

# Review of the Regulatory Framework for the EFTPOS System: Consultation on Options for Reform

JUNE 2012

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ISBN 978-0-9872589-6-0 (Online)

# 1. Introduction

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The Payments System Board (the Board) announced in September 2011 that it would undertake a review of the regulatory framework for the EFTPOS system. The regulatory framework includes: the Designation of the EFTPOS system, *Designation No 2 of 2004*; the Standard, *The Setting of Interchange Fees in the EFTPOS System* (interchange fees Standard); and the *Access Regime for the EFTPOS System* (Access Regime). The industry's *EFTPOS Access Code* (Access Code) also plays an important role in determining the competitive environment for the system.

The review is necessary because of industry developments in recent years. In particular, much of the current regulatory framework was put in place prior to the establishment of the new management structure for the EFTPOS system under EFTPOS Payments Australia Limited (EPAL). The framework, therefore, did not anticipate the changed governance arrangements for the EFTPOS system or the possibility of a change in the structure of interchange fees. It also did not anticipate the move to new industry network arrangements under the Community of Interest Network (COIN). The aim of the review is, therefore, to ensure that regulation of the EFTPOS system continues to support competition and efficiency in the payments system as a whole, in light of the significant changes to the governance and architecture of the EFTPOS system.

This consultation paper has two aims. First, the paper discusses the new form of designation for the EFTPOS system. Based on the views expressed in consultation, the Board has concluded that the new form of designation should be narrow in scope, defining the EFTPOS system based on EPAL's Scheme Rules. It should be noted that this does not preclude debit card transactions occurring outside EPAL's Scheme Rules; it means that any rights or restrictions flowing from regulation under the *Payment Systems (Regulation) Act 1998* apply only to the system governed by EPAL. Second, the paper forms the basis for consultation on the options for the future regulatory framework for the EFTPOS system. In light of recent industry developments, the Board is seeking views on various issues, including whether and how the provisions of the existing Access Regime and interchange fees Standard should be incorporated into a new access regime and standard for the newly designated EFTPOS system. The Board is also seeking views on managing the transition to the new regulatory framework in a manner that takes account of the interests of all participants.

Section 2 of the paper provides background on the current regulatory framework for the EFTPOS system and explains the recent developments that have led to the current review. Section 3 discusses the views expressed in consultation on the new form of designation for the EFTPOS system and the Board's decision on a new designation. Sections 4 and 5 look at recent industry developments in terms of the continued need for an access regime and interchange fees standard for the EFTPOS system, present various options for reform and indicate the Board's preliminary views. Section 6 provides details of the next steps in the process.

## 2. Background

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### Development of the Current Regulatory Framework for the EFTPOS System

The current regulatory framework for the EFTPOS system was put in place by the Board to address concerns regarding: the nature of competition between the EFTPOS and scheme debit card systems; the effect of the difference in interchange fees in the two types of systems on efficiency in the payments system as a whole; and the difficulties faced by entrants seeking access to the EFTPOS system. These concerns were initially identified in the context of joint work undertaken by the Reserve Bank (the Bank) and the Australian Competition and Consumer Commission (ACCC).<sup>1</sup> This study found that the difference in interchange fees between scheme debit and EFTPOS (of up to \$1.15 on a \$100 transaction) did not reflect the underlying costs of each system, and was likely to distort consumers' choice of payment instruments in a way that was detrimental to the efficiency of the overall payments system.<sup>2</sup> It also found that bilateral negotiations over access disadvantaged smaller providers seeking entry to the EFTPOS system.

In response to these findings, and with encouragement from the Bank, the industry developed a proposal to set interchange fees in the EFTPOS system to zero and applied to the ACCC for authorisation for this arrangement. After the ACCC's initial authorisation was overturned on appeal, the Board came to the view that the prospect for further industry-based reform was limited and it designated the EFTPOS system in September 2004.

### Interchange Fees Standard

The interchange fees Standard for the EFTPOS system was imposed by the Bank in 2006. The Standard sets both a floor and a cap on bilateral interchange fees for EFTPOS transactions without a cash-out component. The floor and cap approach was taken because of the bilateral negotiations required to access the EFTPOS system. The Board's concern was that, without a cap and a floor, new entrants might not be able to negotiate interchange fees on as favourable terms as existing participants, which could be detrimental to competition and efficiency. The cap – currently \$0.05 paid to the acquirer – was set based on the cost to the acquirer of authorisation and processing of EFTPOS transactions. The floor is specified to be 80 per cent (currently \$0.04) of the cap paid to the acquirer. The introduction of the Standard resulted in a reduction in EFTPOS interchange fees of around \$0.15 per purchase transaction, from around \$0.20 paid to the acquirer prior to the reforms.

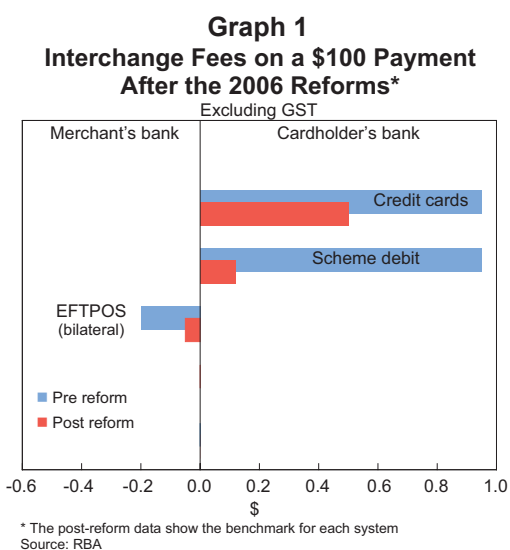
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1 Reserve Bank of Australia and Australian Competition and Consumer Commission (2000), *Debit and Credit Card Schemes in Australia: A Study of Interchange Fees and Access*, October. Available at <<http://www.rba.gov.au/payments-system/resources/publications/payments-au/interchg-fees-study.pdf>>.

2 This difference was between a \$0.95 interchange fee paid to the issuer for a \$100 scheme debit transaction, and an interchange fee of around \$0.20 paid to the acquirer for an EFTPOS purchase transaction.

At the time that the interchange fees Standard for the EFTPOS system was introduced, the Bank also imposed a separate interchange fees Standard on the Visa Debit system (Visa Debit interchange fees Standard).<sup>3</sup> Prior to the reforms, the interchange fees on Visa Debit transactions were around 0.95 per cent of the transaction value, paid to the issuer (the opposite direction to the flow of interchange fees in the EFTPOS system). The Visa Debit interchange fees Standard placed a cap of \$0.12, paid to the issuer, on the weighted average of interchange fees paid in the Visa Debit system. The cap is based on the cost to the issuer of authorisation and processing of scheme card transactions.

The introduction of the interchange fees Standards in the two debit card systems resulted in not only a reduction in interchange fees in each system, but also a narrowing in the differential of fees between the systems; the interchange fee differential between the EFTPOS and the scheme debit systems was reduced to around \$0.17 on a \$100 transaction, down from around \$1.15 prior to the Bank’s reforms (Graph 1).

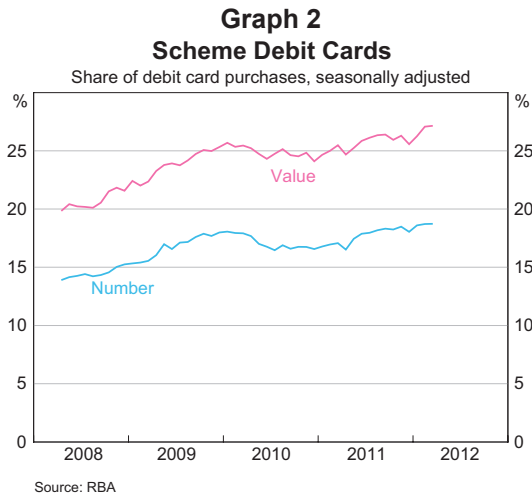


While the interchange fees Standard reduced the size of the interchange fee differential between EFTPOS and the scheme debit systems, the Board continued to be concerned that the remaining difference preserved a strong incentive for issuers to promote the use of scheme debit over EFTPOS. In essence, the underlying transaction for EFTPOS and scheme debit is identical from the perspective of the cardholder at the point of sale – for both transactions, the funds are drawn from the cardholder’s deposit account. However, issuers at the time had an incentive to promote scheme debit because of the interchange fee revenue generated. One outcome of this could have been the decline of the EFTPOS system solely as a result of the difference

3 MasterCard provided a written undertaking to the Bank to meet the same benchmark for the Debit MasterCard system (as well as a written undertaking to comply with a separate standard on the honour-all-cards rule and surcharging).

in interchange fees (regardless of the services it offered) effectively shifting transactions from the lower-cost EFTPOS system to the higher-cost scheme debit systems.<sup>4</sup>

The extent of the incentive to issuers was evident in the increased promotion of scheme debit cards by some issuers, beginning in the late 2000s. In addition to more active marketing, some issuers took steps to replace their customers' EFTPOS cards with 'multi-function' cards with both EFTPOS and scheme debit functionality, and encouraged customers to press the 'credit' button at the point of sale to process transactions through the scheme debit networks.<sup>5</sup> Consequently, the share of debit card transactions processed through the MasterCard or Visa networks increased over this period (Graph 2).<sup>6</sup>



Concerns regarding the ability of the bilateral EFTPOS system to respond to competition from scheme debit led the Board to push for the establishment of an EFTPOS scheme; EPAL was established in April 2009 (see discussion on changes to governance arrangements, below). Following this, the Bank varied its interchange fees Standard in 2009 to accommodate the possibility of EPAL setting a multilateral interchange fee for the EFTPOS system. The varied Standard (which is the current Standard) distinguishes between interchange fees agreed bilaterally – which remain constrained within a range of between \$0.04 and \$0.05, paid to the acquirer – and those set on a common multilateral basis by EPAL. Multilateral interchange fees under the Standard are subject to a weighted-average cap of \$0.12 flowing to the issuer, in line with the Visa Debit interchange fees Standard.

4 The Bank undertook a study of the cost of different payment methods as part of its 2007/08 review of the payment system reforms. That study found that, for financial institutions, the resource cost (i.e. excluding transfers such as interchange fees) of an average EFTPOS transaction of \$59 is around \$0.22, while the resource cost of an average scheme debit card transaction of \$81 is around \$0.46. For merchants and consumers, the total resource cost was also estimated to be higher for a scheme debit card transaction than for an EFTPOS transaction. The scheme debit cost data should be viewed with some caution, however, because there were only a small number of responses on scheme debit costs; the study was undertaken prior to the increased promotion of scheme debit cards by the major banks. For further details, see Schwartz C, J Fabo, O Bailey and L Carter (2008), 'Payment Costs in Australia', in *Payments System Review Conference*, Proceedings of a Conference, Reserve Bank of Australia and Centre for Business and Public Policy at the Melbourne Business School, Sydney, 29 November 2007, pp 88–138. Available at <<http://www.rba.gov.au/payments-system/resources/publications/payments-au/paymts-sys-rev-conf/2007/7-payment-costs.pdf>>.

5 Most scheme debit cards on issue in Australia can be processed through either the EFTPOS system (the cardholder presses the 'cheque' or 'savings' button on the terminal) or one of the scheme debit (MasterCard or Visa) systems (the cardholder presses the 'credit' button on the terminal).

6 The Bank began collecting separate data on scheme debit transactions from March 2008.

## EFTPOS Access Framework

One response to the Board's concerns regarding access to the EFTPOS system for new participants came from the industry, which developed an access code setting out a procedure for new entrants to negotiate and implement bilateral connections with existing EFTPOS participants. The Access Code, administered by the Australian Payments Clearing Association (APCA) on behalf of EFTPOS Access Australia Limited, sets out timeframes for agreement on access terms and provides a mechanism to resolve disputes over agreements not finalised within these timeframes.

The Bank's Access Regime, imposed in 2006, operates in conjunction with the industry Access Code by adding two main provisions. First, it places a cap on the amount that an existing participant can charge an entrant to establish a new connection. This cap is based on a survey of the cost of establishing a past connection, and is currently set at \$87 776. The cap on connection charges prevents existing participants from charging unreasonably high connection fees, which may discourage new entrants.

Second, the Access Regime contains 'no-discrimination' provisions designed to prevent existing EFTPOS participants from using negotiations over interchange fees to frustrate access. These provisions require existing EFTPOS participants to offer interchange fee terms to new participants that are no less favourable than terms agreed with other existing participants. The no-discrimination provisions were written at the time that interchange fees flowed to the acquirer in the EFTPOS system. Hence, they specifically require that existing participants offer prospective acquirers an interchange fee no less than the lowest fee paid to an existing acquirer, and prevent existing acquirers from demanding that prospective issuers pay an interchange fee greater than the highest interchange fee they receive from an existing issuer.

## Recent Industry Developments

As discussed, the current regulatory framework for the EFTPOS system was put in place at a time when governance of the system was largely based on bilateral agreements that determined interchange fees and connection arrangements between participants. While certain operational procedures and general standards for the exchange of EFTPOS (and ATM) transactions were set collectively by APCA in its Consumer Electronic Clearing System (CECS) Manual and Regulations, there was no central body responsible for: promoting the use of EFTPOS; making strategic decisions about the system, such as the development of new functionality; or adjusting pricing to better compete with the scheme debit systems.

The Board noted concerns about the bilateral governance of the EFTPOS system in the conclusions to its 2007/08 review of the payments system reforms.<sup>7</sup> Specifically, the Board noted that bilateral governance made it difficult for the EFTPOS system to adapt to changing technology and the demands of end users, and to compete effectively with the scheme debit systems. The Board therefore advocated the establishment of an EFTPOS scheme that could play a coordinating role in promoting and making decisions in the interests of the system as a whole. The Board was of the view that an EFTPOS scheme would be best placed to strike a balance between the interests of merchants, issuers and cardholders, and would contribute to a more competitive environment for debit cards. The industry's response was the establishment of EPAL in April 2009.

EPAL is owned and funded by its fourteen member institutions, including two large merchants, with three seats on its board reserved for independent directors. It has put in place scheme rules to regulate the activities

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<sup>7</sup> Reserve Bank of Australia (2008), *Reform of Australia's Payments System: Conclusions of the 2007/08 Review*, September. Available at <<http://www.rba.gov.au/payments-system/reforms/review-card-reforms/pdf/review-0708-conclusions.pdf>>.

of its members, covering aspects of access and interchange fees, as well as technical operational and security rules. Since its establishment, EPAL has taken an active role in promoting the use of EFTPOS and has made a number of strategic decisions, including the decision to introduce a multilateral interchange fee schedule from October 2011.

The multilateral interchange fee schedule introduced by EPAL reverses the direction of interchange fees from previous bilateral arrangements on most purchase transactions. A multilateral interchange fee of \$0.05 is paid from the acquirer to the issuer, compared with an interchange fee of between \$0.04 and \$0.05 paid to the acquirer under bilateral arrangements. However, the multilateral interchange fee schedule does not currently apply to all EFTPOS transactions. Where EPAL members do not opt-in to the multilateral schedule, existing bilateral agreements remain in place until they expire or are terminated. In addition, EPAL members may bilaterally agree to an interchange fee that is different from the multilateral schedule. There also remain participants in the EFTPOS system that are not members of EPAL; these participants are not directly bound by EPAL's Scheme Rules, including any multilateral interchange fee schedule set by EPAL.

Alongside the developments in governance arrangements for the EFTPOS system, there have been significant changes to the underlying architecture of the EFTPOS system. The industry, with encouragement from the Bank, has worked since 2009 on migrating to a COIN for the exchange of messages in bilateral payment systems. The COIN removes the need for participants to establish physical bilateral links to every other participant for messaging; instead, participants can establish a single physical connection to the COIN. By simplifying the physical connection process, the COIN has the potential to reduce the cost and shorten the timeframes involved for new EFTPOS entrants to establish connections to existing participants.

## The Current Review

In response to these significant changes to the governance and underlying architecture of the EFTPOS system, the Board announced in September 2011 that it would undertake a review of the regulatory framework for the EFTPOS system. The aim of the review is to ensure that the regulations for the EFTPOS system continue to meet their objectives of promoting competition between the EFTPOS and scheme debit systems, improving efficiency in the payments system as a whole, and providing fair access to new participants.

As a first public step in this review, the Bank issued a consultation document on the designation of the EFTPOS system in March 2012. Changes to APCA rules (which were relied on to determine the scope of the original EFTPOS designation) along with the changed governance arrangements, mean that the original designation no longer clearly defines the EFTPOS system. The views expressed in consultation and the decision on the designation are discussed in the next section.



# 3. Designation of the EFTPOS System

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## The EFTPOS Designation

The EFTPOS designation dated 9 September 2004 (original designation) defines the system as follows:

The EFTPOS system is the electronic funds transfer at point of sale payment system described in clause 1 of the CECS manual for the Consumer Electronic Clearing System and governed by the rules of that system set out in the manual, supplemented or modified by contracts, arrangements or understandings between individual issuers, acquirers and merchant principals (as that latter term is defined in the CECS manual) in the system. This system allows cardholders to use a debit card to pay for goods or services or withdraw cash at the point of sale.

As discussed in Section 2, EPAL has put in place scheme rules as well as technical and other requirements for the EFTPOS system. These types of requirements, along with a description of the EFTPOS system, had previously been set out in APCA's CECS Manual and Regulations, but were removed with the establishment of EPAL and replaced with a reference to EPAL's Scheme Rules. The previous references to the EFTPOS system in the CECS manual, however, had formed an integral part of the definition of the system for the purposes of the designation. Hence, the original designation no longer clearly defines the EFTPOS system.

In addition, other industry developments, including the establishment of EPAL, have meant that the original designation is arguably no longer appropriate. The original designation was intended to describe a system primarily based on bilateral contracts between participants, with clearing and settlement arrangements governed by the CECS manual; that is, a system without a central governing scheme.

Given the changes to the EFTPOS system since it was first designated in 2004, the Board considered the original designation to be no longer appropriate. It therefore released a document for public consultation in early March, seeking views on an appropriate definition of the EFTPOS system. The consultation on designation was a necessary precursor to the current consultation on the broader regulatory framework.

The Board specifically sought views on two options regarding the definition of the EFTPOS system to be adopted in a new designation:

- Option 1: a definition based on EPAL membership and Scheme Rules.
- Option 2: a broader definition in order to capture those parts of the system that lie outside the scope of EPAL's membership and Scheme Rules.

The Board's preliminary views were that Option 1 would clearly define the EFTPOS system and would recognise the central role that EPAL has taken in the system. It would also be similar to the form of designation for the MasterCard and Visa credit card systems, and the Visa Debit system. However, the Board also considered that this definition could be restrictive as some participants may not seek to join EPAL as members, but may still wish to conduct EFTPOS transactions as they have been doing under bilateral agreements.

Option 2, by contrast, would potentially be more inclusive. However, it would be less clear on the scope of the EFTPOS system and the role of the central governing body since the EFTPOS system would be defined to extend beyond the bounds of EPAL.

The views expressed on the two options in consultation are discussed below.

## Views Expressed in Consultation

The Bank received 21 submissions in total from financial institutions, merchants, merchant associations, card schemes, payments solution providers, and a private citizen. Bank staff met with a number of those making submissions.

In broad terms, nearly all submissions were of the view that the original designation of the EFTPOS system is no longer appropriate and should be revoked. However, there were divergent views about whether a new designation is, in fact, required. The majority of submissions suggested that a new designation should be put in place, at least in the establishment phase of the centralised EFTPOS system, while two submissions commented that there may be no need for ongoing regulation of the EFTPOS system and so the designation could be revoked without replacement.

There was little consensus from the submissions on the form the new designation should take if one were to be put in place. Indeed, submissions were relatively evenly balanced between those supporting Option 1 and those supporting Option 2. Most of those supporting Option 1 – a narrow definition of the EFTPOS system, limited to EPAL's Scheme Rules – were from existing members of EPAL. Broadly, these submissions argued that the narrow designation would:

- give the EFTPOS system 'designation parity' with the regulated Visa Debit system (as well as the MasterCard and Visa credit card systems)
- enable EPAL to determine access arrangements and provide a consistent interchange fee structure for members of the EFTPOS system
- align technological and other developments
- enable EPAL to better compete with the international scheme debit card schemes
- reduce industry and regulatory complexity
- lessen risk within the EFTPOS system by enabling EPAL to centralise management of fraud, operational and credit risk, and business continuity planning.

The remaining submissions supported the Bank adopting Option 2 – a broader definition for designation. These submissions generally commented that a definition based on EPAL's Scheme Rules would be restrictive given that there are various participants (including those that are not issuers and acquirers) in the EFTPOS system that are not members of EPAL. The main concern raised in these submissions, centred on a perception that non-EPAL participants in the EFTPOS system had limited ability to express views on various aspects of the EFTPOS system, such as marketing in stores and pricing decisions. One merchant association, in particular, made the point that EPAL membership is, in large part, composed of the largest banks, and that this is evident in decisions, such as the reversal of interchange fee flows. Participants that made these submissions were also concerned about there being adequate competition and the incentive to innovate among participants *within* the EFTPOS system if it were to be narrowly defined.

Some submissions commented that the current designation of the EFTPOS system – which references the CECS Manual and Regulations – is still workable. For example, EPAL suggested that the CECS manual still adequately refers to the EFTPOS system, though it is supportive of a review and updating of the designation as per Option 1. One merchant (an EPAL member) suggested that the Bank may wish to leave the original designation in place as well as issuing a new designation with reference to EPAL Scheme Rules and membership. In its view, the designation in its original form still adequately describes the EFTPOS system, particularly given that not all participants are members of EPAL, and hence it provides the basis for regulation of this part of the system.

## The Decision on Designation

Under section 11(1) of the Payment Systems (Regulation) Act, the Bank may designate a payment system if it considers that designating the system is in the public interest. Section 11(3) of the Act provides that the Bank may revoke the designation if it no longer considers that it is in the public interest that the system be designated. The Act, however, does not provide the Bank with the power to vary a designation. Therefore, to 'vary' the original designation, the Bank needs to revoke the original designation and impose a new designation in its place, provided that these actions are in the public interest.

The meaning of the public interest is set out in section 8 of the Payment Systems (Regulation) Act. Specifically, in determining both the revocation of the original designation and the imposition of a new designation for the EFTPOS system, the Bank is required to have regard to the desirability of payment systems:

- (a) being (in its opinion):
  - (i) financially safe for use by participants; and
  - (ii) efficient; and
  - (iii) competitive; and
- (b) not (in its opinion) materially causing or contributing to increased risk to the financial system.

The Reserve Bank may have regard to other matters that it considers are relevant, but is not required to do so.

Taking into account the views expressed in consultation, the Board has decided that it is in the public interest to:

- revoke the original designation – *Designation No 2 of 2004*; and
- designate the EFTPOS system, where the system is defined as one based on EPAL's Scheme Rules.

The Board reached this decision for several reasons. In particular, the Board formed the view that it is in the public interest to align the definition of the EFTPOS system with the current rules and governance structure for the system by revoking the original designation and imposing a new one. A new definition that keeps pace with industry developments in terms of defining the scope of the EFTPOS system removes any uncertainty regarding the participants subject to the Bank's regulatory framework. In addition, as discussed later in the paper, the Board has formed the preliminary view that regulation of the EFTPOS system may still be required to promote efficient price signals and competitive access to the system. To consult on future regulation, a new designation of the EFTPOS system needs to be in place.

On the form of the designation, the Board has decided that a narrow definition based on EPAL's Scheme Rules provides the clearest definition of the EFTPOS system. In making its decision, the Board recognised the central governing role that EPAL has now undertaken. In its opinion, giving regulatory recognition to the role EPAL

plays is the best way to ensure that EFTPOS remains a viable alternative debit card system to the international card schemes, thereby promoting competition between debit card systems, which is in the public interest. A broader definition would run the risk of undermining EPAL's ability to set and control any aspects of access or pricing that are regulated by the Bank. In addition, a narrow definition provides consistent regulatory treatment with the designated Visa Debit system, thereby promoting competition in the debit card system as a whole.

The new designation in relation to the EFTPOS system is set out in Attachment 1. This designation is relevant to the discussions in the following sections related to the future regulatory framework, particularly the imposition of a new access regime and interchange fees standard, should the Board determine that these are required. As a technical matter, the Board has not determined that it is in the public interest to revoke the existing designation at this stage. Its intention is that the existing designation will remain in place during consultation of the broader regulatory framework, to avoid a period without any EFTPOS regulation in force (given that the existing interchange fees Standard and Access Regime currently refer to this designation). Having the new designation concurrently in place enables the Bank to proceed with consultation on a future interchange fees standard and access regime.

It should be noted that a narrow designation does not mean that proprietary debit transactions cannot occur outside EPAL's Scheme Rules. It simply means that regulation imposed by the Bank on the new designated system would not apply to those transactions. For instance, restrictions on interchange fees or connection charges that may apply to the EFTPOS system would not apply to arrangements outside the designated system. Any bilateral agreement made between two EPAL members as provided for and defined in EPAL's Scheme Rules would, however, form part of the new designated system.

# 4. Interchange Fees Standard

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## Issues with the Current Standard

When the EFTPOS interchange fees Standard was amended in 2009 to allow for the introduction of multilateral interchange fees, the Bank took the decision not to harmonise regulation of multilateral and bilateral interchange fees. Instead, the Bank left in place the existing floor and cap on bilateral interchange fees of \$0.04 and \$0.05, paid to the acquirer. This decision was intended as a transitional measure, to reduce the likelihood of disruptive bilateral fee negotiations ahead of an expected move by the system to a multilateral interchange fee schedule.

The subsequent introduction of a multilateral interchange fee schedule by EPAL has substantially changed the way in which interchange fees are set in the EFTPOS system. In particular, a multilateral interchange fee schedule set by a central scheme allows interchange fees to be altered relatively easily, whereas they have previously been very difficult to renegotiate. EPAL is therefore able to coordinate the setting of interchange fees in response to competitive pressures and with a view to the benefits to the EFTPOS system as a whole. The multilateral fee schedule also avoids the need for new entrants to negotiate fees with existing participants who might otherwise have an incentive to offer unfavourable interchange fee terms.

Bilaterally negotiated EFTPOS interchange fees, as currently regulated under the Bank's interchange fees Standard, place a constraint on EPAL's capacity to set interchange fees in what it considers to be the best interests of the EFTPOS system. The current interchange fees Standard constrains any remaining bilateral fees to between \$0.04 and \$0.05, payable to the acquirer, which is significantly different from the multilateral rate set by EPAL. This difference, of between \$0.09 and \$0.10 for most transactions, has the potential to distort behaviour over time, potentially undermining EPAL's capacity to set multilateral fees.

In the Board's preliminary view, the very different approaches to the current regulation of bilateral and multilateral EFTPOS interchange fees are no longer appropriate. It is, therefore, seeking views on how this should be addressed.

## Multilateral Interchange Fees in the EFTPOS System

Under the interchange fees Standard, the weighted average of multilateral interchange fees must comply with the \$0.12 cap.<sup>8</sup> This offers a degree of flexibility regarding individual transaction types. For example, EPAL, like the other debit card schemes, has the flexibility to set interchange fees of greater than \$0.12 on some transactions, provided that enough other transactions attract interchange fees of less than \$0.12 to ensure that the weighted average of all multilaterally set interchange fees remains under the cap.

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<sup>8</sup> Multilateral interchange fees cited here are assumed to be paid to the issuer, unless otherwise indicated. Under the interchange fees Standard, multilateral interchange fees flowing to the acquirer are treated as negative amounts. All interchange fees cited are exclusive of GST.

The multilateral interchange fees set by EPAL currently remain well below the cap set by the Standard. The highest interchange fee payable is \$0.05, while purchases under \$15, charity payments and Medicare rebates do not attract any interchange fee. Interchange fees on transactions with a cash-out component remain payable to the acquirer, currently at \$0.14. EPAL has also recently announced a differential point-of-sale rate range of between \$0.00 and \$0.05, and a differential cash-out rate range payable to the acquirer of between \$0.14 and \$0.23, to take effect from 1 October 2012. These rates will apply to transactions with merchants that satisfy certain criteria set by EPAL.

EPAL has established 'interchange fee principles' that guide its setting of its interchange fee regime. Underlying these principles is EPAL's belief that 'interchange fees should be set in a way that is transparent and reflects the interests of all stakeholders'.<sup>9</sup> In particular, Principle 2 states that its interchange fee regime will 'promote usage, issuance and acceptance of EFTPOS'.<sup>10</sup> This might suggest that multilateral interchange fees are set well below the cap in order to maintain the system's appeal to merchants. However, partly reflecting the fact that EPAL is still developing functionality for the EFTPOS system – such as chip and online capability – it is possible that EPAL might choose to set higher interchange fees on some transaction types in the future. Indeed, while all three debit card systems currently set their comparable basic electronic transaction rates well below the \$0.12 cap, the Debit MasterCard and Visa Debit systems have a number of interchange fee categories that are above \$0.12, with these schemes relying on lower interchange rates in other categories to comply with the benchmark (Table 1).

## Options for the Future Regulation of Interchange Fees

Section 18(1) of the Payment Systems (Regulation) Act provides that the Bank may determine standards to be complied with by participants in a designated payment system if it considers that determining the standards is in the public interest. Under section 18(3) the Bank may also revoke a Standard. Section 8 of the Payment Systems (Regulation) Act sets out that in determining whether a particular action is in the public interest, the Bank is to have regard to the desirability of payment systems:

- (a) being (in its opinion):
  - (i) financially safe for use by participants; and
  - (ii) efficient; and
  - (iii) competitive; and
- (b) not (in its opinion) materially causing or contributing to increased risk to the financial system.

The Reserve Bank may have regard to other matters that it considers are relevant to assessing the public interest, but is not required to do so.

Given the Bank has imposed a new designation on the EFTPOS system (as newly defined), it is of the view that, if required, the regulation of interchange fees would need to be put in place via a new interchange fees standard that applies to the newly designated EFTPOS system. Nonetheless, the starting point for considering the provisions of a potential new standard for the EFTPOS system should be the provisions of the

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9 See <<http://www.eftposaustralia.com.au/corporate/resources/interchange-fee-principles>>.

10 See <<http://www.eftposaustralia.com.au/corporate/resources/interchange-fee-principles>>.

**Table 1: Debit Card Interchange Fees<sup>(a)</sup>**  
As at May 2012, excluding GST

	EFTPOS	MasterCard	Visa
Electronic POS/ consumer electronic	\$0.05	\$0.06	\$0.08
Consumer chip	–	\$0.12	–
Cash out <sup>(b)</sup>	–\$0.14	–	–
Medicare Easyclaim	\$0.00	–	–
Charity	\$0.00	0.00%	0.00%
Micropayment <sup>(c)</sup>	\$0.00	\$0.04	–
Consumer standard	–	\$0.19	0.30%
Premium/platinum	–	0.50%	0.40%
Commercial	–	1.27%	1.00%
Commercial chip	–	1.48%	–
Differential point-of-sale rate/ Strategic merchant	\$0.00 to \$0.05	\$0.036	\$0.04 to \$0.60
Differential cash out rate <sup>(b)</sup>	–\$0.14 to –\$0.23	–	–
Government/utility	–	\$0.07	\$0.08
Petrol/service station	–	\$0.04	\$0.06
Education	–	–	\$0.08
Supermarket	–	–	\$0.06
Insurance	–	–	\$0.08
Transit	–	–	\$0.06
Recurring payment	–	\$0.091	\$0.08
Quick Payment Service	–	\$0.04	–
Large ticket <sup>(d)</sup>	–	–	\$10.00 + 0.10%
<b>Benchmark</b>	<b>\$0.12</b>	<b>\$0.12</b>	<b>\$0.12</b>

(a) Positive fees indicate those paid to the issuer; negative fees indicate those paid to the acquirer

(b) Transactions with a cash-out component, including combined purchase/cash-out transactions

(c) For EFTPOS, these are transactions with a value less than \$15; for MasterCard these are transactions with a value equal to or less than \$20

(d) Transactions above \$10 000 excluding travel/entertainment purchases

Sources: EPAL website; MasterCard website; RBA; Visa website

current interchange fees Standard. On this basis, the Board has identified five broad options to address issues concerning the current regulation of interchange fees:

1. leaving the current form of regulation unchanged
2. imposing a bilateral interchange fee benchmark that is closer to the benchmark for multilateral interchange fees
3. placing bilateral and multilateral interchange fees under a common benchmark

4. eliminating bilateral interchange fees by preventing the payment of any interchange fee other than a multilateral interchange fee set by EPAL
5. revoking the interchange fees Standard without imposing a new standard in its place.

Under all but Option 5, the current \$0.12 weighted-average cap on multilateral interchange fees would remain unchanged.

### **Option 1: Leaving the current form of regulation unchanged**

Under this option, the new interchange fees standard would be substantively unchanged from the current interchange fees Standard, with minor alterations to clarify the application of multilateral or bilateral interchange fee benchmarks where this is ambiguous. This approach would require the least adjustment for the industry, and it would keep in place the regulatory framework that has delivered the current interchange fee settings.

The weakness of this approach is that it does not address the potential for bilateral interchange fees to constrain EPAL's ability to set interchange fees in the best interests of the system. Bilateral interchange fees within the range set by regulation before the establishment of EPAL are significantly different from current multilateral fees for most transactions and provide an incentive for acquirers to seek to access these fees rather than the multilateral fees set by EPAL. The narrow band for bilateral fees was established in order to allow new entrants to access the system at interchange rates similar to those of the existing participants. However, given that new entrants can access the system at the multilateral rates established by EPAL, and that those multilateral rates have been adopted by most participants, this is now less of a concern.

### **Option 2: Imposing a bilateral interchange fee benchmark that is closer to the benchmark for multilateral interchange fees**

The second option considered by the Board involves changing the current regulation of interchange fees to bring the bilateral interchange fee benchmark closer to the multilateral interchange fee benchmark. For example, in its conclusions to the 2007/08 review of the payments system reforms, the Board considered the option of varying the bilateral cap and floor to a range between \$0.05 paid to the acquirer and \$0.05 paid to the issuer.<sup>11</sup>

This option could potentially bring bilateral and multilateral interchange fees closer together, partly reducing the constraint that bilateral fees may place on EPAL's ability to adjust pricing. Nonetheless, there would remain some difference between the regulation of the two types of interchange fees under this model, meaning that there would be the possibility of some participants being able to retain or negotiate more favourable bilateral interchange arrangements within the provisions of the Bank's standard.

### **Option 3: Placing bilateral and multilateral interchange fees under a common benchmark**

A third option, considered as part of the 2009 review of the interchange fees Standard, is to bring the regulation of bilateral interchange fees into line with the \$0.12 cap, paid to the issuer, that is currently placed on multilateral interchange fees. Some distinction would need to be retained between bilateral and multilateral fees in a new standard, as bilateral fees would largely be outside EPAL's control, complicating the task of meeting the weighted-average cap. Similarly, participants operating on bilateral fees would have control only over their

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<sup>11</sup> Reserve Bank of Australia (2008), *Reform of Australia's Payments System: Conclusions of the 2007/08 Review*, September. The change to regulation of debit card interchange fees was suggested as an alternative if the improvements to competition that would allow the Board's preferred option of removing regulation did not emerge.



own agreements. While it might be possible for each pair of participants on bilateral rates to be subject to a separate weighted-average cap, a simpler solution would be for all bilateral fees to be subject to a \$0.12 cap.

A key advantage of this approach is that it would largely harmonise the regulation of interchange fees across all three debit card systems. It would also remove the regulatory requirement for bilateral interchange fees to flow to the acquirer.

However, similar to Option 2, a potential drawback of Option 3 is that participants with bargaining power may be able to retain or negotiate bilateral interchange fee agreements more favourable to them than the multilateral interchange fee schedule set by EPAL. This could potentially limit EPAL's flexibility to set interchange fees competitively. Under EPAL's Scheme Rules both parties need to agree to a bilateral interchange rate, otherwise the multilateral interchange fee schedule applies.

#### **Option 4: Eliminating bilateral interchange fees by preventing the payment of any interchange fee other than a multilateral interchange fee set by EPAL**

Another option is for a new interchange fees standard to prevent the payment of any interchange fee other than a multilateral interchange fee set by EPAL. The multilateral interchange fee cap would remain the same as in the current Standard – \$0.12, paid to the issuer. This option could significantly increase EPAL's ability to set interchange fees in the interests of the system, though it would nonetheless be possible for parties that wished to agree to exchange debit transactions at a bilaterally negotiated fee to do so outside the designated system.

#### **Option 5: Revoking the interchange fees Standard without imposing a new standard in its place**

The final option considered by the Board is for the Bank to revoke the interchange fees Standard without imposing a new interchange fees standard in its place. This would remove the current cap and floor for bilateral interchange fees and would allow EPAL to determine the appropriate level of interchange fees in the EFTPOS system without a regulatory cap. This option recognises that EFTPOS multilateral fees are currently well within the regulated cap. The Board, however, is conscious that EPAL's business is still evolving and therefore that its interchange fee schedule and transaction mix might evolve over time. It is also conscious of the tendency for competition between card schemes in other circumstances to drive interchange fees higher over time.

As for Options 1 to 3, acquirers may retain or negotiate more favourable bilateral interchange arrangements; placing some constraint on EPAL in setting its multilateral interchange fee schedule.

### **Discussion of the Options**

The Board is seeking comments on the various options, with a view to determining its approach to EFTPOS interchange fee regulation later in the year. Its preliminary view is that, by constraining bilateral interchange fees to a range of \$0.04 to \$0.05, paid to the acquirer, while multilateral interchange fees on most transactions flow in the other direction, the current interchange fees Standard has the potential to inhibit competition between the EFTPOS system and the scheme debit systems. On this view, continuing the current form of regulation for interchange fees (Option 1) would not be in the public interest.

The Board is also of the preliminary view that Option 5, revoking the interchange fees Standard without replacement, is not in the public interest. This is based on the consideration that while the Board recognises the significant progress made by the industry in establishing EPAL and the fact that at this stage EFTPOS interchange fees are well below the current cap, the EFTPOS offering and business model may evolve over

time. Therefore, consistent regulatory treatment between debit card schemes may be likely to promote more competitive and efficient outcomes than a system in which one type of debit card system is unregulated (in relation to interchange fees), while another is not. For this reason, the Board sees it as appropriate for all three debit card systems to face a similar regulatory landscape.

The Board's preliminary assessment, therefore, is that there is a case for putting in place a new interchange fees standard that would change the current form of regulation for bilateral interchange fees. Options 2 to 4 all accommodate this approach. An important consideration here is that it would most likely be possible for EPAL to either prevent the negotiation of bilateral interchange fees among its members (Option 4) or limit interchange fees to a new range (Option 2) via its Scheme Rules. It is therefore not obvious that a regulatory response along these lines is warranted. Option 3, however, would allow EPAL to restrict bilateral interchange fees if it so chose, but would continue to apply an overall cap consistent with both EFTPOS multilateral interchange fees and Visa Debit interchange fees. Indeed, when the Bank varied its interchange fees Standard in 2009, it considered the option of a common benchmark for bilateral and multilateral fees; however, at that time it wanted to reduce the likelihood of disruptive bilateral fee negotiations ahead of an expected move to a multilateral interchange fee schedule.

On balance, based on the above considerations, the Board's preliminary view is that Option 3, placing multilateral and bilateral interchange fee regulation, as far as possible, on an equal footing, would be the most effective approach to regulating EFTPOS interchange fees in the public interest. Under this option, all interchange fees for all debit card systems would be subject to a \$0.12 cap.

Option 3 would recognise EPAL's mandate to manage the EFTPOS system in the best interests of that system, while ensuring that constraints on the level of interchange fees – aimed at promoting the efficiency of the payments system overall – apply equally across debit card systems. While it would not force any change in bilateral interchange fees or prevent acquirers with bargaining power from negotiating favourable fees, it would remove the regulatory requirement for bilateral EFTPOS interchange fees to flow to the acquirer and be constrained to between \$0.04 and \$0.05. Cash-out arrangements, which have typically involved a payment to the acquirer, would be consistent with the benchmark under Option 3. Accordingly, there would be no need for an exemption for cash-out transactions (as is the case under the current interchange fees Standard).

A draft of a new interchange fees standard that would apply to the newly designated EFTPOS system, based on Option 3, is set out in Attachment 2 to this paper. As a technical matter, it should be noted that it is not possible to be entirely consistent in the treatment of bilateral and multilateral interchange fee regulation because it is not workable to ensure a *weighted average* of bilateral interchange fees complies with the Standard. This is because no single entity would have control over those fees in a way that would allow them to be adjusted to bring the weighted average into line with the benchmark. For this reason, regulation of bilateral interchange fees under this approach would require that each bilateral interchange fee be below the \$0.12 cap.

## 5. Access Framework

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The current regulatory framework for access to the EFTPOS system, comprising the EFTPOS Access Code and Access Regime, was designed to deal with the factors inhibiting access to the then bilateral system. Under a bilateral system, a potential entrant had to rely on individual incumbent participants to negotiate access on reasonable terms, including the cost of connection, interchange fees and reasonable timeliness for completing the process. Therefore, the Access Code and the Access Regime set some requirements for these negotiations.

The transition of the EFTPOS system towards multilateral arrangements has changed the nature of some of the access issues faced by the system. In scheme-governed payment systems, access is typically regulated by membership requirements set out in the rules of the central scheme. In the case of payment systems governed by MasterCard and Visa, access regimes imposed by the Bank are designed, in part, to relax previously restrictive membership requirements.

Currently, EPAL plays a coordinating role in admitting new members to its multilateral arrangements, with its Scheme Rules setting out requirements for membership, and placing an obligation on EPAL to admit applicants that meet those requirements. However, prospective entrants still need to reach bilateral agreements on connections with existing participants in the system. EPAL's Scheme Rules do not place explicit obligations on members to facilitate technical access for prospective entrants as these provisions are contained in the Access Code, supplemented by the Bank's Access Regime.

### Access Code

The Access Code is administered by APCA on behalf of EFTPOS Access Australia Limited. It was developed and implemented in 2006 by the industry as a means of regulating access to the EFTPOS system. Given it is an industry code, the Bank does not play any role in the operation of the Access Code, but the effectiveness of current industry access arrangements are relevant in determining whether regulation of access arrangements by the Bank is still required.

The Access Code currently relates to the 'EFTPOS system designated by the RBA'.<sup>12</sup> It will therefore be necessary for the industry to provide some clarity about whether the Access Code will reflect the new designation – based on EPAL's Scheme Rules – that has now been put in place by the Bank. This might determine whether a party has a right to establish a connection for the exchange of debit transactions that are not subject to EPAL's Scheme Rules, or whether such a connection would be a matter solely for commercial negotiation. As a related issue, a party seeking to negotiate a connection, but which is outside EPAL's framework, would most

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<sup>12</sup> Paragraph 1.1(c) of the EFTPOS Access Code. Available at <[http://www.eftposaccess.com.au/public/eftpos01.nsf/live/EFTPOSAccessCode/\\$File/EFTPOSAccessCode.pdf](http://www.eftposaccess.com.au/public/eftpos01.nsf/live/EFTPOSAccessCode/$File/EFTPOSAccessCode.pdf)>.

likely not be subject to the provisions of any new EFTPOS interchange fees standard or access regime, given that the Bank has adopted a narrow definition of designation for the EFTPOS system.

Another important consideration is whether EFTPOS Access Australia Limited (or APCA on its behalf) remains the appropriate body to administer the Access Code and to govern access to the EFTPOS system. Instead, EPAL itself could potentially play this role. This would require all parties to have confidence that EPAL could govern access in a fair and objective manner. In general it could be expected to be in EPAL's interests to encourage participation in the system.

These are decisions for the industry, but because they are important to the overall access framework, the Bank will naturally take a keen interest in the outcomes.

## Access Regime

The existing Access Regime imposed by the Bank has two components – the no-discrimination provisions related to interchange fees and the cap on connection charges. Both have been affected by recent industry developments. Specifically, the introduction of multilateral interchange fees has affected the interpretation and potentially the relevance of no-discrimination provisions, and more efficient connection arrangements under the COIN have implications for the cap on connection charges. The following sections discuss these issues further and provide some options for reform.

Given that the Board has imposed a new designation for the EFTPOS system, any future regulation of access arrangements would be achieved by imposing a new access regime that applies to the newly designated EFTPOS system. To impose an access regime the Bank must have regard to:

- (a) whether imposing the access regime would be in the public interest; and
- (b) the interests of current participants in the system; and
- (c) the interests of people who, in the future, may want access to the system; and
- (d) any other matters the Reserve Bank considers relevant.<sup>13</sup>

The Bank may also revoke the existing access regime if it considers it is appropriate, having regard to the same factors.

The starting point for considering the provisions of a potential new access regime for the EFTPOS system, as discussed in the following sections, is the provisions in the current Access Regime.

## No-discrimination provisions

The no-discrimination provisions of the current Access Regime have become more difficult to interpret now that multilateral interchange fees can flow either from acquirer to issuer or from issuer to acquirer. The provisions currently specify:

### No discrimination

18. An acquirer or self-acquirer who becomes a participant in the EFTPOS system for the first time, on or after 13 September 2006, is for three years entitled to receive an interchange fee from an issuer with whom it has an Access Agreement no less than the lowest interchange fee payable by that issuer to an existing acquirer or self-acquirer.

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<sup>13</sup> Section 12(2) of the Payment Systems (Regulation) Act.

19. An issuer who becomes a participant in the EFTPOS system for the first time, on or after 13 September 2006, is for three years not required to pay an acquirer or self-acquirer with whom it has an Access Agreement an interchange fee greater than the highest interchange fee payable by an existing issuer to that acquirer or self-acquirer.

The intent of these provisions was to ensure that a new entrant had access to interchange fees that were in line with existing participants. At the time these provisions were put in place, interchange fees were regulated to flow from the issuer to the acquirer, as had been the case prior to regulation of the system. With the establishment of EPAL's multilateral interchange fee schedule, fees for most transactions flow in the reverse direction – from the acquirer to the issuer. Paragraph 18 could now be interpreted as requiring that new acquirers *receive* an interchange fee, while acquirers subject to multilateral fees *pay* interchange fees under EPAL's Scheme Rules. In other words, new acquirers might receive substantially more favourable treatment than the incumbents under these arrangements. The terms 'less than the lowest' and 'greater than the highest' are also more difficult to interpret now that interchange fees can flow in either direction (that is, both positive and negative interchange fees under the Standard).<sup>14</sup>

While it would be possible to clarify the no-discrimination provisions, a more important issue is whether there is a continued need for provisions of this type when multilateral fees have been adopted by the industry. As discussed, the no-discrimination provisions were designed to prevent existing participants from using negotiation over interchange fees to frustrate entry. However, if new entrants are able to access multilateral interchange fees, which apply equally to all participants, these concerns are clearly reduced.

In order to provide clarity in the regulatory framework, the Board's preliminary view is that the no-discrimination provisions in their current form may no longer be appropriate. It therefore sees two possible approaches for a new access regime – putting in place provisions that are workable under new interchange fee arrangements, or omitting the provisions entirely.

### **Option 1: Imposing no-discrimination provisions that are workable under new interchange fee arrangements**

A new access regime could impose no-discrimination provisions that accommodate the new interchange fee arrangements. Given that new entrants can access multilateral interchange fees through EPAL, these no-discrimination provisions would only apply to bilateral interchange fees and would also entitle a new entrant to establish a bilateral fee. For example, a new acquirer establishing a bilateral agreement with an issuer would, for a limited period (e.g. three years, as currently provided for in the Access Regime), be entitled to a bilateral interchange fee no less favourable than the least favourable (to the acquirer) bilateral fee agreement that issuer has established with an existing acquirer or self-acquirer. Likewise, a new issuer establishing a bilateral agreement with an acquirer would, for a limited period, be entitled to a bilateral interchange fee no less favourable (to the issuer) than the least favourable bilateral interchange fee agreement that acquirer has established with an existing issuer. Depending on the existing bilateral agreements in place, fees could flow from either acquirer to issuer or issuer to acquirer under these provisions, so long as they are no less favourable to the new entrant than any bilateral agreement put in place for its competitors.

The practical effect of these potential provisions depends on the extent to which there are bilateral agreements in the system. If most participants had adopted bilateral rates with one another, the provisions would place the

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<sup>14</sup> The current interchange fees Standard considers a fee paid to the acquirer to be a negative interchange fee. Therefore, 'less than' could be considered to mean a larger negative number – the opposite of what was intended in the Access Regime.

new entrant on comparable terms to existing participants. The effect would be less clear where only a small number of participants had established bilateral interchange fees with other participants. For instance, where an existing self-acquiring merchant had established bilateral interchange fees with issuers, the provisions would allow a new self-acquiring merchant to establish equivalent bilateral interchange fees. On the other hand, allowing a new entrant conducting more traditional acquiring business to access that same bilateral rate might provide the new entrant with a competitive advantage over other more traditional acquirers.

### **Option 2: Omitting the provisions**

This option would omit the no-discrimination provisions from a new access regime, since new entrants are able to rely on the multilateral interchange fee schedule set by EPAL to access the system on the same terms as other participants. This might disadvantage the new entrant if most participants were operating on bilateral rather than multilateral fees. However, this risk is likely to be low based on the Bank's understanding, at this stage, that most members of EPAL have now opted-in to the multilateral interchange fee schedule.

## **Connection Charges**

The migration of the industry to the COIN for the exchange of messages in the EFTPOS system has the potential to reduce the cost to existing participants of establishing connections to new entrants. The current cap (referred to as the access charge benchmark) on the amount an existing participant can charge a new entrant to establish connections under the Access Regime is based on a cost survey undertaken by APCA in 2004, under the old technical connection arrangements.<sup>15</sup> The cost to the participant with the lowest connection costs was adopted as the benchmark. Under the provisions of the current Access Regime, this benchmark is not scheduled for its next review until January 2014. The Board is seeking views on two main issues:

- Given the change in architecture, is there a case for a new access regime to provide for an earlier recalculation of the benchmark, and if so, how would the benchmark be estimated?
- Would there be a case to remove regulation of the cost of connection, if suitable arrangements to limit the cost of access were imposed by EPAL?

The options with regard to access charges are therefore as follows.

### **Option 1: Put in place an access charge benchmark that is the same as provided for in the current Access Regime**

The current access charge benchmark, established under the current Access Regime, would be replicated in a new access regime; that is, the access charge benchmark imposed would be the current benchmark of \$87 776. A new access charge benchmark would apply from January 2014, based on a new survey of connection costs conducted during 2013. Those connection costs would reflect the cost of establishing a connection via the COIN. While this approach allows time for some new entrants to establish a connection, providing observations upon which the access charge benchmark calculation could be based, it might mean, however, that connection charges remain higher than necessary in the interim.

### **Option 2: Provide for an earlier recalculation of the access charge benchmark**

A new access regime could require a more timely recalculation of the access charge benchmark. This could allow new entrants to benefit sooner from the cost savings that have arisen from the adoption of the COIN. The

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<sup>15</sup> The cap was adjusted for inflation on 1 January 2010.

current methodology relies on estimates of actual connection costs over the preceding four years and asks for data to be provided 4½ months before the new cap is due to apply. Given that any new access regime that may stem from this review is unlikely to be put in place until later this year, the scope for bringing the benchmark recalculation forward from that provided for in the current Access Regime would be limited, unless the industry had voluntarily collected the relevant data ahead of the imposition of a new access regime, if required.

### **Option 3: Remove regulation of the cost of connection**

The Board could consider removing regulation of the cost of connection if it were satisfied that appropriate arrangements to limit connection costs would be put in place by EPAL.

## **Discussion of the Options**

After considering the various options for the future regulation of access arrangements in light of changes to the governance and architecture of the EFTPOS system, the Board's preliminary view is that the current form of the no-discrimination provisions is not effective for the current EFTPOS system, based on the following considerations. First, the current form of the no-discrimination provisions may be difficult to interpret in the current EFTPOS environment. Second, given that new entrants are now able to access the multilateral interchange fee schedule set by EPAL on an equal basis to existing participants, it is not clear that the provisions are necessary to ensure access on fair terms for new entrants.

The Board is therefore seeking views on whether it is appropriate to retain some form of no-discrimination provisions in a new access regime. Were such provisions to be adopted, they might have a broadly similar effect to the existing provisions (focused on bilateral fees), but be drafted in a way that is workable under the new EFTPOS interchange fee arrangements.

The means of establishing a connection for the purposes of exchanging EFTPOS payments has changed with the establishment of the COIN. As a consequence, the current cap on connection charges may no longer be a good measure of the cost to participants of establishing a connection to the EFTPOS system. The Board is seeking views on the benefits and practicality of bringing forward the recalculation of the access charge benchmark, if such a benchmark were determined by the Board to be required in a new access regime. However, were EPAL able to demonstrate that it could limit the cost of connection in a way that was satisfactory to the Board, the Board would also be prepared to consider whether regulation of the cost of connection continued to be required.

The above discussion raises the possibility that the Board might consider all elements of the current Access Regime to be no longer necessary. The Board could consider it to be in the public interest to revoke the current Access Regime, without putting a new one in its place. This approach would be reliant on the Board being satisfied that a suitable and appropriate access framework had been provided by the industry.

For the purposes of consultation, Attachment 3 sets out a draft access regime, incorporating possible wording of new no-discrimination and access charge benchmark provisions, should the Board determine these provisions are necessary having regard to public interest considerations.

## 6. Transitional Arrangements

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The access and interchange fee arrangements embodied in the current regulatory framework for the EFTPOS system are in part intended to facilitate competition in the provision of EFTPOS services by enabling participants that are not in a strong bargaining position, such as new or potential entrants, to access similar interchange fee arrangements to larger and more established participants. EPAL's multilateral interchange fee arrangements do not appear to be inconsistent with this intention. The shift to the multilateral interchange fee schedule has, nonetheless, been quite a large change to the market, particularly given that it has entailed a reversal in the direction of interchange fee flows for most transactions. Looking ahead, it is not clear that the switch in the direction of interchange fees necessarily affects the long-run viability of different business models, but there could be significant disruptions, at least in the short-run. This is most applicable for some specialist business models, particularly sole acquirers that used to receive interchange fees under bilateral arrangements. The effects will depend on the way that the change in interchange fees flow through to pricing to merchants and bank customers, with evidence to date suggesting that pricing adjustments are still underway.

Given this, there may be a case for putting transitional arrangements in place to facilitate transition to the new governance and regulatory regime. The Bank is seeking views on the form of any transitional arrangements that might be appropriate, in conjunction with a new access regime and interchange fees standard that may be imposed, if the Board determines they are required.



## 7. Conclusion and Next Steps

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The Board has decided to designate the EFTPOS system, based on a narrow definition of that system focused on EPAL's Scheme Rules. The practical effect of this is that any regulation imposed by the Bank in relation to the new designated EFTPOS system will directly affect only EPAL and its members. This does not mean that debit card transactions cannot occur outside EPAL; rather, that the interchange fee and access arrangements imposed by the Bank on the designated EFTPOS system will not apply to those transactions.

The Bank is now seeking views on the issues discussed in this paper regarding possible provisions in a new access regime and a new interchange fees standard that will relate to the newly designated EFTPOS system. Those issues include:

- how bilateral interchange fees should now be regulated if a new interchange fees standard is put in place
- whether no-discrimination provisions regarding interchange fees, in a form equivalent to those in the current Access Regime, are in the public interest
- what form no-discrimination provisions should take if they are included in a new access regime
- whether the EFTPOS access charge benchmark is required if industry were able to put in place acceptable and appropriate access arrangements
- whether, in a new access regime, a recalculated access charge benchmark should become effective sooner than January 2014 (the effective date under the existing Access Regime).

A draft new interchange fees standard and draft new access regime are set out in Attachments 2 and 3, respectively. The draft interchange fees standard reflects the Board's preliminary view on its preferred approach to the regulation of bilateral EFTPOS interchange fees. The draft access regime reflects a possible approach to no-discrimination and access charge provisions, should the Board decide a new access regime is required as part of the future regulatory framework for the EFTPOS system. The draft standard and draft access regime are marked to reflect the differences from the existing interchange fees Standard and Access Regime; though, as a technical matter, it would be necessary to impose a new standard and access regime, to apply to the newly designated EFTPOS system.

The Bank is seeking views on the draft standard and access regime, in addition to the general issues outlined above.

Formal written submissions regarding the review of the regulatory framework for the EFTPOS system should be provided by no later than 31 July 2012 and should be sent to:

Head of Payments Policy Department  
Reserve Bank of Australia  
GPO Box 3947  
Sydney NSW 2001

or

[pysubmissions@rba.gov.au](mailto:pysubmissions@rba.gov.au).

Submissions provided by email should be in a separate document, in PDF, Word or equivalent format.

In the normal course of events, submissions will be posted on the Reserve Bank's website and those making submissions will be provided with an opportunity to discuss their submission with the Bank.

At this stage the Bank anticipates that a final decision on the regulatory framework will be made towards the end of 2012.

# Attachment 1

## DESIGNATION UNDER THE *PAYMENT SYSTEMS (REGULATION) ACT 1998*

### Designation No 1 of 2012

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The RESERVE BANK OF AUSTRALIA designates as a payment system pursuant to section 11(1) of the *Payment Systems (Regulation) Act 1998* the debit card payment system operated within Australia known as the EFTPOS system.

The EFTPOS system is the electronic funds transfer system governed by the EFTPOS Scheme Rules promulgated under the constitution of EFTPOS Payments Australia Limited and any schedule, document, specification or rule published by EFTPOS Payments Australia Limited pursuant to those EFTPOS Scheme Rules.

# Attachment 2

## Draft Standard

### The Setting of Interchange Fees in the EFTPOS System

#### Objective

The objective of this Standard is to ensure that the setting of interchange fees in the designated EFTPOS payment system promotes:

- (i) efficiency; and
- (ii) competition

in the Australian payments system.

#### Commencement date ~~Amended and restated standard~~

1. ~~This Standard is an amended and restated Standard of that gazetted on 27 April 2006 and amended on 10 December 2008~~ This Standard comes into force on [ ] and is current as at that date.

#### Application

2. This Standard is determined under Section 18 of the *Payment Systems (Regulation) Act 1998*.
3. This Standard applies to the payment system operated within Australia known as the EFTPOS system, which was designated as a payment system on ~~9 September 2004~~ 12 June 2012 and is referred to in this Standard as the EFTPOS system.
4. In this Standard:

~~an 'acquirer' is a participant in the EFTPOS system that provides services to a merchant to allow that merchant to accept a debit card;~~

~~'Bilateral Agreement' has the meaning given in the EFTPOS Scheme Rules and also includes any other agreement permitted under the EFTPOS Scheme Rules between two or more Members to pay or receive interchange fees that vary from those specified by the Company as payable between Members;~~

a 'bilateral interchange fee' is an interchange fee that is agreed between two or more Members participants in the EFTPOS system under a Bilateral Agreement for payment solely between those participants Members in relation to EFTPOS €transactions;

~~'cash out' means the provision of cash to a cardholder by a merchant, as a result of a debit card transaction at the merchant;~~

'debit card' means a card issued by a participant in the EFTPOS system that allows the cardholder to make payments to merchants for goods or services and/or obtain cash out using the EFTPOS system by accessing a deposit account held at an authorised deposit-taking institution;

'debit card transaction' or 'transaction' means a transaction in Australia using the EFTPOS system;

'Company' means EFTPOS Payments Australia Limited (ABN 37 136 180 366);

'EFTPOS Acquirer' has the same meaning as in the EFTPOS Scheme Rules;

'EFTPOS Interchange Activity' has the same meaning as in the EFTPOS Scheme Rules;

'EFTPOS Issuer' has the same meaning as in the EFTPOS Scheme Rules;

'EFTPOS Scheme Rules' are the rules promulgated under the constitution of the Company;

'EFTPOS Transaction' has the same meaning as in the EFTPOS Scheme Rules;

'financial year' is ~~the~~ a 12-month period ending 30 June;

an 'interchange fee' is a wholesale fee payable between an ~~issuer~~ EFTPOS Issuer and an ~~acquirer~~ EFTPOS Acquirer or ~~self-acquirer~~ Self Acquirer, directly or indirectly, in relation to an ~~debit card transaction~~ EFTPOS Transaction in the EFTPOS system;

an 'issuer' is a participant in the EFTPOS system that issues debit cards to its customers;

'Member' means a member of the Company;

'merchant' means a merchant in Australia that accepts a debit card for payment for goods or services and/or that provides cash out;

a 'multilateral interchange fee' is an interchange fee that is determined by EFTPOS Payments Australia Limited ~~the Company~~ to apply to transactions in the EFTPOS system between ~~m~~Members of that system in the absence of a bilateral interchange fee agreement unless a Bilateral Agreement is in place and applies;

'nominated EFTPOS acquirers' are those acquirers and self-acquirers determined by the Reserve Bank of Australia, selected in order of their share of the number of transactions, who comprise the minimum number of such acquirers or self-acquirers required to account for at least 90 per cent of the number of transactions acquired in the EFTPOS system in the 'reference year';

'reference year' is the financial year prior to the relevant year;

'relevant year' is the financial year in which the bilateral interchange fee benchmark is calculated;

a 'self-acquirer' 'Self Acquirer' has the same meaning as in the EFTPOS Scheme Rules; is a participant in the EFTPOS system that is a merchant that sends transactions directly to issuers rather than through an acquirer and takes on the responsibilities usually undertaken by an acquirer;

terms defined in the *Payment Systems (Regulation) Act 1998* have the same meaning in this Standard.

5. The Company and Each participant in the EFTPOS system each Member must do all things necessary on its part to ensure compliance with this Standard.
6. If any part of this Standard is invalid, the Standard is ineffective only to the extent of such part without invalidating the remaining parts of this Standard.
7. This Standard is to be interpreted:

- in accordance with its objective; and
- by looking beyond form to substance.

8. This amended and restated Standard comes into force on 1 January 2010.

## **Interchange fee**

8. For the purposes of this Standard, an interchange fee paid from an EFTPOS Acquirer to an EFTPOS Issuer is to be expressed as a positive number and an interchange fee paid from an EFTPOS Issuer to an EFTPOS Acquirer is to be expressed as a negative number.

## **Bilateral interchange fees**

9. A bilateral interchange fee (excluding GST) that is paid on any transaction EFTPOS Transaction in Australia, other than a transaction which includes a cash-out component, must not exceed be paid to the acquirer and be no more than the bilateral interchange fee benchmark applying in accordance with paragraph 15 and no less than the minimum fee specified in paragraph 16 set out in paragraph 10 below.

## **Bilateral interchange fee benchmark**

10. The bilateral interchange fee benchmark for bilateral interchange fees in the EFTPOS system at any time will be the same as the benchmark applying to the Visa Debit system at that time under the standard *The Setting of Interchange Fees in the Visa Debit Payment System* and published on the Reserve Bank of Australia's website. is to be calculated by the Reserve Bank of Australia as follows:

(i) for each of the nominated EFTPOS acquirers, the aggregate value of its eligible costs in the reference year is to be divided by the number of its debit card transactions in the reference year. The outcome is to be expressed as a number of cents per transaction;

(ii) the interchange fee benchmark is to be calculated by the Reserve Bank of Australia as the aggregate value of eligible costs in the reference year of the three nominated EFTPOS acquirers with the lowest outcome as calculated in paragraph 10(i), divided by the aggregate number of transactions undertaken by the same three nominated EFTPOS acquirers in the reference year. The result is to be expressed as a number of cents per transaction, rounded to the nearest cent.

11. Eligible costs are those directly related to processing and switching EFTPOS transactions incurred by an acquirer or self-acquirer when performing the business responsibilities usually undertaken by an acquirer. The bilateral interchange fee benchmark may be re-calculated in accordance with the standard *The Setting of Interchange Fees in the Visa Debit Payment System*.

12. Data on eligible costs must be drawn from accounting records of the nominated EFTPOS acquirers, prepared in accordance with generally accepted accounting principles and Australian equivalents to International Financial Reporting Standards.

13. The data required to conduct the calculation in paragraph 10 must be provided by each nominated EFTPOS acquirer to the Reserve Bank of Australia, or its agent, by 15 August in the relevant year.

14. The Reserve Bank of Australia, or its agent, will review the data to determine if the costs included are eligible costs and the Reserve Bank of Australia will use the eligible costs to calculate the bilateral interchange fee benchmark in accordance with paragraph 10.

15. — The Reserve Bank of Australia will publish the bilateral interchange fee benchmark for the EFTPOS system by 15 September in the relevant year, and, subject to paragraph 19, this benchmark will apply for three years from 1 November in the relevant year.

16. — The minimum fee determined for the purposes of paragraph 9 is 80 per cent of the applicable bilateral interchange fee benchmark.

## **Initial and subsequent bilateral interchange fee benchmarks**

17. — For the initial bilateral interchange fee benchmark for the EFTPOS system the relevant year is the financial year 2006/07.

18. — The bilateral interchange fee benchmark for the EFTPOS system is next to be re-calculated in the financial year 2012/13 and every three years thereafter. The requirement to re-calculate the bilateral interchange fee benchmark in 2009/10 was waived by the Reserve Bank in December 2008.

19. — The Reserve Bank of Australia may at any time, by notification on its website, waive or suspend the requirement to re-calculate the bilateral interchange fee benchmark, in which case the benchmark in force at that time will continue to apply.

## **Multilateral interchange fees**

20. 12. On each of the dates specified in paragraph 24 13. the weighted average of multilateral interchange fees implemented in the EFTPOS system in Australia (excluding GST) must not exceed the multilateral interchange fee benchmark set out in paragraph 24 15 below.

24. 13. For the purposes of paragraph 20 12. the dates are:

- (i) 1 November of every third year after 2009 2012. and
- (ii) the date any multilateral interchange fee is introduced, varied or removed in the EFTPOS system.

22. 14. For the purposes of paragraph 20 12. the weighted average of multilateral interchange fees is to be expressed as a number of cents per transaction. It is to be calculated by dividing the total interchange revenue that would have been payable had the interchange fees implemented on the dates specified in paragraph 24 13 been applicable in the previous financial year, by the number of transactions in that year.

23. — For the purposes of this standard, multilateral interchange fees paid from acquirers to issuers are to be expressed as positive numbers and multilateral interchange fees paid from issuers to acquirers are to be expressed as negative numbers.

## **Multilateral interchange fee benchmark**

24. 15. The multilateral interchange fee benchmark for the EFTPOS system at any time will be the same as the benchmark applying to the Visa Debit system at that time under the standard *The Setting of Interchange Fees in the Visa Debit Payment System*, as varied from time to time, and which is published on the Reserve Bank of Australia's website.

25. 16. The Reserve Bank of Australia may at any time, by notification on its website, waive or suspend the requirement to re-calculate the multilateral interchange fee benchmark, in which case the multilateral

~~interchange fee benchmark in force at that time will continue to apply. The multilateral interchange fee benchmark may be re-calculated in accordance with the standard *The Setting of Interchange Fees in the Visa Debit Payment System*.~~

## Transparency

- ~~26. 17. EFTPOS Payments Australia Limited The Company must publish any multilateral interchange fees applying to EFTPOS ~~†~~ transactions on its website or otherwise make these fees publicly available.~~
- ~~27. 18. Each acquirer and self-acquirer As a party to a Bilateral Agreement an EFTPOS Acquirer or Self Acquirer with a bilateral interchange agreement in the EFTPOS system must report to the Reserve Bank of Australia by 1 November each year the range of bilateral interchange fees it received or paid in the previous financial year. The Reserve Bank of Australia ~~will~~ may publish the industry range of bilateral interchange fees on its website.~~



# Attachment 3

## Draft Access Regime

### Access Regime for the EFTPOS System

#### Objective

The objective of this Access Regime is to promote competition and efficiency in the Australian payments system, having regard to:

- (i) the interests of current participants in the EFTPOS system;
- (ii) the interests of people who, in the future, may want access to the EFTPOS system;
- (iii) the public interest; and
- (iv) the financial stability of the EFTPOS system.

#### Application

1. This Access Regime is imposed under Section 12 of the *Payment Systems (Regulation) Act 1998*.
2. This Access Regime applies to the payment system operated within Australia known as the EFTPOS system, which was designated as a payment system on ~~9 September 2004~~ 12 June 2012 and is referred to in this Access Regime below as the EFTPOS system.

3. In this Access Regime:

~~'Access Agreement' has the same meaning as in the EFTPOS Access Code;~~

~~'Access Charge' means the charge payable by an Access Seeker to an Access Provider under an Access Agreement as described in clause 3 of Schedule 3 of the EFTPOS Access Code;~~

~~'access' means a direct communications link between two Members for the purposes of exchanging payment instructions and related messages in respect of their own activities as an EFTPOS Issuer and/or EFTPOS Acquirer and/or exchanging payment instructions and related messages on behalf of other EFTPOS Issuers or EFTPOS Acquirers, to facilitate the Clearing and Settlement of EFTPOS Transactions;~~

~~'Access Provider' has the same meaning as in the EFTPOS Access Code;~~

~~'Access Seeker' has the same meaning as in the EFTPOS Access Code;~~

~~'access service' means a service of facilitating or arranging for access;~~

~~an 'acquirer' is a participant in the EFTPOS system that provides services to a merchant to allow that merchant to accept a debit card;~~

~~'APCA' means the Australian Payments Clearing Association Limited (ABN 12 055 136 519);~~

'APCA's 2004 costs survey' is the survey of Direct Connectors in the EFTPOS system, conducted by APCA, on the estimated incremental direct costs of access connecting new Direct Connectors, the results of which were supplied to the Reserve Bank of Australia on 15 April 2005;

'Bilateral Agreement' has the meaning given in the EFTPOS Scheme Rules and also includes any other agreement permitted under the EFTPOS Scheme Rules between two or more Members to pay or receive interchange fees that vary from those specified by the Company as payable between Members;

a 'bilateral interchange fee' is an interchange fee that is agreed between two or more Members under a Bilateral Agreement for payment solely between those Members in relation to EFTPOS Transactions;

'cash out' means the provision of cash to a cardholder by a merchant, as a result of a debit card transaction at the merchant;

'debit card' means a card issued by a participant in the EFTPOS system that allows the cardholder to make payments to merchants for goods or services and/or obtain cash out using the EFTPOS system by accessing a deposit account held at an authorised deposit-taking institution;

'debit card transaction' or 'transaction' means a transaction in Australia using the EFTPOS system;

'Direct Connector' has the same meaning as in the EFTPOS Access Code;

'EFTPOS Access Code' means the EFTPOS Access Code adopted by EFTPOS Access Australia Limited [ABN 99 119 811 344] on 8 September 2006 and as varied from time to time;

'Clearing' means the process of transmission, authorisation and reconciliation of payment instructions between EFTPOS Issuers and EFTPOS Acquirers arising out of EFTPOS Transactions;

'Company' means EFTPOS Payments Australia Limited (ABN 37 136 180 366);

'EFTPOS Acquirer' has the same meaning as in the EFTPOS Scheme Rules;

'EFTPOS Issuer' has the same meaning as in the EFTPOS Scheme Rules;

'EFTPOS Scheme Rules' are the rules promulgated under the constitution of the Company;

'EFTPOS Transaction' has the same meaning as in the EFTPOS Scheme Rules;

'financial year' is a 12-month period ending 30 June;

an 'interchange fee' is a wholesale fee which is payable between an EFTPOS Issuer issuer and an EFTPOS Acquirer acquirer or self-acquirer Self Acquirer, directly or indirectly, in relation to an EFTPOS Transaction a debit card transaction in the EFTPOS system;

an 'issuer' is a participant in the EFTPOS system that issues debit cards to its customers;

'Member' means a member of the Company;

'merchant' means a merchant in Australia that accepts a debit card for payment for goods or services and/or that provides cash out;

a 'self-acquirer' is a participant in the EFTPOS system that is a merchant that sends transactions directly to issuers rather than through an acquirer and takes on the responsibilities usually undertaken by an acquirer;

'Self Acquirer' has the same meaning as in the EFTPOS Scheme Rules;

'Settlement' means the process of discharging payment obligations between an EFTPOS Issuer and an EFTPOS Acquirer arising from EFTPOS Transactions;

'Standard Service' has the same meaning as in the EFTPOS Access Code;

terms defined in the *Payment Systems (Regulation) Act 1998* have the same meaning in this Access Regime.

4. Each Member participant in the EFTPOS system must do all things necessary on its part to ensure compliance with this Access Regime.
5. If any part of this Access Regime is invalid, it is ineffective only to the extent of such part without invalidating the remaining parts of this Access Regime.
6. This Access Regime is to be interpreted:
  - in accordance with its objective; and
  - by looking beyond form to substance.
7. This Access Regime comes into force on 13 September 2006 [ \_\_\_\_\_ ] and is current as at that date.

## Price of access

8. The Access Charge levied by an Access Provider for providing the Standard Service to an Access Seeker  
Any charge or fee levied by a Member for a new access service must not exceed the benchmark, calculated in accordance with paragraphs 9 to 16 below, applying on the date the Access Agreement is entered into on which the Member enters into an agreement relating to that access service.

## Methodology for calculation of the **A**ccess **C**harge benchmark

9. For the period from [ \_\_\_\_\_ ] 13 September 2006 to 31 December 2009 to 1 July 2013 the benchmark for the Access a Ccharge or fee for access services in the EFTPOS system is the lowest estimated cost for providing a direct connection as measured in APCA's 2004 costs survey, adjusted for movements in the Consumer Price Index between the June quarter of 2005 and the June quarter of 2009. This cost is \$78,000 (excluding GST).
10. A new benchmark will apply from 1 January 2010 July 2013, and every four years thereafter, determined in accordance with paragraphs 11 to 16 below.
11. In a the final financial year of application of a given benchmark, to be known as the 're-calculation year', all providers of access services Access Providers in the EFTPOS system who have provided the Standard Service access services to one or more Members an Access Seeker during the four years to 30 June 31 December of that year must complete a survey of the eligible costs they incurred in providing the service to each such Member Access Seeker. For the first benchmark applying from 1 July 2013, this four-year period is from 1 January 2009 to 31 December 2012.
12. The form of the survey, including the set of assumptions, is to be substantively the same as APCA's 2004 costs survey, with any variations to must be approved by the Reserve Bank of Australia prior to the survey being undertaken. Eligible costs are to be specified in the survey, and must be only incremental direct costs incurred in providing access services the Standard Service. Providers of access services Access Providers may appoint an agent to co-ordinate this survey.

13. ~~Providers of access services Access Providers~~ must use data on eligible costs drawn from accounting records prepared in accordance with generally accepted accounting principles and Australian equivalents to International Financial Reporting Standards. Where ~~a provider of access services an Access Provider~~ has provided ~~access services the Standard Service~~ to more than one ~~Member seeking access services Access Seeker~~ during the four years to ~~30 June 31 December of~~ in the re-calculation year, it must provide separate data on the costs incurred in providing ~~access services each Standard Service~~. Each such provision of data counts as a separate survey response for the purposes of paragraph 16.
14. Results of the survey are to be provided by each ~~provider of access services Access Provider~~ to the Reserve Bank of Australia on a confidential basis by ~~15 August 15 February~~ of the re-calculation year, unless an extension of this deadline is agreed to in writing by the Reserve Bank of Australia.
15. Each ~~provider of access services Access Provider~~ may be required by the Reserve Bank of Australia to explain information in its survey responses. The Reserve Bank of Australia will review the data from each ~~provider of access services Access Provider~~ to determine if the costs included are eligible costs and the Reserve Bank of Australia will use only eligible costs to calculate the benchmark in accordance with paragraph 16 below.
16. The Reserve Bank of Australia will calculate the new benchmark to apply for the four-year period commencing 1 ~~January July~~ of the ~~financial~~ year following the re-calculation year. If the Reserve Bank of Australia receives survey responses from three or more different ~~providers of access services Access Providers~~, the new benchmark is to be the lowest actual cost for provision of ~~access services the Standard Service~~ from among all survey responses. If the Reserve Bank of Australia receives survey responses from fewer than three different ~~providers of access services Access Providers~~, the new benchmark is to be the lower of:
  - (i) the lowest actual cost for provision of ~~access services the Standard Service~~ from among all survey responses; and
  - (ii) the benchmark applying during the re-calculation year adjusted for the change in the Australian Consumer Price Index between the ~~June December~~ quarter of that year and the ~~June December~~ quarter of four years earlier.

## Transparency

17. The Reserve Bank of Australia will publish the new benchmark ~~by no later than 30 September 31 March~~ of the re-calculation year ~~(that is, not less than three months before the new benchmark is due to take effect)~~.

## No discrimination

18. ~~An acquirer or self-acquirer who becomes a participant in the EFTPOS system for the first time, on or after 13 September 2006, is for three years entitled to receive an interchange fee from an issuer with whom it has an Access Agreement no less than the lowest interchange fee payable by that issuer to an existing acquirer or self-acquirer.~~
19. ~~An issuer who becomes a participant in the EFTPOS system for the first time, on or after 13 September 2006, is for three years not required to pay an acquirer or self-acquirer with whom it has an Access Agreement an interchange fee greater than the highest interchange fee payable by an existing issuer to that acquirer or self-acquirer.~~

18. For the purposes of paragraphs 19 and 20, if no interchange fee is payable under a Bilateral Agreement, this fee arrangement is to be considered as a zero interchange fee payable by an EFTPOS Acquirer or Self Acquirer to an EFTPOS Issuer.
19. For a period of three years from the date on which a person becomes an EFTPOS Acquirer or Self Acquirer for the first time (the New EFTPOS Acquirer or Self Acquirer), the New EFTPOS Acquirer or Self Acquirer is entitled to establish a bilateral interchange fee with an EFTPOS Issuer, subject to the following paragraphs (i), (ii) and (iii).
- (i) If the New EFTPOS Acquirer or Self Acquirer seeks to negotiate payment of a bilateral interchange fee to the EFTPOS Issuer, that fee must not exceed the largest bilateral interchange fee that any other EFTPOS Acquirer or Self Acquirer pays to the EFTPOS Issuer.
  - (ii) Subject to paragraph (iii), if the New EFTPOS Acquirer or Self Acquirer seeks to negotiate to receive a bilateral interchange fee from an EFTPOS Issuer, that fee must not be less than the smallest bilateral interchange fee that any other EFTPOS Acquirer or Self Acquirer receives from the EFTPOS Issuer.
  - (iii) If the EFTPOS Issuer both pays and receives bilateral interchange fees, the EFTPOS Issuer is not obliged to pay a bilateral interchange fee to the New EFTPOS Acquirer or Self Acquirer.
20. For a period of three years from the date on which a person becomes an EFTPOS Issuer for the first time (the New EFTPOS Issuer), the New EFTPOS Issuer is entitled to establish a bilateral interchange fee with an EFTPOS Acquirer or Self Acquirer, subject to the following paragraphs (i), (ii) and (iii).
- (i) Subject to paragraph (iii), if the New EFTPOS Issuer seeks to negotiate to receive a bilateral interchange fee from the EFTPOS Acquirer or Self Acquirer, that fee must not be less than the smallest bilateral interchange fee that any other EFTPOS Issuer receives from that EFTPOS Acquirer or Self Acquirer.
  - (ii) If the New EFTPOS Issuer seeks to negotiate to pay a bilateral interchange fee to the EFTPOS Acquirer or Self Acquirer, that fee must not exceed the largest bilateral interchange fee that any other EFTPOS Issuer pays to that EFTPOS Acquirer or Self Acquirer.
  - (iii) If the EFTPOS Acquirer or Self Acquirer both pays and receives bilateral interchange fees, the EFTPOS Acquirer or Self Acquirer is not obliged to pay a bilateral interchange fee to the New EFTPOS Issuer.