



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

17 December 2024  
Head of Payments Policy Department  
Reserve Bank of Australia  
via email: [pysubmissions@rba.gov.au](mailto:pysubmissions@rba.gov.au)

Dear Sir/Madam,

### **Merchant Card Payment Costs and Surcharging Issues Paper October 2024**

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to comment on the Reserve Bank of Australia's Merchant Card Payment Costs and Surcharging issues paper, which is the first phase of the review of retail payments regulation that the RBA is conducting to ensure its regulations remain fit for purpose. The themes in this submission reiterate many of the key points raised in my meeting with the RBA's Payments Policy leads, Ellis Connolly and Troy Gill on 19 August 2024.

#### **Small businesses are struggling**

Small businesses are the engine room of the Australian economy but, like consumers, they are suffering from the impact of inflation, high interest rates and cost of living pressure. In this challenging economic environment, and with small businesses reporting that cash flow and the cost of doing business is their biggest concern, any increase in business costs such as merchant card fees will have a significant impact.<sup>1</sup>

The ASBFEO Small Business Pulse – a health check of objective vital signs for small business – shows that the business environment in November 2024 remains well below the long-term average. The ASBFEO Pulse dropped 0.1% in November 2024 – the ninth consecutive fall. Over the past 12 months it has fallen 1.4%.<sup>2</sup> Small businesses are experiencing high business expenses, high cost of finance, and business insolvencies continue to rise.

As the issues paper notes, Australians are increasingly using cards – debit and credit – instead of cash to make purchases. While consumers benefit from the convenience and security of using this form of payment, businesses pay the price by way of merchant service fees imposed on businesses by payment services providers.

Small businesses pay around three times the average per-transaction fee as large merchants, which can be more than 2 per cent of the transaction value.<sup>3</sup> The combination of complex, opaque fee structures and a lack of bargaining power means small businesses are not in a position to negotiate better fee deals in the same way as large businesses, resulting in them paying more.

In 2023, the ASBFEO undertook a research project with the objective of developing policy solutions to reduce transaction costs for small businesses and family enterprises.<sup>4</sup> Since then, payment-system participants, product offerings and consumer preferences of payment method have

<sup>1</sup> Australian Financial Review. *Cashflow concern for small business*, 6 December 2024

<sup>2</sup> ASBFEO, *ASBFEO Small Business Pulse*, November 2024.

<sup>3</sup> Reserve Bank of Australia, *Merchant Card Payment Costs and Surcharging Issues Paper*, October 2024, p4

<sup>4</sup> Australian Small Business and Family Enterprises Ombudsman, *Reducing Small Business Merchant Fees via Least-Cost Routing*, November 2023.



continued to evolve. The combination of increasing use of mobile wallets, growth in online spending and falling volumes of cash payments are applying upward pressure on merchant payment costs.

Our research highlighted:

- low merchant and consumer awareness of how card payments are facilitated
- a large opportunity cost for small business (\$800 million per annum)
- inconsistent use of payments terminology between government and the banking sector
- poor transparency of merchant fee structures
- inconsistent application of surcharging rules for merchants to recover the cover the cost of consumers' chosen payment method
- multiple government reviews and inquiries have recommended that the Payments System Board should take regulatory action to progress the implementation of least-cost routing.

### **Merchant surcharging is increasing as costs rise**

Surcharging regulations allow businesses to apply a surcharge to recover the reasonable costs of merchant service fees. The ACCC has powers to take action against merchant surcharging that exceeds the merchant's cost of card acceptance. Surcharging is increasing as a result of the shift away from cash payments and increasing fees by payment services providers. Single-rate or bundled payment plans – marketed to small businesses as 'free' – charge a higher percentage fee for all card payments meaning debit cards attract the same fees as credit cards.

The issues paper acknowledges that there is public concern about surcharges increasing and being harder to avoid through, for example, using a debit card. There is also concern that some merchants may be charging excessive surcharges.

The ACCC has powers under the *Competition and Consumer Act 2010* (Cth) to investigate and take enforcement action against a merchant who engages in excessive surcharging; that is, charging a higher amount than it costs the merchant to use any particular card payment type.

However, there is limited enforcement in practice. The issues paper notes that the large number and small size of many merchants makes enforcement challenging for the relevant competition authorities.

The ASBFEO welcomes the Australian Government's announcement in October of \$21 million of new funding for ACCC to tackle excessive surcharging and to work to reduce payment fees. The government also signalled its intention to ban debit card surcharging and the RBA is considering this as an option.

The ASBFEO does not support the proposed ban as it does not address the underlying issues. Such a move would punish small businesses who are unable to reduce the fees they pay to payment services providers and would lead to higher prices as businesses seek to recover their costs in other ways. This would have a detrimental effect on consumers and would defeat the purpose of the reform.

The ASBFEO instead supports other reforms to put downward pressure on merchant card fees. A reduction in fees payable by small businesses would lead to a reduction in surcharging, owing to their inability to surcharge more than is necessary to recover the cost of merchant fees. This could



be achieved through greater regulation of interchange and scheme fees, more transparent fee structures to allow comparisons and promote competition, mandating least-cost routing and unbundled fee structures as the default setting for new contract arrangements.

**Recommendation 1: The government should not ban surcharging on any card or payment method until the imbalance in merchant fees charged to small businesses is addressed.**

### **Least-cost routing**

Most debit cards are dual-network debit cards, which allow domestic payments to be processed via either eftpos or one of the international debit networks. Contactless payments generally default to the international networks, which are typically more expensive for merchants. Least-cost routing gives merchants the ability to override the default network and route dual-network debit-card transactions via whichever of the two networks on the card costs them less to accept.

Default payment routing settings in the payments system are currently unregulated; however, the RBA has been strongly encouraging least-cost routing since 2017. Progress has been slow with online transactions in particular lagging behind. Furthermore, it is likely that payment services providers who have adopted least-cost routing are not passing on savings costs to merchants.

Given rapid advancements in payment technology and payment provider types, the ASBFEO recommends that the setting of a default routing network on dual-network debit cards be prohibited at issuance. It is essential that government policies enforce merchant choice of routing or least-cost routing for all payment-form factors so that small business merchants pay the least-cost merchant fees.

The issues paper notes the share of merchants with least-cost routing enabled had increased to 70% by June 2024, and is expected to reach 80% by December 2024 (with a residual of 5% to 10% likely to never enable least-cost routing for valid reasons). In contrast, the enablement of least-cost routing for online transactions is at an earlier stage of progress. The RBA has suggested it is satisfied that the adoption of least-cost routing for in-person transactions is widespread enough that a mandate is not necessary. However, the Bank is considering whether further regulatory intervention is necessary for online transactions given the slow rate of take-up.<sup>5</sup>

The ASBFEO recommends the RBA mandate least-cost routing for transactions across all form factors, including in-person, online, buy now pay later and digital wallets. ASBFEO is of the view that self-regulation for in-person transactions is not sufficient, particularly considering it is unclear that LCR cost savings are being passed on by acquirers to merchants. The paper notes that the RBA is only aware of one PSP offering dynamic LCR, suggesting LCR is being adopted to benefit PSPs rather than small businesses.

We acknowledge that the RBA consultation relates only to card payments at this time, and note that there is uncertainty whether payment gateways and mobile wallet providers come within the scope of the current Payment Systems (Regulation) Act 1998 (PSRA). However, like other stakeholders, we urge the RBA to extend mandatory least-cost routing to all payment types after

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<sup>5</sup> Michele Bullock, Governor, Reserve Bank of Australia, Senate Economics Legislation Committee Estimates, 7 November 2024, Proof Committee Hansard, p 22.



the amendments to the PSRA are introduced. This is critical given the rapid increase in such payment methods and the low uptake of least-cost routing by those providers.<sup>6</sup>

A broad mandating would increase the number of merchants gaining access to least-cost routing under a fixed-plan structure and therefore increase the number of merchants paying the lowest possible merchant fees, specifically by:

- mandating unbundled fee structures as the default setting for new contract arrangements
- mandating that fixed or bundled plans are opt-out rather than opt-in
- providing merchants with appropriate examples of each fee structure to inform a decision about the most appropriate fee structure for their business.

**Recommendation 2: The government should expand the Payment Systems (Regulation) Act 1998 to give the RBA sufficient regulatory capacity to mandate least-cost routing for transactions across all form factors, including in-person, online, buy now pay later and digital wallets.**

#### **Merchant fees are complex and opaque**

As noted above, there is a lack of awareness and knowledge of fees which is exacerbated by a lack of transparency which hinders merchants' ability to compare competing offerings. The use of bundled packages prevents them from having visibility of the true cost of electronic transactions.

The ASBFEO agrees with other stakeholders, including the Australian Chamber of Commerce and Industry (ACCI), the Australian Retailers Association (ARA), and the Australasian Convenience and Petroleum Marketers Association (ACAPMA), that reform is needed to increase transparency and reduce complexity of merchant card fees. ACCI recommends card networks be required to publish data on interchange and scheme fees and to provide reports to merchants on their specific incurred fees. Data should be published in a useable way and updated regularly to drive competition across the payments system. The ARA recommends mandatory publication of scheme fee data and standardised reporting formats to allow merchants to better understand and compare costs across payment systems.

ACAPMA proposes a public reporting system along the lines of the Terminal Gate Prices publishing requirement imposed on the fuel industry. The three components that comprise the cost of a transaction – interchange fee, scheme fee and acquirer fee – should be provided to the market on a weekly basis as benchmarks. Mention

The ASBFEO would like to add its voice to those of other stakeholders in advocating for reforms to reduce the complexity and enhance the transparency of interchange and scheme fees. This could be achieved by requiring payment services providers to provide a breakdown of fee costs to the RBA or ACCC for publication. These costs should also be provided to merchants on merchant fee contracts to allow for comparison.

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<sup>6</sup> Independent Payments Forum Australia, Plan to cut \$3 billion from card fees and reduce surcharging – IPF, media release, 2 December 2024; Australian Chamber of Commerce and Industry, Merchant Card Payment Costs and Surcharging submission, December 2024; Australian Retail Association, Merchant Card Payment Costs and Surcharging submission, December 2024; Australasian Convenience and Petroleum Marketers Association, Merchant Card Payment Costs and Surcharging submission, December 2024



The issues paper references a measure recently introduced in the UK Australia to improve transparency and competition in the card acquiring market. PSPs are required to provide merchants with a summary box containing key price and non-price information and an online quotation tool on their website to allow merchants to compare providers. The ASBFEO is of the view that a similar reform should be introduced in Australia.

**Recommendation 3: The Australian Government should require payment services providers to provide a breakdown of fees to the RBA or the ACCC for publication to allow merchants to compare prices. Providers should also be required to provide a breakdown of fees, charges and services on merchant fee contracts.**

The RBA should consider emulating the British approach of requiring payment service providers to provide merchants with a summary box containing key price and non-price information and to provide an online quotation tool on their website.

**Recommendation 4: The RBA explore with the ACCC the extent to which existing regulatory mechanisms (outside the RBA's confirmed powers) could be deployed achieve a more transparent and competitive payments system and fees linked to actual costs.**

In the absence of the legislative reforms intended to clarify powers and enhance regulatory tools available to the RBA to support its stewardship of the payments system, the RBA should collaborate with the ACCC in exploring the extent of existing powers under the *Competition and Consumer Act 2010* (Cth) may be helpful in pursuing the policy objectives.

Mechanisms that require fees to be based on actual costs; ban excessive surcharging; prohibit false and misleading representations about surcharges applying for card use when in fact other services have been bundled; transparency obligations around the basis of charges; and a duty to display a surcharge-included cost where there is no payment options that does not involve a surcharge, all currently exist and have been enforced by the ACCC. Examining in collaboration with the ACCC the extent to which existing powers under the *Competition and Consumer Act 2010* (Cth) could be deployed would support RBA payments systems reform and improved conduct objectives in the absence of legislative reforms, given the limited impact of the RBA imploring payment system providers to improve transparency, practices and conduct.

If you require any further information, or have any questions regarding our submission, please email the ASBFEO Policy and Advocacy team at [advocacy@asbfeo.gov.au](mailto:advocacy@asbfeo.gov.au)

Yours sincerely

**The Hon Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman