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# Merchant card payment costs and surcharging:
## Submission to the Reserve Bank of Australia

## ABOUT US

CHOICE is the leading consumer advocacy group in Australia. CHOICE is independent, not-for-profit and member-funded. Our mission is simple: we work for fair, just and safe markets that meet the needs of Australian consumers. We do that through our independent testing, advocacy and journalism.

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# EXECUTIVE SUMMARY

CHOICE welcomes the Reserve Bank of Australia's review of merchant card payment costs and surcharging. Card payments in Australia have seen significant change in the years since the RBA's 2019-21 Review of Retail Payments Regulation (**Previous Review**).There are now signs the existing regulatory settings are no longer leading to an efficient or fair payments framework, and consumers and small businesses are bearing the cost of this.

Payments are a simple but vital action for all consumers, and card payments have comfortably become the most common method by which Australians do this. However, the economic and technological arrangements that are built into the card payment system are anything but simple. Interchange fees, scheme fees, card acquirer fees and surcharges are complex, opaque and confusing. It could be seen as a credit to technology and the payments industry that with all this occuring in the background, consumers can just tap a card to make a payment. However, when consumers and small businesses end up footing the bill for all this complexity, it is difficult to celebrate the ingenuity of the payments sector.

Since the Previous Review, new 'fintechs' have firmly established themselves in the payments landscape and we are told the technology is improving all the time. With so many other essential service markets in Australia desperately crying out for more competition, this should be good news for consumers. Unfortunately, outside of some minor conveniences, increased competition and improved technology do not appear to be leading to better economic outcomes for consumers or small businesses.

For consumers, card surcharges are becoming more frequent, costs are adding up and frustrations are mounting. Recent anecdotal feedback CHOICE has received from consumers supports the suggestion on page 9 of the RBA's Issues Paper (**Issues Paper**) that surcharging frequency has risen well above the 7% of card transactions measured in 2022.

CHOICE also undertook nationally representative research in September 2024, in which 66% of people agreed that businesses often apply surcharges without telling them.[1] So while surcharging may be getting more frequent, consumer centric practices are not. CHOICE supporters have shared many more sources of frustration regarding surcharges with us as well.

The trend noted in the Issues Paper that small businesses are paying far more to process card payments than big businesses is also a major concern. Small business owners paying higher prices to process card payments are left with the difficult decision of building the entire cost into

[1] CHOICE Consumer Pulse September 2024 is based on an online survey designed and analysed by CHOICE. 1,024 Australian households responded to the survey with quotas applied to ensure coverage across all age groups, genders and locations in each state and territory across metropolitan and regional areas. The data was weighted to ensure it is representative of the Australian population based on the 2021 ABS Census data. Fieldwork was conducted from the 5th to the 18th of September, 2024.

their advertised prices, or passing the costs onto consumers. Neither option helps them remain competitive with the big end of town that is getting a far better deal.

In our view, there are clear signs the existing payments rules are no longer achieving their intended outcomes. Surcharges are no longer operating as an effective price signal to consumers from businesses about the cost of accepting certain types of cards, and the ability to surcharge clearly is not a sufficient deterrent for the payments sector to keep merchant costs down (at least for small business).

We firmly believe that the interests of the end users of the payments system - consumers - should be prioritised when assessing whether current regulatory settings are working or certain innovations are desirable. Wherever possible, the interests of small businesses should also be considered and supported. However, where market developments are benefiting small businesses to the detriment of consumers, this is a market failure that should be corrected.

### Our key policy positions

**CHOICE supports the proposed ban on card surcharges for payment by debit card that has been proposed by the Government**.[2] Debit cards are now the most common form of payment method[3] and we believe that consumers should be able to expect that the price advertised is the price they can reasonably pay most of the time. CHOICE's nationally representative survey data about what consumers expect when paying a bill also supports this view: substantially more people do not expect to pay a surcharge when paying with cash or debit cards, compared to credit cards.[4] Banning debit card surcharges will also help redistribute some financial benefit of increased digitisation to consumers, will be easier to monitor compliance and enforce, and should encourage businesses to seek better deals from acquirers.

**We also urge the RBA to introduce an upper limit in real monetary terms on the maximum surcharge that may be imposed on a credit card.** We are not calling for a ban on credit card surcharging for a number of reasons, including that it is likely to result in debit card users unfairly cross-subsidising the extra costs involved in processing credit card payments, even though credit cards are used more by Australians in the highest income quartile.[5]

**We recommend the RBA intervene to help empower small business merchants to get a better deal on card payment processing.** To help achieve this, we generally support the potential interventions proposed throughout the Issues Paper in line with the following themes:

- increase transparency to reduce the extra bargaining power of major payment firms

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[2] https://www.pm.gov.au/media/reducing-card-surcharges-australians-and-small-businesses
[3] https://www.rba.gov.au/statistics/frequency/retail-payments/2024/retail-payments-1024.html
[4] CHOICE Consumer Pulse September 2024, see above n 1. Further detail provided at footnote 15 below
[5] Thuong Nguyen, Benjamin Watson (2023), 'Consumer Payment Behaviour in Australia', *Reserve Bank of Australia*, 15 June

- ensure any caps on fees charged by payment processing providers are at least set as low as the minimum prescribed in similar economies, such as Europe
- other proactive interventions to improve the bargaining position of small businesses.

We respond to the questions in the Issues Paper below. We address the questions around consumer surcharge rules first, as we believe the broader framework should be considered from the perspective of end users first - being consumers.

## RECOMMENDATIONS

The RBA should:

1. ban surcharge fees for paying by debit card.
2. recommend that the Government takes steps to ban surcharge fees on cash payments.
3. introduce a hard cap on the maximum amount a merchant can charge a consumer for a credit card surcharge. The cap should set a limit both in real dollar terms (regardless of transaction size) and in percentage terms.
4. tighten the definition of what may be recouped by a surcharge as part of the cost of acceptance of a card payment.
5. develop an interchange fee cap regime for foreign issued cards.
6. seek to increase downward pressure on interchange fees, and seek to intervene in the market to specifically improve the interchange fee rates available to small businesses.
7. seek to increase downward pressure on scheme fees, and intervene in the market to simplify scheme fees or cap their overall costs.
8. continue to encourage adoption of least cost routing, but should take steps to ensure that:
    - savings from LCR are actually passed onto merchants; and
    - transactions are not automatically routed to networks that offer substantially weaker consumer protections.
9. encourage governments to reassess whether there is any legitimate justification for the taxi industry being excluded from our national surcharging laws, and consider removing this exemption.

## Surcharging

**12. Is there a case for revising the RBA's surcharging framework? If so, which options or combination of options would best address the current concerns around surcharging? What other options should the RBA consider?**
**13. What are the implications for merchant payment costs from changes to the surcharging framework? Could the RBA address these with other regulatory actions?**

In our view, poor consumer outcomes caused by the card payments system will not be resolved only by putting further downward pressure on merchant card payment costs. We urge the RBA to ban surcharges on debit transactions. For credit cards, we also recommend introducing a hard cap in real dollar terms on the maximum amount that may be imposed as a surcharge, and tightening the definition of the 'cost of acceptance'.

### The consumer experience of card surcharges

The list on page 9 of the Issues Paper identifies a number of the major concerns that consumers have reported to us about current card surcharge practices.

Earlier this year, we asked CHOICE supporters whether they had been frustrated by a card surcharge in the last year, to which 95% of over 10,000 respondents said yes.[6] In their reponses, supporters elaborated on a range of frustrations with current surcharge practices. Frustrations raised that were consistent with factors listed in Issues Paper include:

- the perception that surcharges were becoming unavoidable because cash is becoming increasingly difficult to access;
- poor disclosure practices meant people often don't know if they will be slugged a surcharge until the point at which they pay, and sometimes only find out later on their bank statement;
- the belief that some businesses are charging more than it costs to process the payment (and the lack of transparency around this);
- particular frustration towards very high surcharges (such as 2% on three or four figure transactions); and
- that debit card surcharges in particular don't make sense as you are paying instantly and with your own money.

> *"Given more and more businesses are moving away from cash it seems that a surcharge is becoming an unavoidable fee. It is also not clear why the bank is charging to use this payment method if it is a service they provide."*

[6] CHOICE, 2024, 'Bank card surcharge supporter survey', n=10,959, survey of CHOICE supporters via email, conducted from 4 September to 15 October 2024.

*"I don't mind paying a surcharge on a credit card but it's unfair to be charged a surcharge on your own money when using a debit or Eftpos card."*

*"Some places don't let you know there is a surcharge and you don't find out about it until you're checking bank statements and it's too late then. I think it's wrong they don't display the surcharge"*[7]

Other common views that were raised in that survey included:

- that surcharges were sometimes being applied to all card transactions by businesses that did not accept cash or any other fee-free payment method;
- that card surcharges were altogether illogical or didn't make sense, particularly as all payment types involve some kind of cost of acceptance to the business, and other business costs are not bundled in as a surcharge;
- frustration that banks would profit from an increase in card payments while also closing branches and ATMs, which made cash harder to come by and contributed to the decline in cash use; and
- that cash was the best answer to avoid a surcharge.

*"I think it is ridiculous that the banks charge surcharges for use of bank cards when they have removed ATMs and bank branches where cash was once available. Total rip off! And lack of service. Why do we need to pay to use our own money?"*

*"I don't like it when cash is not accepted and you have no choice but to pay via card and have to accept any charges. I always try to insert my card where possible and I thought this stopped me being charged fees, but it is still happening even with savings accounts."*

*"I am a single parent receiving a government pension. I have had my bank account put into the red due to bank charges, have had my account balance too low to pay direct debits and then been charged a dishonour fee on top of excessive transaction fees."*[8]

Consumers are clearly dissatisfied with the current experience of card surcharges for a range of reasons. There are also good reasons to suggest that the current surcharging regime is not achieving its intended purpose, either.

[7] Quotes taken from CHOICE Bank card supporter survey 2024, above n 6.
[8] Ibid.

## Ban debit card surcharges

### Surcharging no longer achieving intended outcomes

As stated in the RBA's backgrounder on interchange and scheme fees, a key purpose of surcharging is to allow businesses to send price signals to consumers about cards that cost them more to process. Many trends suggest surcharges are no longer achieving this purpose:

- The increasing prevalence of blended, single card processing rates for businesses means that price signals between cards often do not even exist to pass on;
- Consumer reports that they are not receiving clear communication from businesses about surcharges clearly also impedes any price signal being recevied;
- The increasing prevalence and variation of card surcharging also makes it very difficult for consumers to remember which businesses surcharge, and on what terms;
- There are more factors that can confuse or complicate payment signals, such as some businesses charging a different surcharge if a card is tapped or inserted (likely due to routing to eftpos);
- The most consistent trend in surcharge practices is that many larger businesses do not pass them onto consumers, likely because they are paying less to process the payment. Avoiding small businesses is not a desirable payment signal to be sent in any market.

  *"The problem lies with the banks charging so much for small businesses to have card facilities. Large profitable businesses shouldn't be allowed to charge the surcharge but many small businesses have to now because it would otherwise cost them too much. The RBA should stop banks from charging excessive fees to businesses."*[9]

There are also signs that surcharges may no longer be reducing the cost of merchant card processing fees to the same extent that it has in the past:

- scheme fees are increasing, despite there being strong arguments that significant improvements in technology and increasing transaction volume should see these fees decreasing;
- an increasing number of merchants are opting for acquirers that set surcharges at a higher rate than competitors. For example, Square and Stripe are increasing their acquirer market share despite charging relatively high card processing fees. For most businesses, Square charge 1.6% for in-person card payments,[10] while Stripe charges 1.7% + 30c.[11] By comparison, Commonwealth Bank advertises a 1.1% blended

[9] Ibid.

[10] https://squareup.com/au/en/the-bottom-line/managing-your-finances/credit-card-processing-fees-and-rates, accessed 25 November 2024.

[11] https://stripe.com/au/pricing, accessed 25 November 2024.

processing fee,[12] and Suncorp even offers a lower 0.95% rate.[13] There may be other reasons businesses make this decision, but it generally leaves the consumer footing the bill.

### Benefits of introducing a ban on debit surcharges

1. *Pricing certainty*
    - Debit cards are the most common payment method used by Australians.[14] We think that people should be able to trust that the price advertised will be the price paid in most circumstances. A ban on debit card surcharges would achieve this.
2. *Aligning with consumer expectations*
    - Paying for goods and services is essential to function in society. If people are trying to pay for something with their own money (whether it be cash or debit card), we think it is reasonable for them to expect they would not be charged for doing so, or that any charge is built into the advertised price.
    - CHOICE's nationally representative survey data also suggests that more consumers do not expect that there will be a surcharge if they pay with cash or debit, compared to credit cards. Our research found, when paying a $100 restaurant bill:
        - 89% of people do not expect to pay a surcharge when paying with cash
        - 61-68% do not expect to pay a surcharge when tapping or inserting a debit card
        - 46-48% do not expect to pay a surcharge when inserting or tapping a credit card.[15]
3. Redistributing benefits of *digitisation to consumers*
    - The transition to a digital economy represents great savings to the banking and payments sector, particularly with the reduction in use of cash. While consumers may save time via card payments, they do not see any concrete financial benefit from the move. Banning debit card surcharges may help reallocate some of the financial benefit of digitisation to consumers.
    - Businesses also save money by not handling cash. Some estimates suggest the saving is significant[16] (though any estimate of the cost of cash calculated at the bequest of a major card company must be considered with great caution). If there

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12 https://www.commbank.com.au/business/merchant-services/eftpos-terminals/single-rate-per-transaction.html, accessed 25 November 2024.

13 https://www.suncorpbank.com.au/business-banking/eftpos-savings-campaign.html, accessed 25 November 2024.

14 Thuong Nguyen, Benjamin Watson (2023), 'Consumer Payment Behaviour in Australia', *Reserve Bank of Australia*, 15 June.

15 CHOICE Consumer Pulse September 2024, see above n 1. A range is provided for debit and credit cards as responses differed depending on whether a person tapped or inserted their card.

16 Boston Consulting Group (2024), 'White paper: The Hidden Cost of Cash and the True Cost of Electronic Payments in Australia, Europe, New Zealand and the UK - Addendum', August.

are cost savings to the digital transition, some reallocation of those savings from businesses to consumers would be fair, too.

4. *Encourage businesses to seek the best deal from acquirers.*
    - Consumers also are not party to the agreements that determine how much processing a card payment costs a business, yet surcharging allows consumers to directly incur the cost.
    - Businesses can use acquirers that charge more to process card payments than other available options for strategic reasons. For example, there may be other benefits such as help with bookkeeping or frequent flyer points. However, passing those costs on to consumers as a surcharge is not signaling the relative costs of different payment processing options. Strategic or other costs should be built into the advertised price. (We also have serious concerns about the appropriateness of merchants considering frequent flyer points as a relevant consideration when the cost of this is borne by consumers).

5. *Identifying non-compliance is far simpler.*
    - It is difficult for consumers to know whether a business is charging a surcharge beyond what it costs them to process the card payment under current rules. Non-compliance with a ban would be much simpler for debit cards.

6. *Encourage least cost routing.*
    - The eftpos system makes Australia's debit card market slightly more competitive than other markets like the UK or the US. However, slow uptake of least cost routing (**LCR**) by business means the benefits of DNDCs are not being realised. If businesses were wearing the cost, we suspect LCR would increase.

We recognise that there are risks to banning surcharges for debit payments, but on balance we consider it to be the best option at this point for Australia's economy and the consumers our payments system is supposed to work for.

While we understand it is outside the current powers of the RBA, we also recommend the RBA encourages the government to introduce an equivalent surcharge ban on cash payments, so consumers who prefer cash also have a free and fair way to pay.

### Recommendation 1

The RBA should ban surcharge fees for paying by debit card.

### Recommendation 2

The RBA should recommend that the Government takes steps to ban surcharge fees on cash payments.

## Cap and restrict credit card surcharges

We also recommend introducing a hard upper cap on the maximum surcharge on credit card payments, and tightening the definition of 'cost of acceptance' in regard to what costs merchants can recoup in a credit card surcharge. We do not support introducing a ban on surcharging altogether on credit cards.

### Reasons we do not support a ban on credit card surcharges

1. *Risk of harmful cross-subsidisation*

As the Issues Paper states, any outright ban on charging consumers surcharges may result in merchants seeking to offset those costs previously surcharged via their real prices. We agree with the Issues Paper[17] that a blanket ban on all card surcharges may lead to consumers using cheaper payment methods, like debit cards, cross-subsidising the purchases of those using credit cards that cost more to process.

As the RBA Payments Survey data indicates credit cards are currently more often used by consumers on higher incomes - in 2022, one third of payments (by value) made by people in the top income quartile were made using credit cards, compared to only 15% of people in the lowest income quartile. In contrast, for debit cards, roughly 40% of payments (by value) are made using debit cards across the lowest, second and third quartiles. This means any cross-subsidisation would be inequitable, unfair and should be strongly resisted. A ban on all surcharges may also increase credit card use across the economy, but the portion of savings would still skew toward higher income users who will generally spend more as well.

2. *Increased risk of exploitation by MasterCard and Visa*

We also agree that major card networks may exploit a blanket ban on surcharging to increase scheme fees. Data suggests that since the UK banned both debit and credit card surcharges, scheme fees have increased considerably there - research by the British Retail Consortium reported credit card scheme fees increased 9% in 2023,[18] following a 52% increase in 2022.[19] Scheme fees are also representing an increasing percentage of overall turnover.[20] Unless the RBA also introduced strict caps on scheme fees it was confident would reduce any risk of this occurring here, this is a situation we should be trying to avoid. The risk of this occurring for debit transactions would also be reduced because the eftpos network provides greater competiton.

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[17] On page 19-20
[18] British Retail Consortium (2024), 'Payments survey', page 14: https://brc.org.uk/media/jmrhrss1/2024-payments-survey.pdf
[19] British Retail Consortium (2023), 'Payments survey', page 19: https://brc.org.uk/media/683937/payment-survey-2023.pdf
[20] British Retail Consortium (2024), 'Payments survey'.

3. *Maintaining the benefits of a price signal about credit cards costing more*

As credit transactions do cost more to process than debit, we see a greater risk at removing the ability of merchants to offer any price signal to consumers about this. A signal by businesses that credit transactions cost more to process is also far simpler for consumers that are sensitive to surcharges to receive and act upon, if it were consistent across the market. This signal may also be more in line with what consumers expect.[21]

### A cap for credit card surcharges

We recommend that a credit card surcharge cap should be introduced and include a hard cap in real dollar terms, as well as a transaction value percentage limit.

> "Being surcharged many tens of dollars on a large purchase is an unpleasant experience."[22]

It is extremely difficult to see the justification for processing a high value transaction (such as a payment for flights) costing significantly more than a low value one when the fundamental service provided is substantially the same. While there may be some increased risk for the bank to front up the cash for a high value transaction paid by credit, it is not clear to us why the business or the consumer should pay for this through a surcharge. There are many other aspects of the credit card business model that accounts for the cost of this risk, such as the interest rates charged when someone does not pay off their debt.

> "Paying large sums of money by card (e.g. holiday,) has a large fee of over a hundred dollars.  The actual cost of the transaction will be much less than the fee charged. The fee should be the actual cost only."[23]

### Recommendation 3

The RBA should introduce a hard cap on the maximum amount a merchant can charge a consumer for a credit card surcharge. The cap should set a limit both in real dollar terms (regardless of transaction size) and in percentage terms.

### Defining cost of acceptance

We would also support tightening the definition of the cost of acceptance as proposed in the Issues Paper. While this may lead to more complex surcharging rules, it should in time lead to a simpler and more reasonable understanding of what 'processing a payment' actually involves.

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[21] CHOICE Consumer Pulse September 2024, see above n 1 and 15.
[22] Quotes taken from CHOICE Bank card supporter survey, above n 6.
[23] Ibid.

Some acquirers currently offer a range of different payment processing rates that vary significantly in fees charged based on factors separate to payment processing. One example is where businesses can opt to pay a higher percentage based fee per payment to receive frequent flyer points for every dollar put through the terminal.[24] Such an arrangement is certainly not in the spirit of the existing surcharging regime, particularly if that entire processing fee is being passed on via a surcharge.

For any kind of surcharge to achieve its intended purpose it needs to be linked to the real costs that are impacted by consumer choice of payment. If the RBA does not ban debit card surcharges, a tightened definition of cost of acceptance should also apply to debit surcharges.

**Recommendation 4**
The RBA should tighten the definition of what may be recouped by a surcharge as part of the cost of acceptance of a card payment.

## Interchange fees

1. **Is there a case for lowering the level of interchange benchmarks or caps? Should the difference between the interchange fees paid by big and small businesses be limited in some way?**

### Review and reduce caps on interchange fees

We support lowering the level of interchange benchmarks and caps to at least the same as the lowest level in any comparable developed payments market. We see no reason why credit card interchange fees should be any higher than those rates set in Europe, where a 0.3% cap appears to be sustainable. The RBA should also engage with the New Zealand Commerce Commission in light of its review of interchange fees.[25] If the Commerce Commission considers a justification for even lower interchange fees there, we should also consider this move.

Through this review, the onus should be on the payment firms charging interchange fees to provide evidence to support their need and value. We would support the RBA reconsidering the need and justification for interchange fees on established card networks, in line with the assessments made by the Black Economy Taskforce[26] and the Productivity Commission.[27]

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[24] See for example, https://livepayments.com/pricing/in-store
[25] Commerce Commission (2024), 'Retail Payment System: Costs to Businesses and Consumers of Card Payments in Aotearoa New Zealand', Consultation Paper, July
[26] Black Economy Taskforce (2017), 'Final Report', Commonwealth Treasury, October, available at: https://treasury.gov.au/sites/default/files/2019-03/Black-Economy-Taskforce_Final-Report.pdf
[27] Productivity Commission (2018), 'Competition in the Australian financial system inquiry report, August, available at: https://www.pc.gov.au/inquiries/completed/financial-system/report

We also agree with the suggestion in the Issues Paper that there should be a reassessment of whether funding credit card interest-free periods are a valid consideration in setting interchange caps. Credit cards are already a lucrative business model for issuers due to high fees and interest rates. Extra fees via surcharges further complicate the model, and can make it harder for consumers to properly assess the upfront value of signing up for a credit card.

## Better empower small businesses on interchange fees

We would also welcome any action the RBA can take to improve the bargaining power of small businesses to obtain lower costs of card acceptance. We seriously doubt that economies of scale justify the dramatic difference in the interchange fees and overall merchant fees charged to large and strategic mechants compared with small businesses. Cross-subsidisation of large businesses by small businesses is very likely occuring, which is another harmful trend for competition that should justify intervention. For this reason we support in-principle the proposal in the Issues Paper to introduce a maximum difference between the highest and lowest interchange rates on a network.

We also agree a lower small business interchange cap like that recently introduced in Canada is worthy of consideration.[28] However, Canada's experience indicates this alone may not be sufficient - despite the saving, it is not clear all acquirers are going to pass this saving onto merchants,[29] and in fact Stripe has specifically stated that it will not.[30] The RBA should be wary of this and consider what further interventions may force acquirers to deliver savings to merchants.

2. **Should interchange regulation be extended to foreign card transactions in Australia?**

We agree that the time has come to introduce a cap on interchange fees for foreign card transactions in Australia, particularly if it is likely that blended acquirer rates will continue to exist after the review recommendations are implemented. Australian merchants and card users should not be subsidising high fees that go offshore to international businesses.

### Recommendation 5

The RBA should develop an interchange fee cap regime for foreign issued cards.

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[28] https://www.canada.ca/en/innovation-science-economic-development/news/2023/12/government-of-canada-announces-finalized-agreements-with-visa-and-mastercard-to-lower-credit-card-transaction-fees-for-small-businesses.html

[29] See: https://www.cfib-fcei.ca/en/media/lower-visa-and-mastercard-fees-for-small-business-start-this-week-but-stripe-plans-to-ignore-ottawa-and-keep-the-savings-for-itself

[30] See: https://support.stripe.com/questions/2024-pricing-update-for-canadian-businesses

3. **Is there a case for reducing the complexity, and/or enhancing the transparency, of interchange fees? If so, how?**

We would support any intervention by the RBA aimed at simplifying and improving transparency around interchange fees. Complexity and opacity harm competition because it becomes difficult for merchants to compare options. This is a trend the RBA should be concerned about, and should consider interventions to help restore hopes for small merchants to meaningfully at least compare options in the market.

### Recommendation 6

The RBA should seek to increase downward pressure on interchange fees, and seek to intervene in the market to specifically improve the interchange fee rates available to small businesses.

## Scheme fees

4. **Is there a case for further transparency of scheme fees to promote efficiency and competition? If so, what additional information would be beneficial?**
5. **Is there a case for regulatory action to reduce the complexity or growth of scheme fees? If so, what form should this take?**
6. **What other regulatory action should the RBA consider to increase the competitive pressure on scheme fees?**

As with interchange fees, we firmly support any interventions the RBA can make to improve transparency and reduce complexity of scheme fees. Any kind of limit on surcharging may also increase the need for substantial interventions on scheme fees, to reduce the risk of essential card networks gouging businesses. As mentioned above, it appears that scheme fees have risen considerably in the UK since surcharging was banned.[31] This very much looks like it is the product of the Visa and MasterCard duopoly exploiting their market power, and is something we should be wary of in Australia.

We would also support the RBA working towards establishing caps on scheme fees as it does interchange fees, to prevent price gouging and simplify the market. When dealing with an extremely concentrated market, significant interventions are necessary to ensure big businesses play fair. We are not experts in scheme fees, but the description of their complexity sounds like a very clear example of large businesses adding complexity to market pricing to exert greater control over their interests. Increased pricing complexity occurs in many consumer markets and evidence suggests that big businesses do this to increase their bargaining power and inflate prices.[32]

[31] British Retail Consortium (2024), ‘Payments survey’, page 14.
[32] See for example: Bruce Carlin (2009), ‘Strategic price complexity in retail financial markets’, *Journal of Financial Economics, Volume 91, Issue 3,* March, pages 278-287;

**Recommendation 7**
The RBA should seek to increase downward pressure on scheme fees, and intervene in the market to simplify scheme fees or cap their overall costs.

## Least cost routing

7. **How do stakeholders assess the functioning and effectiveness to date of LCR for in-person transactions? Is further regulatory intervention needed? What might that look like?**

### LCR is only a partial solution

CHOICE and other consumer groups have previously supported the rollout of least cost routing (**LCR**), provided that:[33]

- consumer protections are substantially the same on the different payment networks (discussed further below); and
- consumers retain a way to override the network selected by LCR, if desired.

However, the problems with card surcharging and merchant fees are now too great to be solved by the application of LCR alone. The Issues Paper correctly points out that the benefits of LCR are substantially lost to merchants and consumers where a single blended card processing rate is being agreed between merchants and acquirers. We seriously doubt that acquirers are offering small businesses that have LCR enabled a better deal if over time their customers are using DNDCs and LCR is leading to wholesale cost savings.

Unless other interventions are made to ensure a more direct link exists between merchant card processing costs and wholesale costs, the benefits of LCR are limited.

#### Ensuring chargeback rights are substantially similar

One important consumer right the card schemes provide is chargebacks. As each card scheme writes its own rules for chargebacks, we understand differences do exist. Recently we have been told by various payment industry representatives that the eftpos chargeback rules may be slightly weaker than those offered by Visa and MasterCard. Due to the complexity of the various rules, it is difficult to verify this.

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Kenan Kalayci (2015), 'Price complexity and buyer confusion in markets', *Journal of Economic Behavior and Organization*, *Volume 111,* March, pages 154-168.
[33] See our submission to the RBA's 2019-20 Review of Retail Payments Regulation, available at: https://www.rba.gov.au/payments-and-infrastructure/submissions/review-of-retail-payments-regulation/index.html

As the stated grounds on which a consumer can raise a chargeback under the eftpos Technical, Operational and Security Rules[34] look to largely cover the most common situations we know consumers use chargebacks for, we do not have existing major concerns on this issue. However, if continuing to encourage LCR, we urge the RBA to ensure that consumer rights under eftpos, Visa and Mastercard are substantially similar.

**Recommendation 8**

The RBA should continue to encourage adoption of least cost routing, but should take steps to ensure that:

- savings from LCR are actually passed onto merchants; and
- transactions are not automatically routed to networks that offer substantially weaker consumer protections.

## Merchant fee transparency

8. **Is there a case for greater transparency of fees, wholesale costs and market shares for some payment services? If so, what form should this take? What benefits or drawbacks might arise from implementing any of these measures?**
9. **Should PSPs be required to provide individual merchants more detailed information on their regular statements (or through other channels)? How could this information be presented without creating additional complexity for merchants?**
10. **Should PSPs be required to publish standardised information on their pricing and services for merchants (in line with reforms introduced in the United Kingdom)?**

As with scheme and interchange fees, we support increased simplification and transparency in the acquirer fee market. We understand that acquirer costs and margins account for the majority of merchant card processing costs, so it remains the obvious blackspot in the market. It is also the market that has seen most new entrants. While extra competition is a good thing, it is likely also a sign that those new entrants identified it as a market where profits could be made.

Interventions, whether aimed at publishing information broadly, or providing more information on merchant statements, should be aimed at providing merchants with key information that would help them easily identify when they could get a better deal elsewhere.

## Other options

**14. Are there any other regulatory actions that the RBA should consider taking in response to the issues raised in this paper?**

[34] eftpos Technical, Operational and Security Rules, version 2.22, effective 22 October 2024, see section 7.1.1.1

### Encourage governments to review the taxi exemption from surcharge rules

The taxi industry has been excluded from the RBA and ACCC's otherwise market-wide surcharge rules. Instead, permitted surcharges for the taxi industry are set under state law by state regulators. Generally, permitted surcharges for taxis range from between 4-6%, depending on the state.[35] This is significantly higher than the vast majority of surcharges in other industries.

While there may have previously been some reasons for this difference, we no longer believe that there is a strong case to justify the different treatment for taxis. While we understand it is beyond the RBA's powers to change this, we urge the RBA to recommend that Commonwealth and State Governments revisit this exemption and consider whether it is still appropriate.

We expect that if significant limits were placed on surcharges as a result of this review, the exorbitant surcharges that taxis are currently allowed to impose upon customers would become a significant, concentrated source of consumer frustration - and justifiably so.

#### Recommendation 9

The RBA should encourage governments to reassess whether there is any legitimate justification for the taxi industry being excluded from our national surcharging laws, and consider removing this exemption.

### Prepare to address mobile wallets, BNPL and AMEX

We understand that without the reforms proposed to the *Payment Systems (Regulation) Act 1998* currently before Parliament,[36] the RBA has determined it does not have the regulatory remit to impose regulation upon mobile wallet providers, buy now, pay later products or 'three-party' card schemes, such as American Express. We urge the RBA to do everything it can to prepare to swiftly establish rules to apply to all these sectors once those reforms do pass.

Three-party cards that operate largely in the same way as credit cards should be subject to the same limits on interchange fees, and any other protections regarding scheme fees that the RBA introduces. We understand that while cards like American Express and Diners Club are now difficult for merchants to refuse, accepting them comes with significant costs.

The need for regulation of big-tech mobile wallet providers is also quite apparent now. Fees those providers charge add frustrating costs to the payment system that eventually make their way to merchants and consumers.

[35] For example it is currently set at 4% in Victoria by the Essential Services Commission: https://www.esc.vic.gov.au/transport/commercial-passenger-vehicles/unbooked-taxi-fares-and-non-cash-payment-surcharge-review-2024, and at 5% in New South Wales under powers from the *Point to Point Transport (Taxi and Hire Vehicles) Act 2016.*

[36] https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7133