

## *Payment Systems (Regulation) Act 1998*

## Variation to Standards Relating to Merchant Surcharging: Explanatory Statement

### Background to the June 2012 Variation

This variation to Standards relating to merchant surcharging allows the designated credit card and Visa Debit systems to limit merchant surcharges to the reasonable cost of card acceptance.

In 2003, the Reserve Bank of Australia (the Bank) began implementing reforms to the debit and credit card systems in Australia. As part of these reforms, a number of restrictions that had been placed on merchants by the international card schemes were removed. One such restriction was the ‘no-surcharge’ rule, which prevented merchants from surcharging for transactions on international scheme cards. These rules had masked price signals to cardholders of the relative costs of different payment methods, and contributed to the subsidisation of credit card users by all other customers as merchants would build the costs of accepting card payments into the overall prices of their goods and services. The rules also limited the ability of merchants to put downward pressure on merchant service fees and interchange fees.

The Bank imposed standards requiring the removal of no-surcharge rules in the MasterCard and Visa credit card systems from 1 January 2003, and from the Visa Debit card system from 1 January 2007.[[1]](#footnote-1) The Standards allowed merchants to pass on to their customers the cost of accepting cards issued under those designated payment systems via a surcharge. The wording of the Standards provided merchants with the freedom to set surcharges without constraint. This reflected the Bank’s view at the time that this level of discretion for merchants was appropriate in light of an environment where surcharging was likely to develop slowly, given the expectation by cardholders – built up over many years – that surcharges would not apply. It was therefore considered unlikely that merchants at that time would use surcharging to recover significantly more than the cost of acceptance. Consistent with this environment, surcharging was initially slow to develop among merchants.

The benefits from the removal of the no-surcharge rules have been substantial, particularly in improving the price signals cardholders face when making payments and providing merchants the freedom to charge according to the means of payment. Nevertheless, in recent years, it has become apparent that merchants have increasingly been adopting a number of surcharging practices that have the potential to distort price signals and thereby reduce the effectiveness of the surcharging reforms. In particular, concern had been expressed to the Bank that in some cases surcharges appear to be well in excess of acceptance costs, and some merchants may be using surcharging as an additional means of generating revenue rather than simply covering the cost of card acceptance. There has also been an apparent increase in the use of ‘blended’ surcharging, where different cards are surcharged at the same rate despite significant differences in acceptance costs.

After considering available data and views expressed in consultation, the Bank came to the view that some limit on the level of surcharges could improve the effectiveness of the reforms at relatively little cost, particularly given that the practice of surcharging is now well established.

### Purpose and Effect

The purpose of the variation is to improve efficiency in the payments system by providing better price signals to cardholders about the relative costs of different payment methods. It is intended to help address surcharging practices that potentially compromise price signals – such as surcharging in excess of card acceptance costs – which appear to have become more widespread in recent years.

The variation relaxes the surcharging Standards by allowing for the rules of the designated credit card systems and the Visa Debit system (as well as their participants) to limit fees or surcharges imposed by a merchant to an amount that is the reasonable cost of acceptance, while continuing to ensure that neither the rules of the systems nor the participants of the systems are able to prohibit merchants from fully recovering the cost of accepting those cards. The merchant’s cost of acceptance is defined in the Standards to include, but is not necessarily limited to, the applicable merchant service fee or fees. The variation also provides that neither the rules of the systems nor the participants of the systems are able to prohibit a merchant from applying different surcharges for different card types either within a system or across card systems.

By allowing the designated credit card systems and the Visa Debit system to limit surcharges to the reasonable cost of card acceptance, the effect of the variation is to enable these systems to address cases where merchants are surcharging in excess of their reasonable card acceptance costs. At the same time, by continuing to allow merchants to fully pass on legitimate costs of accepting cards, the variation has the effect of helping to ensure that appropriate price signals can be given to consumers, and that there is proper market discipline in negotiations over card acceptance costs between acquirers and merchants. These effects are likely to enable surcharges to best reflect the costs of card acceptance faced by each individual merchant, leading to more efficient use of payment instruments by consumers. The varied Standards will take effect on 1 January 2013.

The rationale for the variation and views expressed during the consultation process are discussed in more detail in the documents listed below.

### Consultation

The Bank consulted extensively with interested parties on the review of card surcharging. The Bank invited submissions on two consultation documents – the first seeking views on the case to vary the surcharging Standards, and the second on a draft variation to the Standards – as well on a guidance note to assist in the interpretation of the Standards.

The first consultation document was released on 8 June 2011 and invited submissions from interested parties by 20 July 2011. After considering the views expressed during consultation, the second consultation document was published on 16 December 2011, and submissions invited by 10 February 2012.

A document detailing the final reforms was published on 12 June 2012. The draft of the Guidance Note was published at the same time, and submissions were invited from interested parties by 20 July 2012. Based on these views, a revised draft was published on 23 August 2012, with the Bank inviting submission from interested parties by 21 September 2012.

### Statement of Compatibility with Human Rights

For the purpose of the *Human Rights (Parliamentary Scrutiny) Act 2011*, section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to determinations and variations of standards under section 18 of the *Payment Systems (Regulation) Act 1998*.

### Documents

* Reserve Bank of Australia (RBA) (2011), *Review of Card Surcharging: A Consultation Document*, June.

Available at <http://www.rba.gov.au/publications/consultations/201106-review-card-surcharging/index.html>.

* RBA (2011), *A Variation to the Surcharging Standards: A Consultation Document*, December.

Available at <http://www.rba.gov.au/publications/consultations/201112-variation-surcharging-standards/index.html>.

* RBA (2012), *A Variation to the Surcharging Standards: Final Reforms and Regulation Impact Statement*, June.

Available at <http://www.rba.gov.au/payments-system/reforms/cards/201206-var-surcharging-stnds-fin-ref-ris/index.html>.

Reserve Bank of Australia

SYDNEY

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1. The American Express, Diners Club and Debit MasterCard systems each provided voluntary undertakings to remove their equivalent rules. [↑](#footnote-ref-1)