

2004 — 2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**PAYMENT SYSTEMS (REGULATION) AMENDMENT BILL 2005**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,  
the Hon Peter Costello, MP)

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# 1

## Outline

### Payment Systems (Regulation) Amendment Bill 2005

1.1 The *Payment Systems (Regulation) Act 1998* (the Act) provides for the regulation of payment systems and purchased payment facilities. Subsection 11(1) of the Act provides that the Reserve Bank of Australia (RBA) has the power to designate payment systems if it considers that it is in the public interest to do so.

1.2 Subsection 18(1) of the Act provides that the RBA may determine standards to be complied with by participants in a designated payment system.

1.3 On 26 August 2002, the RBA determined a standard on the setting of wholesale ‘interchange’ fees for participants in credit card schemes. The standard came into force on 1 July 2003. The RBA designated three participants for the purposes of the standard on 12 April 2001 — Visa, MasterCard and Bankcard. Interchange fees are charged between financial institutions in order to provide credit card services.

1.4 However, if participants in the designated schemes comply with the standard on the setting and charging of interchange fees, they risk contravening Part IV of the *Trade Practices Act 1974* (TPA). Part IV of the TPA describes and prohibits various restrictive trade practices.

1.5 Subparagraphs 51(1)(a)(i) and (ii) of the TPA respectively provide that anything specified in, and specifically authorised by an Act or regulations made under an Act, is exempted from the operation of Part IV.

1.6 The Payments System (Regulation) Regulations 2003 — made under section 32 of the Act — provides interim relief by protecting credit card schemes from liability under Part IV of the TPA. However, these regulations only apply until 30 June 2005 as paragraph 51(1C)(c) of the TPA prevents such regulations

## **Outline**

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from operating for more than 2 years and prevents similar regulations from being introduced.

1.7 The Bill eliminates the overlap between the TPA and a standard by specifically authorising, for the purpose of subparagraph 51(1)(a)(i) of the TPA, the setting and charging of interchange fees in designated payments systems by participants of specified schemes in accordance with a standard.

1.8 The effect is to exempt such conduct from Part IV of the TPA.

# 2

## **Financial Impact Statement**

2.1 This Bill will have no significant financial impact.

# 3

## Regulation Impact Statement

3.1 The Office of Regulation Review has advised that no Regulation Impact Statement (RIS) is required as one was prepared for the package of reforms in relation to credit cards released by the RBA on 27 August 2002 and further RISs would be provided in conjunction with the development of further standards.

# 4

## Note on Individual Clauses

### *Clause 1 — Short title*

4.1 This clause provides the short title by which the Act may be cited.

### *Clause 2 — Commencement*

4.2 This clause provides that this Act will commence on 1 July 2005.

### *Clause 3 — Schedule(s)*

4.3 This clause makes it clear that the *Payment Systems (Regulation) Act 1998* is amended as set out in the Schedule, and that any other item in the Schedule has effect according to its terms.

### *Schedule 1 — Amendments*

4.4 The Schedule amends the *Payment Systems (Regulation) Act 1998*.

### **Item 1 — Section 18A**

4.5 Subsection 18A(1) authorises conduct for the setting and charging of wholesale ‘interchange’ fees for participants in a designated payments system to which an ‘interchange fees standard’ applies. This authorisation ensures that such conduct is exempt from Part IV of the *Trade Practices Act 1974*.

4.6 Subsection 18A(2) defines ‘interchange fees standard’ in two parts. The first is to include the RBA Standard No. 1, entitled the Setting of Wholesale (‘Interchange’) Fees as determined on 26 August 2002 (and any subsequent variations). This standard applies to conduct of participants in credit card schemes designated by the Reserve Bank on 12 April 2001 in compliance with

## **Note on Individual Clauses**

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Standard No. 1 (that is, the Bankcard, MasterCard and Visa credit card schemes). The second part of the definition permits the identification of further standards through regulations.

### ***Item 2 — Application of the amendment***

4.7 This item limits the application of the amendment to things done on or after the commencement of the amendments.