

THE SETTING OF INTERCHANGE FEES IN THE DESIGNATED CREDIT 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 credit 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 each of the following, each of which is referred to in this Standard as a **Scheme**:

- (a) the payment system operated within Australia known as the MasterCard system which was designated under the Act as a payment system on 12 April 2001 and which is referred to in this Standard as the **MasterCard System**;
- (b) the payment system operated within Australia known as the VISA system, which was designated under the Act as a payment system on 12 April 2001 and which is referred to in this Standard as the **VISA System**; and
- (c) the American Express Companion Card payment system operated within Australia, which was designated under the Act as a payment system on 15 October 2015 and which is referred to in this Standard as the **American Express Companion Card Scheme**.

2.3 In this Standard:

Above Benchmark Reference Period has the meaning given to it in clause 4.2;

Acquired includes accepted;

Acquirer means a participant in a Scheme in Australia that:

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

Benefit means a payment, receipt, rebate, refund, allowance, discount or deduction or a benefit (however named or described) of a similar nature to any of them;

Commencement Date means 1 July 2017;

Credit Card Account means in relation to a Credit Card of a Scheme the account that is debited when that Device is used to purchase goods or services on credit;

Credit Card of a Scheme or **Credit Card of that Scheme** means, in relation to a Scheme, a Device issued by a participant in the Scheme in Australia under the Rules of the Scheme that can be used for purchasing goods or services on credit;

Credit Card Transaction means, in relation to a Scheme, a transaction in that Scheme between a holder of a Credit Card of that Scheme and a Merchant involving the purchase of goods or services using a Credit 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 or other embodiment is issued and a code or device used or to be used for only one transaction;

Interchange Fee Category has the meaning given to it in clause 4.1(b);

Interchange Fees means:

- (a) for each of the VISA System and the MasterCard System, wholesale fees, known as interchange fees, which are payable between an Issuer and an Acquirer, directly or indirectly, in relation to Credit Card Transactions in the Scheme; and
- (b) for the American Express Companion Card Scheme, wholesale fees, known as issuer fees or issuer rates, which are payable, directly or indirectly, between an Issuer which is a participant in the Scheme in Australia and the Acquirer or an administrator of the Scheme in Australia, or any Related Body Corporate of either of them, and any other Credit Card Transaction based payments which are functionally equivalent to such issuer fees or issuer rates or to the fees described in paragraph (a) above;

Issuer means a participant in a Scheme in Australia that issues Credit Cards of a Scheme to its customers;

Issuer Payments has the meaning given to it in clause 5.2;

Issuer Receipts has the meaning given to it in clause 5.2;

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

Multilateral Interchange Fee means, in relation to a Scheme, an Interchange Fee that is determined by an administrator of the Scheme and applies regardless of the identity of the Acquirer or Issuer paying or receiving the Interchange Fee;

Net Compensation has the meaning given to it in clause 5.1;

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

Reference Period means a 12 month period ending on the last day of a Quarter;

Registration Date means the date on which this Standard is registered in the Federal Register of Legislation;

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

Relevant Portion has the meaning given to it in clause 5.2;

Reporting Period means, subject to clause 7.3, a 12 month period ending 30 June;

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

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 Each participant in a Scheme must do all things necessary on its part to ensure compliance with this Standard.
- 2.6 If any part of this Standard is invalid, this Standard is ineffective only to the extent of such part without invalidating the remaining parts of this Standard.
- 2.7 This Standard is to be interpreted:
- (a) in accordance with its objective; and
 - (b) by looking beyond form to substance.
- 2.8 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.
- 2.9 On the Commencement Date this Standard replaces *Standard No. 1, The Setting of Wholesale (Interchange) Fees in the Designated Credit Card Schemes* relating to each of the VISA System and MasterCard System. Neither the registration nor the terms of this Standard affect that standard before the Commencement Date.

3. Anti-Avoidance

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 but for this provision have achieved or could reasonably be considered to have achieved that purpose.

4. Interchange Fees

- 4.1 (a) An Interchange Fee (exclusive of goods and services tax) in relation to a Credit Card Transaction must not exceed 0.800 per cent of the value of the Credit Card Transaction to which it relates.
- (b) If an Interchange Fee applies in relation to a category of Credit Card Transactions (whether that category is determined by reference to the nature of the holder, or type, of the Credit 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:

- (i) a percentage of the value of the Credit Card Transaction to which it relates; or
- (ii) a fixed amount,

applying to all Credit Card Transactions in the category, and cannot be expressed as a range of rates or amounts.

4.2 If the total value of Interchange Fees (exclusive of goods and services tax) payable in relation to Credit Card Transactions undertaken in a Scheme during a Reference Period exceeds 0.500 per cent of the total value of those Credit Card Transactions:

- (a) that Reference Period will be an **Above Benchmark Reference Period**; and
- (b) the participants in that Scheme must take all necessary steps to vary the rates or amounts of Interchange Fees applicable under that Scheme, with effect no later than 2 months and 1 day after the end of the Above Benchmark Reference Period, to rates or amounts such that, had those varied rates or amounts applied under the Scheme during that Above Benchmark Reference Period, that Reference Period would not have been an Above Benchmark Reference Period.

4.3 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 Reference Period prior to the date of the change, that Reference Period would not have been an Above Benchmark Reference Period. Nothing in this clause 4.3 limits clause 4.2.

5. Net Payments to Issuers

5.1 No Issuer which is a participant in a Scheme may receive, directly or indirectly, Net Compensation in relation to Credit Card Transactions undertaken in that Scheme. **Net Compensation** is received by an Issuer if the Issuer Receipts of the Issuer for that Scheme over a Reporting Period exceed the Issuer Payments of the Issuer for that Scheme over that Reporting Period.

5.2 For the purpose of this clause 5 and subject to clause 7.3(d):

- (a) subject to paragraphs (c), (d) and (e), **Issuer Receipts** of the Issuer for a Scheme is the total of the Benefits received, directly or indirectly, by the Issuer in relation to Credit Cards of the Scheme or Credit Card Transactions undertaken in the Scheme that have a purpose or likely effect of promoting or incentivising the issuance or use of Credit Cards of the Scheme or of providing or funding incentives to holders of Credit Cards of the Scheme to use those cards, but excluding:
 - (i) Interchange Fees;
 - (ii) payments made by or on behalf of holders of Credit Cards of the Scheme (or holders of the related Credit Card Accounts) to:
 - (A) discharge a liability (whether then due and payable or not) to the Issuer that arose as a result of such a Device being held or used; or
 - (B) create a credit balance in the relevant Credit Card Account; and
 - (iii) any transaction to reverse a Credit Card Transaction or provide a credit or make a chargeback in relation to a Credit Card Transaction.

These Benefits include volume based and transaction specific Benefits such as:

- (i) marketing incentives;
 - (ii) Benefits 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 for a Scheme is the total amount of all Benefits paid, given or allowed, directly or indirectly, by the Issuer to or in favour of the administrator of the Scheme in Australia or an Acquirer in relation to Credit Cards of the Scheme or Credit Card Transactions undertaken in the Scheme (excluding Interchange Fees and the amount of the Credit Card Transactions paid by the Issuer to the Acquirer to settle obligations arising from the clearing of Credit Card Transactions). These Benefits include:
- (i) Scheme branding fees;
 - (ii) processing fees; and
 - (iii) assessment fees;
- (c) if a Benefit referred to in paragraph (a) or (b) does not relate solely to Credit Cards of the Scheme or Credit Card Transactions undertaken in the Scheme and also relates to other Devices or other transactions:
- (i) the Benefit must be apportioned between:
 - (A) the Credit Cards of the Scheme and Credit Card Transactions on the one hand; and
 - (B) 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 payment systems to which the Benefit relates and the proportion of the Devices to which the Benefit relates that are Credit Cards of the Scheme issued by the Issuer; and
 - (ii) the portion referable to Credit Cards of the Scheme and Credit Card Transactions determined in accordance with sub-paragraph (i) (the **Relevant Portion**) must be 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 Credit Card Transactions undertaken in the Scheme using Credit Cards of the 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 Benefit 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); and
- (e) where a Benefit referred to in paragraph (a), (b) or (c) relates to a period that spans more than one Reporting Period, the Benefit or, in the case of a Benefit referred to in paragraph (c), the Relevant Portion of the Benefit, 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 Benefit 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 under which the Benefit is payable, receivable or allowable 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 under which the Benefit is payable, receivable or allowable has ended; and
- (iii) it may not be allocated among more than 10 consecutive Reporting Periods.

6. Reporting and Transparency

- 6.1 An administrator of a Scheme in Australia or a representative of the participants in the Scheme in Australia must publish the Multilateral Interchange Fee rates or amounts (whichever is applicable) of the Scheme in Australia on the Scheme's website, including the rates or amounts for each Interchange Fee Category.
- 6.2 Each Acquirer and Issuer that is a party to an agreement with one or more other participants in a Scheme to pay or receive Interchange Fees in relation to Credit Card Transactions in the Scheme that are not Multilateral Interchange Fees must report to the Reserve Bank of Australia by 31 July each year the range of Interchange Fee rates or amounts (whichever is applicable) it received or paid in the most recent Reporting Period. The Reserve Bank of Australia may publish the reported range of these Interchange Fees for the Scheme on its website.
- 6.3 An administrator of a Scheme in Australia or a representative of the participants in the Scheme in Australia must on or before 31 July 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.
- 6.4 Each of an administrator of a Scheme in Australia and each Issuer who is a participant in the Scheme in Australia must on or before 31 July 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.
- 6.5 An administrator of a Scheme in Australia or a 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:
 - (a) the total value of Credit Card Transactions undertaken in the Scheme in that Quarter;
 - (b) the number of Credit 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 Credit Card Transactions undertaken in the Scheme during that Quarter;
 - (d) the total value of Interchange Fees (exclusive of goods and services tax) payable in respect of Credit Card Transactions undertaken in the Scheme during the Quarter divided by the total value of the Credit Card Transactions undertaken in the Scheme during the Quarter; and
 - (e) 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 (whichever is applicable) 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 Credit Card Transactions undertaken in the Scheme in that Quarter in that category.

7. Commencement and Implementation

- 7.1 This Standard comes into force on the Commencement Date, but certain provisions in it have a transitional application as set out in this clause 7.
- 7.2 Determination of whether there is an Above Benchmark Reference Period must be made Quarterly in accordance with clause 4.2 from the Commencement Date irrespective of whether the relevant Reference Period commenced before or after the Commencement Date. This means that the first determination under clause 4.2 must be made after the Commencement Date in relation to the Reference Period ending 30 June 2017, even though that Reference Period commenced before the Commencement Date.
- 7.3 For the purposes only of:
- (a) clause 5; and
 - (b) clause 6.4 and clause 7.4 as it relates to clause 6.4:
the:
 - (c) first Reporting Period will be the period from the Registration Date to 30 June 2018; and
 - (d) Net Compensation in relation to an Issuer and a Scheme is to be calculated for that first Reporting Period using only the Issuer Receipts of the Issuer and the Issuer Payments of the Issuer over that first Reporting Period that directly or indirectly relate to issue or use of Credit Cards of the Scheme, or Credit Card Transactions in the Scheme, on or after the Commencement Date.
- 7.4 The first reports and certifications under clauses 6.2, 6.3 and 6.4 must be made by 31 July 2018 in respect of the Reporting Period ending on 30 June 2018.