



3 February 2016

By email: pysubmissions@rba.gov.au

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

Dear Dr Richards,

Review of Card Payments Regulation – Consultation Paper

Thankyou for the opportunity to provide comment on the reforms proposed by the Reserve Bank of Australia (**RBA**) in the Review of Card Payments Regulation Consultation Paper (**Consultation Paper**), released in December 2015.

Consumer Action has had the benefit of reviewing CHOICE's submission to the Consultation Paper and largely concurs with the views expressed by CHOICE in that submission. Consumer Action represents a narrower segment of the consumer base than CHOICE, as we are particularly focused on the needs of disadvantaged, vulnerable and low-income consumers. Accordingly, we have restricted our comments to the issues which we perceive as most important to those we represent—namely excessive surcharges, and interchange fees. On other matters raised in the Consultation Paper which we do not directly address, we support the views expressed by CHOICE.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

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Surcharges

Consumer Action has consistently advocated for tighter controls on credit card surcharging, which in certain industries have been used excessively and effectively amount to price gouging. This has a negative impact on consumer confidence, and particularly impacts on low-income consumers who are poorly placed to absorb the additional, unjustified cost. While we broadly concur with CHOICE that a “no surcharge” system would shift costs from those choosing a certain payment type to all consumers, there is a clear need for tighter price controls on those who do charge surcharges—so that allowable surcharges fairly reflect the cost incurred for receiving the payment, and do not simply amount to an arbitrary “add on” costs for the consumer.

In Consumer Action’s view, “Option 3: Modifications to the cost acceptance framework”¹ strikes the most appropriate balance for consumers—particularly as Option 3 adopts a narrow definition of ‘card acceptance costs’, limiting the definition to the fees paid by the merchant to their acquirer (or payment facilitator). Importantly, Option 3 also requires card acceptance costs to be provided to merchants by their acquirer or payment facilitator, and to be expressed in percentage terms rather than as a dollar figure. As the Consultation Paper notes, fixed dollar surcharging (which is particularly common in the airline industry) has received considerable negative publicity. Charging the same fixed dollar surcharge for transactions of significantly varying value shows that current surcharges frequently bear little or no relation to the actual cost incurred by the airline.²

In their totality, the measures proposed under Option 3 should work to ensure that surcharges paid by consumers for utilizing card payment systems fairly reflect the cost incurred by the merchant. We are particularly supportive of measures to limit merchants evading limits on surcharges by describing their fees as something else, for example, a ‘booking and service fee’. This kind of avoidance is a likely response from some market segments, so it is important that the new system anticipates that. As it stands, the proposed system will be far more transparent and much fairer than current arrangements.

We do note though, that despite supporting Option 3, we are opposed to surcharging for lower cost payment methods such as debit cards or eftpos. We maintain that it is not fair for consumers to be surcharged for access to their own funds.

Consumer Action also notes the *Competition and Consumer Amendment (Payment Surcharges) Bill 2015* which was introduced to Federal House of Representatives in December 2015 and is expected to be enacted early this year. This legislation will empower the Australian Competition and Consumer Commission (**ACCC**) to enforce the limits set by the RBA (as proposed in the Consultation Paper), and to that end Consumer Action supports CHOICE’s recommendation that consideration be given to how consumers may best report excessive surcharging so that it may be effectively enforced. Consumer Action would be happy to participate in any consultation regarding effective reporting and enforcement of the new limits.

¹ Reserve Bank of Australia, ‘Review of Card Payments Regulation – Consultation Paper’ December 2015, p 29.

² Reserve Bank of Australia, ‘Review of Card Payments Regulation – Consultation Paper’ December 2015, p 34.

Interchange fees

Consumer Action supports CHOICE's view that credit card interchange fees need to be lowered, although we believe this should be achieved through the implementation of a hard cap, or ceiling—rather than a weighted benchmark. Consumer Action notes that the recent Financial System Inquiry (**FSI**) commissioned by Federal Treasury also recommended the implementation of hard caps for interchange fees, in its final report.³ The FSI Final Report framed the issue in terms of market competition, making reference to the fact that large merchants are currently able to negotiate lower merchant service fees, giving them an unfair advantage against smaller businesses. The FSI Final Report recommended:

“Replacing three-year weighted-average caps with hard caps, so every interchange fee falls below the interchange fee caps. This would also reduce differences in fees paid by small and large merchants”⁴

In Consumer Action's view, a more even playing field between large and small businesses would benefit consumers. We recommend that the proposed weighted benchmark of 0.3% be implemented as a cap—which we note is considerably lower than the 0.8% cap proposed by the Consultation Paper. Creeping interchange fees have been detrimental for consumers, as they generally lead to an increase in retail prices, as merchants pass on the cost.

We are also of the view that a hard cap of five cents per transaction should be applied to interchange fees for debit card transactions. Consumer Action notes that this is considerably lower than the fifteen cents currently proposed in Clause 4.1 of Draft Standard No.2 in the Consultation Paper.⁵

Consumer Action refutes the arguments commonly raised against a reduction in interchange fees. Common industry criticisms are that a reduction in interchange fees will not result in lower costs for consumers (as merchants will retain the difference), that a lowering of fees will negatively impact the value of rewards programs, and that annual card fees will rise to account for the shortfall in fee revenue, and that some card providers will be unable to offer low rate credit cards. In our view, these arguments all ignore the role of healthy competition in a consumer economy. Interchange fees as they currently stand are too lightly regulated, opaque and amount to a hidden business to business cost that most consumers are unaware they are bearing.

In terms of profitability, Australia's retail banking sector is arguably the healthiest in the developed world.⁶ To suggest that a lowering of interchange fees will result in negative outcomes for consumers misrepresents the capacity of the industry to absorb fair regulation and respond competitively with strong product offerings, which are not reliant on unjustified fee based revenue.

³Financial System Inquiry Committee, 'Financial System Inquiry – Final Report', November 2014, p 168 (<http://fsi.gov.au/publications/final-report/chapter-3/interchange-fees/>)

⁴ Financial System Inquiry Committee, 'Financial System Inquiry – Final Report', November 2014, p 168 (<http://fsi.gov.au/publications/final-report/chapter-3/interchange-fees/>)

⁵ Reserve Bank of Australia, 'Review of Card Payments Regulation – Consultation Paper' December 2015, p 54.

⁶ Yeates, Clancy 'Big four banks most profitable in developed world: BIS' Sydney Morning Herald, June 28 2015 (<http://www.smh.com.au/business/banking-and-finance/big-four-most-profitable-in-developed-world-bis-20150626-ghyriu.html>)

Please contact Zac Gillam, Senior Policy Officer on 03 9670 5088 or at zac@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

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