer over a Reporting Period exceed the Issuer Payments of the Issuer over that Reporting Period; and

- (b) the administrator of a Scheme in Australia must not pay or facilitate payment or enter into an agreement or arrangement that provides for payment or facilitates payment, directly or indirectly, of Net Scheme Compensation to an Issuer which is a participant in a Scheme in Australia. **Net Scheme Compensation** is paid, or payment of it is facilitated, if, for one or more such Issuers, the Issuer Receipts of the Issuer that are paid, given or allowed, directly or indirectly, by the administrator of the Scheme in Australia to the Issuer over a Reporting Period exceed the Issuer Payments of the Issuer that are paid, given or allowed, directly or indirectly, by that Issuer to that administrator of the Scheme in Australia over that Reporting Period.

5.2 For the purpose of clause 5.1:

- (a) subject to paragraphs (c), (d) and (e), **Issuer Receipts** of the Issuer is the total of the payments or rebates received, directly or indirectly, by the Issuer in relation to any of the Cards of the Schemes in the Scheme Pair or Card Transactions undertaken in any Scheme in the Scheme Pair that have a purpose, or likely effect of promoting or incentivising the issuance or use of Cards of any Scheme in the Scheme Pair or of providing or funding incentives to holders to use Cards of the Scheme or Scheme Pair (but excluding Interchange Fees and payments made by or on behalf of holders of Cards of the Scheme to discharge a liability to the Issuer as a result of holding or using such a card). These payments and rebates include volume based and transaction specific payments, incentives, fees or rebates such as:
- (i) marketing incentives;
 - (ii) payments or rebates for meeting or exceeding a specific transaction volume, percentage share or dollar amount of transactions processed; and
 - (iii) signing bonuses;
- (b) subject to paragraphs (c), (d) and (e), **Issuer Payments** of the Issuer is the total amount of all amounts paid or rebates paid, given or allowed, directly or indirectly, by the Issuer to the administrator of a Scheme in the Scheme Pair in Australia or an Acquirer in relation to any of the Cards of the Schemes in the Scheme Pair or Card Transactions undertaken in any Scheme in the Scheme Pair (excluding Interchange Fees and the amount of the relevant Card Transactions paid by the Issuer to the Acquirer to settle obligations arising from the clearing of Card Transactions). These payments and rebates include:
- (i) Scheme branding fees;
 - (ii) processing fees; and
 - (iii) assessment fees;
- (c) if an amount referred to in paragraph 5.2(a) or 5.2(b) paid to or by, or a rebate referred to in paragraph 5.2(a) or 5.2(b) given, allowed or received, directly or indirectly, by an Issuer does not relate solely to Cards of any Scheme in the Scheme Pair or Card Transactions undertaken in any Scheme in the Scheme Pair and also relates to other Devices or other transactions, the amount or rebate must be apportioned between the Cards of any Scheme in the Scheme Pair and Card Transactions undertaken in any Scheme in the Scheme Pair on the one hand (the **Relevant Portion**) and the other Devices and other transactions on the other fairly and reasonably, having regard to, where relevant, the transaction history on Devices used in the payments systems to which the amount or rebate relates and the proportion of the Devices to which the amount or rebate relates that are Cards of a Scheme in the Scheme Pair issued by the Issuer, and the Relevant Portion included in the determination of Issuer Receipts or Issuer Payments, as applicable;
- (d) one method of apportionment that will be fair and reasonable for the purpose of clause 5.2(c) is an apportionment on a pro-rata basis, based on the value of Card Transactions undertaken in any Scheme that forms part of the Scheme Pair using Cards of any such Scheme issued by that Issuer over the Reporting Period as a proportion of the total value of the transactions

undertaken in any payment system to which the amount or rebate relates over the Reporting Period using Devices issued by that Issuer. This does not preclude an apportionment in another way that meets the requirements of clause 5.2(c);

- (e) where a payment or rebate referred to in paragraph (a), (b) or (c) relates to a period that spans more than one Reporting Period, the payment or rebate or, in the case of a payment or rebate referred to in paragraph (c), the proportion calculated in accordance with paragraph (c), may be allocated among Reporting Periods on a pro-rata basis based on the number of months in each relevant Reporting Period to which the payment or rebate relates provided that:
 - (i) no part of it is allocated to any Reporting Period the whole of which occurs before the term of the contract or arrangement to which the payment or rebate applies has commenced;
 - (ii) no part of it is allocated to any Reporting Period the whole of which occurs after the term of the contract or arrangement to which the payment or rebate applies has ended; and
 - (iii) it may not be allocated among more than 5 consecutive Reporting Periods.

6. Reporting and Transparency

- 6.1 The administrator of a Scheme or a representative of the participants in the Scheme in Australia must publish the Interchange Fee rates and amounts of the Scheme in Australia on the Scheme's website, including the rates or amounts for each Interchange Fee Category.
- 6.2 The administrator of a Scheme or a representative of the participants in the Scheme in Australia must on or before 31 October each year certify in writing to the Reserve Bank of Australia in respect of the most recent Reporting Period, that Interchange Fees of the Scheme in Australia were over that Reporting Period in compliance with this Standard.
- 6.3 Each of the administrator of a Scheme in Australia and each Issuer who is a participant in the Scheme in Australia must on or before 31 October each year certify in writing to the Reserve Bank of Australia that it was, over the most recent Reporting Period, in compliance with clause 5 of this Standard.
- 6.4 The administrator of a Scheme or representative of the participants of the Scheme in Australia must, not later than 30 days after the end of each Quarter, certify in writing to the Reserve Bank of Australia each of the following for that Quarter for the Scheme (and in the case of paragraph (e), the relevant Scheme Pair):
 - (a) the total value of Card Transactions undertaken in the Scheme in that Quarter;
 - (b) the number of Card Transactions undertaken in the Scheme in that Quarter;
 - (c) the total value of all Interchange Fees (exclusive of goods and services tax) payable in respect of the Card Transactions undertaken in the Scheme made during that Quarter;
 - (d) the total value of Interchange Fees (exclusive of goods and services tax) payable in respect of Card Transactions undertaken in the Scheme made during the Quarter divided by the total number of the Card Transactions made during the Quarter;
 - (e) the total value of Interchange Fees (exclusive of goods and services tax) payable in respect of Card Transactions undertaken in the Scheme made during the Quarter across the Scheme Pair of which the Scheme forms part divided by the total number of the Card Transactions undertaken in the Scheme made during the Quarter across the Scheme Pair of which the Scheme forms part;
 - (f) each Interchange Fee Category that applied for some or all of the Quarter and, for each of those categories:

- (i) the Interchange Fee rates or amounts that applied during the Quarter (expressed as a percentage or an amount, not as a range); and
- (ii) the total value of Interchange Fees (exclusive of goods and services tax) payable in respect of that Quarter that are referable to Card Transactions undertaken in the Scheme in that Quarter in that category.

7. Anti-avoidance

- 7.1 A participant in a Scheme must not, either alone or together with one or more other persons, enter into, begin to carry out or carry out a plan or arrangement or otherwise be knowingly involved in a plan or arrangement if it would be concluded that the person did so for a purpose of avoiding the application of this Standard, and the plan or arrangement or part of the plan or arrangement has achieved or would have achieved or could reasonably be considered to have achieved that purpose.