



4 April 2019

Dr Tony Richards
Head of Payments Policy Department
Reserve Bank of Australia
GPO Box 3947
SYDNEY NSW 2001

Dear Dr Richards

RESPONSE TO INVITATION FOR SUBMISSIONS (THE OPERATION OF THE INTERCHANGE STANDARDS: CONSULTATION PAPER)

We refer to the document *The Operation of the Interchange Standards: Consultation Paper* issued by the RBA in February 2019 (the **Consultation Paper**).

We welcome the opportunity to provide a submission in respect of the Consultation Paper.

Unless indicated otherwise in this submission, a reference to a section in a Standard (in their original or proposed amended form) is a reference to the equivalent clause in both of the two Standards in question.

Capitalised terms in these submissions have the meaning given to them in the proposed amendments to the Standards, unless they are given another meaning in these submissions. We will follow the RBA's approach of referring to 'Direct Issuer Participant Payments' as 'Issuer Payments' and 'Direct Issuer Participant Receipts' as 'Issuer Receipts', for the sake of easy comparison between the current and proposed revised versions of the Standards.

Proposals 1, 3, 6 and 7

We support Proposals 1, 3, 6 and 7 and the manner in which they are proposed to be implemented in the revised Standards.

Proposal 2 (Issuer Payments and Core Services)

The Consultation Paper proposes introducing 'Core Services' as a defined term, which itself would feed into the meaning of Issuer Payments.

We have the following comments and suggestions regarding this new definition:

- Our view is that the definition of Issuer Payments in the current Standard is fit-for-purpose. The only confusion was an assertion by one third party that payments for loyalty services could be included.

- The proposed definition of Core Services seems to introduce undue complexity to the existing concept of Issuer Payments, which was broadly interpreted as the scheme fees that are periodically billed to all issuers by the schemes. Under the proposed definition of Core Services, it is not clear that this would continue.
- Given the intent of this consultation is to clarify rather than change the Standard, a better approach may be to expand on the existing paragraph 5.2(b) to include a broader set of scheme fees and explicitly exclude, by way of example, loyalty services provided by a scheme operator or its associated entities. We also note the Anti-Avoidance provision.
- If RBA is still of a mind to re-define Issuer Payments, our view is that this should be out of scope for this consultation and should be covered in a broader review.

Further, the proposed amendments in respect of 'Core Services' may make issuers overly reliant on scheme administrators for their own compliance:

- Under the proposed amendments, issuers will be reliant on scheme administrators to provide adequate written confirmation as to whether a service meets the 'global provision test' in order for it to be a 'Core Service' (although note our submission above that the definition is not warranted). On the face of the Standards, there is nothing compelling scheme administrators to provide that confirmation at all, let alone in any complete or accurate way.
- If the Standards are amended in such a way that issuers are required to rely on the provision of this sort of information by scheme administrators, the Standards should require them to provide that information in a timely, accessible (e.g., on their website if appropriate), complete and accurate way.

Proposals 4 and 5 (meaning of Issuer Receipts)

The Consultation Paper says "[a] key factor to consider under the proposed definition of [Issuer Receipts] is whether the source (or the ultimate funder) of the incentive is the administrator of a scheme or one of its associated entities". With this, the RBA appears to suggest that an incentive which has a source or ultimate funder *other than* the scheme administrator or an associated entity will tend not to be an issuer receipt. If that is correct, we agree that this is a desirable outcome.

However, it is not entirely apparent on the face of the proposed amendments to the Standards how this objective is borne out. We think the 'ultimate funder' concept should form an element of the Issuer Receipts definition. Alternatively, the definition should exclude flows to the extent that the source or ultimate funder is an entity other than the scheme administrator or an Associated Entity of it.

Without such an amendment, we are concerned that the revised definition will include flows which the RBA may not have intended to be captured. For instance, in the proposed amendments, a 'merchant funded reward' (even if genuinely funded by a merchant) may nonetheless constitute an Issuer Receipt if ultimately received by a Westpac cardholder through an Associated Entity of a scheme. That appears possible even where that entity's activities are unrelated to the scheme administrator's activities. In this instance, there seems to be no policy purpose served by that result.

Proposal 8 (transition arrangements)

We think the proposed transition arrangements are a sensible way of smoothing the impact of the changes proposed in the Consultation Paper, especially as they are contemplated to apply retrospectively. However, that view is subject to the matters raised in these submissions being resolved in a satisfactory manner.

GST

While this is not a matter proposed to be affected by the amendments in the Consultation Paper, it does appear that the Standards are silent on the question of whether any GST should be included in assessing the amount of Issuer Payments and Issuer Receipts. In our view, it should be expressly excluded.

The GST law contains mechanisms whereby a taxpayer's GST position in earlier tax periods can be revisited (e.g., through increasing or decreasing adjustments), whereas there is no analogy to that system in the Standards' compliance certification process. It may therefore be impractical for GST to factor into the Standards' compliance certification process.

In summary, we think the Standards would benefit from an express statement that all Issuer Payments and Issuer Receipts should be expressed as being exclusive of GST.

Please contact me on 0409 838 296 or at ccampbell@westpac.com.au if you would like to discuss any aspect of this letter, or require further information.

Yours faithfully,

Chris Campbell
Head of Payments Policy and Strategy
Westpac Banking Corporation