



**Submission to the
Commonwealth Consumer Affairs Advisory Council on
“Credit card surcharges and non-transparent transaction
fees: a study”**

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About this document

This is the submission of the Australian Payments Clearing Association to the Commonwealth Consumer Affairs Advisory Council on “Credit card surcharges and non-transparent transaction fees: a study”, issued on 29 May 2013.

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The Association has no objection to publication of its submission.

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1. Introduction

The Australian Payments Clearing Association (APCA) is the self-regulatory body for Australia's payments industry. The members of APCA include Australia's leading financial institutions, major retailers and other principal payments service providers. More information about APCA can be found on our website www.apca.com.au.

APCA is pleased to make this submission to the Commonwealth Consumer Affairs Advisory Council on "Credit card surcharges and non-transparent transaction fees: a study", issued on 29 May 2013.

APCA has previously made submissions to the Reserve Bank of Australia's 2011-12 Review of Card Surcharging. This Review concluded with the revision of the RBA Standards enabling card schemes to develop rules that restrict surcharging by merchants to the reasonable cost of card acceptance, effective March 2013.

2. Issues

2.1 Addressing Excessive Surcharging by Merchants

APCA maintains a strong preference for market-based outcomes in payments. However, if regulation is required to maintain healthy competition, efficiency and security, then industry self-regulation is preferred.

APCA believes that permitting merchant surcharging on credit and debit cards has been essentially pro-competitive and, as such, a positive regulatory intervention. Permitting merchants to surcharge enables price signalling to consumers, facilitates merchants in their negotiations on merchant service fees and allows merchants to recover the costs associated with card acceptance.

However, our view is that price capping of merchant surcharging and interchange fees distort markets and inhibits efficient outcomes. Ideally, market and self-regulatory based solutions, such as facilitated by the RBA's recent Standards changes, would need to be thoroughly and properly assessed before consideration of further responses to address excessive surcharging.

On this basis, APCA acknowledges that the revision of the RBA's Standards represents a practical and industry-based solution to excessive surcharging that is preferable to heavy-handed and market-distorting public regulation or fee capping.

Another important consideration in coming to this position is that excessive surcharging appears to be concentrated within particular industries and payment channels, for example, online purchasing of discount airline tickets. This is supported by data from the RBA and in submissions made to the June 2011 *Merchant Surcharging Consultation Paper* (the Consultation Paper). The RBA's own research suggests that the consumer experience of surcharging has remained reasonably consistent over recent years and that, for most of their card transactions, consumers do not pay a surcharge.

A more heavy-handed intervention by the regulator, or a major reworking of the current regime would be a disproportionate response when based on the confined nature of excessive surcharging. A "light touch", self-regulatory solution appears far more appropriate.

APCA previously welcomed the RBA's decision to not pursue some of the more interventionist and burdensome proposals made in the June 2011 Consultation Paper. These included the disclosure of the merchant service fee at point of sale and a fixed cap on surcharges. We continue to believe that basing the surcharge limits on the reasonable costs of acceptance has the potential for fewer

unintended consequences and adverse market outcomes than the introduction of a fixed cap may have.

Any response to this issue must have low implementation and compliance costs and must balance the competing interests and incentives of cardholders, issuers, schemes, merchants and acquirers. In particular, any approach to restrict excessive surcharging must avoid imposing expensive compliance requirements on the wider community of card acquirers and merchants.

Further, the current regime has only been in place for a matter of months. It could be argued that properly evaluating the effectiveness of the recent reforms at this current time is premature.

2.2 Comprehensive Self-Regulation

RBA's reliance on the card schemes' rules to affect the surcharge caps is not ideal. However in the absence of other alternatives, we recognise that this represents a more pragmatic and flexible outcome than direct regulatory intervention by a regulator.

The issue of how to regulate merchant surcharging suggests that limitations remain in relation to regulating particular system-wide practices.

In our submission on Systemic Governance to the RBA Innovation Review in August 2011, APCA proposed that:

A single, comprehensive industry self-governance body should be established to work with the public regulator. The body should have clearly defined self-regulatory authority, supported by changes to the PSRA to develop, implement and ensure compliance with industry self-regulation, under well-defined RBA oversight.

A more robust and inclusive self-regulatory regime, along the lines proposed by APCA, may provide the RBA and industry stakeholders with another, and possibly more appropriate and effective, means for addressing future cross-scheme issues.

2.3 Surcharging of Other Payment Instruments

Despite the surcharging of card transactions, to the best of our knowledge, surcharging of other payment instruments remains almost non-existent in Australia. We believe the RBA interventions on the lifting of the "no surcharge" standards sent a clear signal to merchants that card surcharging was acceptable. However there remains a lack of clarity as to the appropriateness of surcharging on other payment instruments.

This absence of clear and comprehensive regulatory signals on the acceptability of surcharging other payment instruments has likely meant merchants have been hesitant to explore this path. This on-going uncertainty constrains the ability of merchants to recoup costs associated with non-card payments, potentially creating cross-subsidies, where card users subsidise cash and cheque users, or else disposing merchants to promote cards, on which they can surcharge, at the expense of other options. An unintended consequence of card surcharging is that it drives consumers to cash at point of sale, which is often costly and inefficient. It remains desirable to promote use of more efficient payment methods. Understanding the costs of various payment methods, in particular understanding the true cost of cash, remains worthy of further assessment by Government and industry.

In the interest of payments efficiency, there should be clarity on the ability of merchants to surcharge both card and non-card payment instruments to recoup acceptance costs and to effect more robust payment instrument competition. This includes the ability of merchants to differentially

surcharge across schemes. Ideally, this clarity should not advantage or disadvantage particular instruments.

3. Conclusion

APCA welcomes the opportunity to consult on the Commonwealth Consumer Affairs Advisory Council on “Credit card surcharges and non-transparent transaction fees: a study”, issued on 29 May 2013.

APCA acknowledges that permitting merchant surcharging on credit and debit cards has been essentially pro-competitive and, as such, a positive regulatory intervention.

APCA also recognises that “excessive surcharging” needs to be addressed and that the RBA’s current approach is preferable to a more interventionist or heavy-handed approach. Further, any assessment of this approach, which is now slightly over three months old, may be premature.

While addressing “excessive surcharging” through the card scheme rules may not be the ideal solution, APCA recognises it is a pragmatic and flexible self-regulatory solution. A more robust self-regulatory framework, along the lines proposed by APCA in our governance submission to the RBA Innovation Review, could provide the RBA with another alternative to address policy issues such as this in the future.

APCA notes the importance of enabling market mechanisms to work and to minimise the compliance requirement on acquirers and merchants. The need for clarity on the ability of merchants to surcharge payments instruments other than cards is also needed.