

## SCHEME RULES RELATING TO MERCHANT PRICING FOR CREDIT, DEBIT AND PREPAID CARD TRANSACTIONS

### 1. Objective

*The objective of this Standard is to promote:*

- *efficiency; and*
- *competition*

*in the Australian payments system by providing for scheme rules that require participants to give merchants the freedom to make a charge for accepting payment of a particular kind that reflects the cost to the merchant of accepting that payment type.*

### 2. Application

2.1 This Standard is determined under Section 18 of the Payment Systems (Regulation) Act 1998 (the **Act**).

2.2 This Standard applies to each of the following, each of which is referred to in this Standard as a **Scheme**:

- (a) the payment system operated within Australia known as the MasterCard system, which was designated under the Act as a payment system on 12 April 2001 and which is referred to in this Standard as the **MasterCard System**;
- (b) the payment system operated within Australia known as the VISA system, which was designated under the Act as a payment system on 12 April 2001 and which is referred to in this Standard as the **VISA System**;
- (c) the payment system operated within Australia known as Visa Debit, which was designated under the Act as a payment system on 23 February 2004 and which is referred to in this Standard as **Visa Debit**;
- (d) the payment system operated within Australia known as Debit MasterCard, which was designated under the Act as a payment system on 15 October 2015 and which is referred to in this Standard as **Debit MasterCard**;
- (e) the debit card payment system operated within Australia known as the EFTPOS payment system, which was designated under the Act as a payment system on 12 June 2012 and which is referred to in this Standard as the **EFTPOS System**;
- (f) the prepaid card payment system operated within Australia under the EFTPOS Scheme Rules, which was designated under the Act as a payment system on 15 October 2015 and which is referred to in this Standard as **EFTPOS Prepaid**;
- (g) the payment system operated within Australia known as MasterCard Prepaid, which was designated under the Act as a payment system on 15 October 2015 and which is referred to in this Standard as **MasterCard Prepaid**; and
- (h) the payment system operated within Australia known as Visa Prepaid, which was designated under the Act as a payment system on 15 October 2015 and which is referred to in this Standard as **Visa Prepaid**.

2.3 In this Standard:

**Acquired or Acquiring** includes accepted or accepting;

**Acquirer** means a participant in a Scheme in Australia that:

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

**Acquirer Supplied Element** means in relation to an Acquirer, a Merchant and a Scheme, those of the Permitted Cost of Acceptance Elements for that Merchant and that Scheme that are supplied, directly or indirectly, by that Acquirer;

**Card, Card of a Scheme or Card of that Scheme** means a Credit Card of a Scheme, Debit Card of a Scheme or Prepaid Card of a Scheme;

**Card Transaction** means a Credit Card Transaction, Debit Card Transaction or Prepaid Card Transaction;

**Commencement Date** means 1 September 2016;

**Cost of Acceptance** has the meaning given to it in clause 5;

**Credit Card, Credit Card of a Scheme or Credit Card of that Scheme** means, in relation to a Scheme, a Device that can, under the Rules of the Scheme, be used in Australia for purchasing goods or services on credit (irrespective of whether the Device is issued in or outside Australia);

**Credit Card Scheme** means the MasterCard System or the VISA System;

**Credit Card Transaction** means, in relation to a Credit Card Scheme, a transaction in that Scheme between a holder of a Credit Card of that Scheme and a Merchant involving the purchase of goods or services using a Credit Card of that Scheme that is Acquired by an Acquirer and includes any transaction to reverse such a transaction or provide a credit or make a chargeback in relation to such a transaction;

**Debit Card, Debit Card of a Scheme or Debit Card of that Scheme** means, in relation to a Scheme, a Device that can, under the Rules of the Scheme, be used in Australia to make payments to Merchants for goods or services by accessing a deposit account held at an authorised deposit-taking institution or a bank or other financial institution (irrespective of whether the Device is issued in or outside Australia);

**Debit Card Scheme** means Debit MasterCard, the EFTPOS System or Visa Debit;

**Debit Card Transaction** means, in relation to a Debit Card Scheme, a transaction in that Scheme between a holder of a Debit Card of that Scheme and a Merchant involving the purchase of goods or services (whether or not it also involves the obtaining of cash) using a Debit Card of that Scheme that is Acquired by an Acquirer and includes any transaction to reverse such a transaction or provide a credit or make a chargeback in relation to such a transaction;

**Device** means any card, plate or other payment code or device, including a code or device where no physical card or other embodiment is issued and a code or device used or to be used for only one transaction;

**EFTPOS Scheme Rules** means the rules promulgated under the constitution of EFTPOS Payments Australia Limited (ABN 37 136 180 366) and any schedule, document, specification or rule published by EFTPOS Payments Australia Limited pursuant to those rules;

**Financial Year** means a period from 1 July to the following 30 June;

**Issuer** means an entity that issues Cards of a Scheme to its customers;

**Large Merchant** means a Merchant that satisfies two or all of the following:

- (a) the consolidated gross revenue for the Financial Year ended 30 June 2015 of the Merchant and its Related Bodies Corporate was \$25 million or more;
- (b) the value of the consolidated gross assets at 30 June 2015 of the Merchant and its Related Bodies Corporate was \$12.5 million or more;
- (c) as at 30 June 2015 the Merchant and its Related Bodies Corporate between them had 50 or more employees (whether full time, part time, casual or employed on any other basis);

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

**Merchant Service Fee** means a transaction-based fee (or a time-period-based fee that covers a specified or maximum number of transactions) charged to a Merchant by an Acquirer for Acquiring, or by a Payment Facilitator for arranging the Acquisition of, one or more types of Card Transaction from that Merchant whether collected on an ad valorem or flat-fee basis, or charged as a blended or bundled rate across more than one type of Card Transaction or on an interchange plus acquirer margin basis or any other basis;

**Payment Facilitator** means an entity which arranges or procures Acquiring services from an Acquirer for one or more Merchants;

**Payment Service Provider** means, in relation to a Merchant and a Scheme, an entity that is not a Related Body Corporate of the Merchant that provides services and/or equipment to the Merchant that directly relate to, or are directly used for or in connection with, the acceptance by that Merchant of Cards of that Scheme for payment for goods or services;

**Permitted Cost of Acceptance Elements** in relation to a Merchant and a Scheme are the fees and premiums referred to in clause 5.1(a) for that Merchant and that Scheme;

**Permitted Surcharge** has the meaning given to it in clause 4.1;

**Prepaid Card, Prepaid Card of a Scheme or Prepaid Card of that Scheme** means, in relation to a Scheme, a Device that can be used in Australia, under the Rules of the Scheme, to make payments for goods or services using a store of value that has been prepaid or pre-funded and is accessible to make payments for goods or services only through the use of that, or a linked or related, Device (irrespective of whether the Device is issued in or outside Australia);

**Prepaid Card Scheme** means EFTPOS Prepaid, MasterCard Prepaid or Visa Prepaid;

**Prepaid Card Transaction** means in relation to a Prepaid Card Scheme a transaction in that Scheme between a holder of a Prepaid Card and a Merchant involving the purchase of goods or services (whether or not it also involves the obtaining of cash) using a Prepaid Card relating to that Scheme and includes any transaction to reverse such a transaction or provide a credit or make a chargeback in relation to such a transaction;

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

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

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

**Scheme Pair** means:

- (a) Visa Debit and Visa Prepaid;
- (b) Debit MasterCard and MasterCard Prepaid; or
- (c) EFTPOS System and EFTPOS Prepaid;

**Statement Period** has the meaning given to it in clause 7.2(a);

**Surcharge** means, in respect of any Card Transaction, any of the following, however named or described:

- (a) an amount charged, in addition to the price of goods or services, for the relevant Merchant accepting payment through the Card Transaction; or
- (b) an amount charged for making payment through the Card Transaction. An amount will be charged for making payment through a Card Transaction if:
  - (i) that amount is charged because the purchase of the relevant goods or services is effected using the relevant Card; or
  - (ii) the goods or services could be purchased from the relevant Merchant by a different payment method without that amount being charged;

**include or including or such as** when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and terms defined in the Act have the same meaning in this Standard.

- 2.4 Each participant in a Scheme must do all things necessary on its part to ensure compliance with this Standard.
- 2.5 If any part of this Standard is invalid, this Standard is ineffective only to the extent of such part without invalidating the remaining parts of this Standard.
- 2.6 This Standard is to be interpreted:
  - (a) in accordance with its objective; and
  - (b) by looking beyond form to substance.
- 2.7 This Standard shall not apply in respect of Rules of a Scheme that relate, or the conduct of participants in a Scheme that relates, to charges made by Merchants for accepting Cards for payment of a taxi fare in a State or Territory of Australia. Accordingly payment of a taxi fare in any State or Territory of Australia effected using a Card is not a payment of a kind covered by this Standard.
- 2.8 This Standard replaces each of the following Standards or parts of Standards:
  - (a) each of Standard No. 2 *Merchant Pricing for Credit Card Purchases* which applied to the MasterCard System and Standard No. 2 *Merchant Pricing for Credit Card Purchases* which applied to the VISA System; and
  - (b) clauses 9 and 10 and sub-clauses 12 (i), (ii) and (iii) of *The Honour All Cards Rule in the Visa Debit and Visa Credit Card Systems and the No Surcharge Rule in the Visa Debit System* Standard.

### 3. Merchant Pricing

Neither the Rules of a Scheme nor any participant in a Scheme shall prohibit or deter:

- (a) a Merchant from recovering, by charging a Surcharge in respect of a Card Transaction in a Scheme at any time, an amount that does not exceed the Permitted Surcharge for that Merchant and that Scheme at that time; or
- (b) a Merchant, in recovering part or all of the Cost of Acceptance of Cards of the Scheme, from applying different Surcharges in respect of Card Transactions in different Schemes (except that, in relation to a Scheme Pair, the Rules of a Scheme may require that if a Surcharge is applied in respect of Card Transactions in one Scheme in the Scheme Pair, any Surcharge applied in respect of Card Transactions in the other Scheme in the Scheme Pair must be the same).

### 4. Permitted Surcharge

- 4.1 The Permitted Surcharge for a Merchant and a Scheme at any time is an amount not exceeding the Cost of Acceptance for that Merchant and that Scheme applicable at that time.
- 4.2 For the purpose of clause 4.1 the Cost of Acceptance of Cards of a Scheme applicable at a time is:
  - (a) subject to paragraph (b), the Cost of Acceptance of Cards of the Scheme calculated for a 12 month period that ended not more than 13 months before that time; or
  - (b) if the Cost of Acceptance of Cards of the Scheme for a Merchant for a 12 month period preceding that time is not reasonably ascertainable, an estimate of the average cost of acceptance of Cards of the Scheme for a period of 12 months calculated by the Merchant in good faith using only known and/or estimated Permitted Cost of Acceptance Elements and Card Transaction volumes for Cards of the Scheme.

Each 12 month period referred to in paragraph (a) or paragraph (b) is a **Reference Period**.

### 5. Cost of Acceptance

- 5.1 Subject to the other provisions of this clause 5, **Cost of Acceptance** for a Merchant, a Scheme and a Reference Period at any time means, in relation to the Merchant's acceptance of a Card of the Scheme, the average cost per Card Transaction in the Scheme calculated for the Reference Period as follows:
  - (a) by adding only the following amounts paid by the Merchant in respect of that Scheme during that Reference Period, which are to be determined taking into account any discount, rebate or other allowance received or receivable by the Merchant to the extent any such discount, rebate or other allowance is ascertainable:
    - (i) the applicable Merchant Service Fee or Merchant Service Fees in respect of Card Transactions in the Scheme;
    - (ii) fees paid to any entity that was the Merchant's Acquirer, Payment Facilitator or Payment Service Provider during the Reference Period for:
      - (A) the rental and maintenance of payment card terminals that process Cards of that Scheme; or
      - (B) providing gateway or fraud prevention services referable to that Scheme;

- (iii) fees incurred in processing Card Transactions in that Scheme and paid to any entity that was the Merchant's Acquirer or Payment Facilitator during the Reference Period including international service assessments or cross-border transaction fees, switching fees and fraud-related chargeback fees (but, for the avoidance of doubt, excluding the amount of chargebacks); and
- (iv) if the Merchant acts as agent for a principal, fees or premiums paid by the Merchant to an entity that is not a Related Body Corporate of the Merchant to insure against the risk that the Merchant will be liable to a customer for the failure of its principal to deliver goods or services purchased through a Card Transaction provided that such risk arises because payment for the relevant goods or services is effected through a Card Transaction,

but in each case only if those fees or premiums are:

- (iv) directly related to Card Transactions in that Scheme. A fee or premium will not be so directly related if it is incurred in relation to or in connection with a payment, or the sale or purchase to which the payment relates, irrespective of the method used to make the payment; and
- (v) subject to clause 4.2(b), documented or recorded in:
  - (A) a contract in effect between the Merchant and its Acquirer, Payment Facilitator or Payment Service Provider that relates to or covers the Scheme or Card Transactions in the Scheme (whether or not it also relates to or covers other Schemes or Card Transactions in other Schemes); or
  - (B) a statement or invoice from the Merchant's Acquirer, Payment Facilitator or Payment Service Provider that relates to or covers the Scheme or Card Transactions in the Scheme; and
- (b) expressing the total of the amounts in paragraph (a) above as a percentage of the total value of Card Transactions in the Scheme between the Merchant and holders of Cards in the Scheme in that Reference Period, with that percentage being the average cost per Card Transaction in the Scheme.

5.2 In relation to a Merchant's acceptance of a Card of a Scheme that is part of a Scheme Pair **Cost of Acceptance** for a Reference Period will be calculated as provided in clause 5.1, except that the average cost per Card Transaction for the Reference Period must be calculated across the Scheme Pair using only the Permitted Cost of Acceptance Elements for both Schemes in the Scheme Pair.

5.3 If a Permitted Cost of Acceptance Element is not levied or charged on a per transaction basis and is not referable only to Card Transactions undertaken in a single Scheme (or Scheme Pair where clause 5.2 applies) (for example, a fixed monthly terminal rental cost that allows Card Transactions in more than one Scheme to be made), that Permitted Cost of Acceptance Element is to be apportioned among the relevant Schemes, Scheme Pairs and other payment systems (as the case may be) to which it relates for the purpose of determining Cost of Acceptance on a pro-rata basis. The apportionment is to be based on the value of the Card Transactions in the relevant Scheme or Scheme Pair (as applicable) over the period to which the cost relates as a proportion of the total value of transactions undertaken in any payment system to which the cost relates over that period (in each case, the value of the Card Transactions and transactions excludes the amount of any cash obtained by the holder of a Card of a Scheme or other Device as part of a Card Transaction or other transaction).

## 6. Card Identification

- 6.1 All Debit Cards issued after 1 July 2017 in Australia by a participant in a Debit Card Scheme that are capable of being visually identified as Debit Cards must be so identified. All Prepaid Cards issued after 1 July 2017 in Australia by a participant in a Prepaid Card Scheme that are capable of being visually identified as Prepaid Cards must be so identified.
- 6.2 All Debit Cards issued in Australia by a participant in a Debit Card Scheme must be issued with a Bank Identification Number (**BIN**) that allows them to be electronically identified as Debit Cards. All Prepaid Cards issued after 1 July 2017 in Australia by a participant in a Prepaid Card Scheme in Australia must be issued with a BIN that allows them to be electronically identified as Prepaid Cards.
- 6.3 Without limiting clause 6.2:
- (a) an administrator of a Scheme in Australia or an Acquirer that Acquires both Credit Card Transactions and Debit Card Transactions for a Merchant must provide to the Merchant, or publish, lists of BINs that permit the Merchant to separately identify Credit Card Transactions and Debit Card Transactions electronically; and
  - (b) from 1 July 2017, an administrator of a Scheme in Australia or an Acquirer that Acquires Card Transactions of more than one Scheme for a Merchant must provide to the Merchant, or publish, lists of BINs that permit the Merchant to separately identify Card Transactions of each applicable Scheme electronically.

## 7. Transparency

- 7.1 Subject to clause 7.3, each Acquirer must, on or as soon as practicable after the Commencement Date, notify in writing each Merchant for which the Acquirer directly or indirectly provides Acquiring services of the provisions of this Standard.
- 7.2 Subject to clause 7.3, each Acquirer must issue, or cause to be issued, monthly statements to each Merchant for which the Acquirer provides Acquiring services, directly or indirectly. Each such statement must set out:
- (a) the dates on which the period covered by the statement begins and ends (**Statement Period**). For that purpose, for all statements except the first, the date a statement period begins must be the day after the day the immediately previous statement period ends;
  - (b) for the relevant Statement Period:
    - (i) the aggregate cost of the Acquirer Supplied Elements of the Cost of Acceptance for the Merchant of:
      - (A) Credit Cards of each applicable Credit Card Scheme; and
      - (B) Debit Cards and Prepaid Cards of each applicable Scheme Pair,over the Statement Period (each such aggregate being a **Month Element Cost Total**);
    - (ii) the aggregate value of Card Transactions Acquired for the Merchant for:
      - (A) each applicable Credit Card Scheme; and
      - (B) each applicable Scheme Pair,over the Statement Period (each such aggregate being a **Month Value Total**); and

- (iii) for each applicable Credit Card Scheme and each applicable Scheme Pair, the Month Element Cost Total expressed as a percentage of the corresponding Month Value Total; and
- (c) if it is the statement for the last full Statement Period within a Financial Year:
  - (i) the aggregate cost of the Acquirer Supplied Elements of the Cost of Acceptance for the Merchant over the 12 month period ending on the last day of that Statement Period (an **Annual Period**) of:
    - (A) Credit Cards of each applicable Credit Card Scheme; and
    - (B) Debit Cards and Prepaid Cards of each applicable Scheme Pair, (each such aggregate being an **Annual Element Cost Total**);
  - (ii) the aggregate value of Card Transactions Acquired for the Merchant for:
    - (A) each applicable Credit Card Scheme; and
    - (B) each applicable Scheme Pair, over the Annual Period (each such aggregate being an **Annual Value Total**); and
  - (iii) for each applicable Credit Card Scheme and each applicable Scheme Pair, the Annual Element Cost Total expressed as a percentage of the corresponding Annual Value Total.

7.3 An Acquirer will not contravene clause 7.1 or 7.2 if:

- (a) the Acquirer provided Acquiring services to the Merchant indirectly via a Payment Facilitator;
- (b) prior to the time the Acquirer was required to notify or give a statement under clause 7.1 or 7.2 (as applicable), it entered into a written agreement with the Payment Facilitator which obliged the Payment Facilitator to provide the notice and statements described in clauses 7.1 and 7.2 at the times described in those clauses;
- (c) after conducting due inquiries of the Payment Facilitator before that agreement was entered into, the Acquirer was satisfied that the Payment Facilitator had sufficient processes in place to provide those notices and statements at the times described in clauses 7.1 or 7.2 (as applicable); and
- (d) after entering into that agreement and prior to the time the notice or statement (as the case may be) was required to be sent, the Acquirer had not had cause to suspect that the notice or statement would not be sent to the Merchant by the Payment Facilitator in accordance with clauses 7.1 or 7.2 (as applicable).

## 8. Anti-Avoidance

- 8.1 A participant in a Scheme must not, either alone or together with one or more other persons, enter into, begin to carry out or carry out a plan or arrangement or otherwise be knowingly involved in a plan or arrangement if it would be concluded that the person did so for a purpose of avoiding the application of this Standard, and the plan or arrangement or part of the plan or arrangement has achieved or would but for this provision have achieved or could reasonably be considered to have achieved that purpose.
- 8.2 For the purpose of this Standard, a provision of a plan or arrangement shall be deemed to have a particular purpose if the provision was included in the plan or arrangement by a party



or parties for purposes that include that purpose and that purpose was a substantial purpose.

- 8.3 Without limiting clause 8.1, neither the Rules of a Scheme, nor a participant in a Scheme, shall directly or indirectly deny a Merchant access to Acquiring services or decline to provide Acquiring services to a Merchant for the reason (whether solely or in combination with other reasons) that:
- (a) the Merchant imposes or intends to impose a Surcharge in relation to Card Transactions in that Scheme; or
  - (b) the amount of any Surcharge charged, or proposed to be charged, by the Merchant in relation to Card Transactions in the Scheme is a particular amount, either in absolute terms or relative to any other Surcharge (unless that amount would exceed the Permitted Surcharge for Card Transactions in that Scheme).

## **9. Commencement and implementation**

- 9.1 This Standard came into force on the Commencement Date, but certain provisions in it had a transitional application as set out in clause 9 of this Standard as at the Commencement Date.
- 9.2 On and from 1 January 2022, each participant in a Scheme must comply with this Standard as varied with effect from that date.