

Payment Systems (Regulation) Regulations 2003 2003 No. 110

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 110

Issued by the Treasurer

Payment Systems (Regulation) Act 1998

Payment Systems (Regulation) Regulations 2003

Section 32 of the *Payment Systems (Regulation) Act 1998* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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.

Subsection 18(1) of the Act provides that the RBA may determine standards to be complied with by participants in a designated payments system. On 26 August 2002, the RBA determined a standard on the setting of wholesale "interchange" fees for participants in credit card schemes. The standard is expressed to come 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.

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

The purpose of the regulation is to eliminate the overlap between the TPA and the standard by specifically authorising, for the purpose of subparagraph 51(1)(a)(ii) of the TPA, the setting and charging of credit card interchange fees by participants of these schemes in accordance with the standard.

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

Details of the Regulations are set out in the Attachment.

The Office of Regulation Review has advised that no Regulation Impact Statement is required in relation to the Regulations as one was prepared for the package of reforms in relation to credit cards released by the RBA on 27 August 2002.

The regulations will commence on 1 July 2003.

ATTACHMENT

Summary of Regulations: *Payment Systems (Regulation) Regulations 2003*

Regulation 1: The title of the regulations is the *Payment Systems (Regulation) Regulations 2003*.

Regulation 2: The regulations will commence on 1 July 2003. This is immediately after the Reserve Bank of Australia's (RBA) Standard No. 1, entitled the Setting of Wholesale ("Interchange") Fees, comes into force, on 1 July 2003.

Regulation 3: The regulation provides two definitions. The first is the definition of the RBA Standard No. 1, entitled the Setting of Wholesale ("Interchange") Fees. The second definition limits references to Standard No. 1 to the standard in existence immediately before the regulations commenced.

Regulation 4: This regulation authorises conduct for the setting and charging of credit card interchange fees for the purposes of sub-paragraph 51(1)(a)(ii) of the *Trade Practices Act 1974* (TPA). It applies to conduct of participants in credit card schemes designated by the Reserve Bank on 12 April 2001 in compliance with Standard No. 1. This authorisation ensures that such conduct is exempt from Part IV of the *Trade Practices Act 1974*.