

3 February 2016

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

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

Dear Dr Richards,

### **LPA submission to RBA Review of Card Payments Regulation consultation paper**

Live Performance Australia (LPA) welcomes the opportunity to provide comment on the Reserve Bank of Australia's (RBA's) consultation paper on card payments regulation. We have provided our views and recommendations for changes to the current regulation and standards in our submission attached.

#### **ABOUT LPA**

LPA is the peak body for Australia's live performance industry. Established in 1917 and registered as an employers' organisation under the *Fair Work (Registered Organisations) Act 2009*, LPA has over 400 Members nationally. We represent commercial producers, music promoters, major performing arts companies, small to medium companies, independent producers, major performing arts centres, metropolitan and regional venues, commercial theatres, stadiums and arenas, arts festivals, music festivals, and service providers such as ticketing companies and technical suppliers. Our membership spans from small-medium and not-for-profit organisations to large commercial entities.

LPA has a clear mandate to advocate for and support policy decisions that benefit the sustainability and growth of the live performance industry in Australia. Some of our Members currently surcharge consumers for ticket purchases made via card payments.

#### **LPA POSITION SUMMARY**

1. LPA is broadly supportive of the RBA's proposed changes to limit excessive surcharging. However, we believe that the definition of costs of acceptance is too narrow. The definition needs to be broadened to include other card payment related costs such as chargebacks, secure payment gateway fees and services provided by third party suppliers. These are legitimate costs with accepting card payments, which the RBA has previously deemed appropriate and reasonable.



2. Different surcharge rates for different card types will be impractical to implement (particularly in an online environment) and add complexity to the payment transaction experience for consumers. We believe that if merchants choose to apply a single surcharge rate across all credit card schemes, they should have the option to surcharge based on the weighted average costs of acceptance, rather than the lowest cost of acceptance.
3. Businesses need to be given at least 36 months (if not longer, to accommodate existing long term contractual arrangements) to transition to the revised surcharging standards. Any changes to the surcharging standards will require business to review its current policies, systems, technology and business practices and implement any changes to these to be consistent with the revised standards. There will also be an administration and compliance cost to businesses to transition to the revised standards.
4. LPA welcomes the introduction of any measures that improve the transparency of interchange fees and that reduce the flow on costs to merchants.

LPA has concerns about how the proposed surcharging standards will affect its Members and the live performance industry. We have been impressed by the RBA's willingness to engage with stakeholders on the proposed changes and request a meeting with the RBA to further outline our concerns. Should you have any queries regarding our submission, please do not hesitate to contact Kim Tran, LPA's Director, Policy & Programs on [ktran@liveperformance.com.au](mailto:ktran@liveperformance.com.au) or 03 8614 2000.

Yours sincerely,

A handwritten signature in black ink, appearing to read "E. Richardson", written over a light blue horizontal line.

**Evelyn Richardson**  
Chief Executive

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## RBA Review of Card Payments Regulation Consultation Paper

### LPA SUBMISSION

#### 1. INTRODUCTION

Live Performance Australia (LPA) welcomes the opportunity to provide comment on the Reserve Bank of Australia's (RBA's) consultation paper on card payments regulation. LPA's submission is informed by feedback received from our Members, including ticketing companies, venues and performing arts centres with ticketing capability, government funded performing arts organisations, and commercial producers and promoters.

LPA's submission focuses primarily on the proposed changes to the surcharging standards, as this is the area that will directly affect LPA Members and the live performance industry. For simplicity, any LPA Member that provides ticketing services or has ticketing capabilities will be referred to in this submission as a ticketing agent.

#### 2. SURCHARGING PRACTICES WITHIN THE LIVE PERFORMANCE INDUSTRY

In order to understand how the proposed revised standards will affect the live performance industry, it is important to understand what surcharging practices are currently in place.

Surcharging practices vary across the industry. Some ticketing agents surcharge consumers directly for transactions purchased with a credit/debit card. Some surcharge at a rate to cover reasonable costs of acceptance, while others (who have higher merchants fees because they do not benefit from preferred interchange rates) surcharge at a rate lower than the cost of acceptance in order to be consistent with the practices of the major ticketing companies.

It is not common practice for ticketing agents to apply different surcharge rates depending on the type of card; but rather ticketing agents apply a standardised surcharge rate regardless of the type of card. Recognising that this approach does not send clear price signals to cardholders that the costs of acceptance differ depending on the type of card, from a practicality perspective, this approach is simpler for ticketing agents to implement. In addition, some of our Members apply a standardised rate because the functionality of their ticketing systems is unable to accommodate different surcharge rates.

It is also worth noting that some of our Members do not accept payment from certain cards (principally, Diners) because the merchant fees are too high and/or the card is not widely used by its customer base.

Some ticketing agents do not surcharge consumers, but they pass on the costs related to card payment transactions to the performing arts organisation, promoter or producer who has engaged their ticketing services. For performing arts organisations, promoters and producers this means that they either need to increase the ticket price to account for card payment costs or absorb these costs as part of the cost of doing business.

### 3. IMPLICATIONS FOR THE LIVE PERFORMANCE INDUSTRY

LPA is broadly supportive of the introduction of measures that limit excessive surcharging practices. However, a number of the proposed changes to the surcharging standards will have a serious impact on the live performance industry, namely:

1. Definition of costs of acceptance
2. Implementation of different surcharges for different card payments
3. Timeline for implementation of the revised standards.

#### 3.1 DEFINITION OF COSTS OF ACCEPTANCE

LPA believes that the proposed definition of costs of acceptance is too narrow and should be broadened to include costs related to chargebacks, payment gateway fees, and services provided by third party suppliers. LPA believes these are legitimate costs associated with accepting card payments.

##### 3.1.1 Considerations

###### *Chargebacks*

Chargeback is a benefit that credit card companies provide in circumstances:

- when customers do not receive or perceive they do not receive the goods or services purchased with their credit card, or
- because of fraudulent transactions.

While credit card companies offer this benefit, they do not take on the full risks associated with chargebacks because these costs are, in fact, passed on to merchants (unless merchants can prove otherwise).



Ticketing agents are in a unique position in that they are not the ultimate supplier of live performances; they are the 'middle-man' between the consumer and presenter/promoter. If a presenter or promoter fails to fulfil its obligation, or if for whatever reason the consumer does not receive or perceives that he/she does not receive the live entertainment experience that he/she purchased, then ticketing agents are liable for the chargeback claimed by the consumer through his/her credit card company. The onus of proof rests with ticketing agents, with banks working on the assumption of 'guilty unless proved innocent'; ticketing agents, therefore, also incur administration costs to prove innocence.

Our Members are increasingly seeing more incidences of consumers claiming chargebacks. This is often the case when a consumer seeks a refund via the usual process but if the consumer is unsuccessful, he/she will seek a refund through the credit card company (the cost of which is then passed on to ticketing agents). The issue that ticketing agents face is that there is no ability to recoup these chargeback costs from the producer or promoter once an event/performance has been successfully delivered. Usual industry practice is for ticketing agents/venues to distribute ticket proceeds to the relevant producer/promoter after the successful delivery of an event/performance (as per the commercial arrangement). This often happens one business day after the event/performance. However, as most chargeback claims occur after this time (usually 90 – 180 days), ticketing agents are liable for the chargeback and not the event venue or producer/promoter. In extreme cases, ticketing agents receive chargebacks one to two years after an event.

Our Members are also receiving chargebacks related to fraudulent transactions, which are becoming more prevalent. Ticketing is an area that is more prone to fraud because the majority of ticket purchases are made in 'card not present' environments (i.e. online and over the phone) and where the use of international credit cards can be high. Some of our Members find that the counter-fraud technology offered by the banks is inadequate, and invest heavily in mechanisms to counter fraud risk. However, it is impossible to eliminate this risk completely. As such, Ticketing agents carry significant risks and incur significant costs as a result of card payment transactions. The surcharging standards need to take into account 'no fault' chargeback risks present in the ticketing industry and other like industries (such as travel agents).

The cost of chargebacks to our Members vary depending on the size and nature of the business and number of card payment transactions. For some Members, the number of chargebacks is low and they are able to absorb chargeback costs as part of doing business; for other Members, chargeback risk is in the top three business risks that they actively seek to manage. Some Members have received fraud-related chargebacks in excess of \$200,000 for a single event. Just a few weeks ago, one of our

members incurred chargebacks of \$35,000 for one event and in the last few months \$120,000 for another event.

The cost to the industry as a whole can be significant, as illustrated through the following example (see Figure 1). In 2014, over 18.5 million tickets were issued to live performances with the average ticket price being \$91.57.<sup>1</sup> If banks issue chargebacks related to fraud and experiences not received on 1 per cent of tickets issued, then the cost to the industry amounts to almost \$17 million. This is a significant cost particularly when the ticketing agent is not at fault. Indeed, the RBA has noted in its December 2015 Consultation Paper that ‘no fault’ third party chargeback is a signification risk for all participants in the payment system.

Figure 1: Illustrative example of impact of chargebacks to live performance industry



### Forward delivery risk

The live performance industry is different to many other industries (e.g. retail) in that consumers of live performances typically buy tickets in advance of the event. This can vary from several days or weeks in advance to several months or even a year (for big name acts). As such, ticketing agents are exposed to forward delivery risk for extended periods. Indeed, the banks levy and seek guarantees from ticketing agents for forward delivery risk.

According to LPA research, the live performance industry generated \$1.5 billion in revenues in 2014.<sup>2</sup> Assuming the forward delivery risk period for ticketing agents is six months, this equates to \$750 million of ‘no fault’ third party exposure for ticketing agents. This is significant amount of risk that ticketing agents must guarantee.

### Third party suppliers

The costs associated with accepting card payments are not limited to the services provided by a merchant’s bank. Ticketing agents use third party suppliers for services related to secure payment gateways (which are needed for ‘card not present’ transactions) and other gateways in order to integrate technology platforms between the banks and our Members. Some Members rent card

<sup>1</sup> Live Performance Australia (2015), Live Performance Industry in Australia, 2014 Ticketing Attendance and Revenue Survey, prepared by Ernst & Young

<sup>2</sup> *ibid*

payment terminals through third party providers because these providers provide a more integrated and effective customer service solution that best meets our Members' business needs.

If the RBA retains a narrow definition of cost of acceptance, costs that are excluded from the definition would need to be borne by other parts of the business which ultimately would be reflected in ticket prices. We believe the RBA will best meet its objective of improved transparency if the definition of the costs of acceptance is reflective of the overall costs associated with accepting card payments.

### 3.1.2 Option for addressing chargeback and forward delivery risks

As discussed above, chargeback and forward delivery risks are significant problems for ticketing agents, and are equally problems for other like industries, such as travel agents. An option for mitigating this risk involves adding a capped rate on top of the average cost of acceptance as a 'self-insurance policy' to account for chargeback costs and forward delivery risk. Figure 2 illustrates a hypothetical example of how self-insurance could work in practice.

If the average cost of acceptance for a particular payment method is 1.5%, businesses could add the self-insurance rate (say, 0.8%) to the average cost of acceptance. The addition of these two elements would be the maximum permissible surcharge rate for the transaction – i.e. 2.3% in this hypothetical example. Businesses can elect to include or exclude the self-insurance rate when deciding how much to surcharge consumers for card payments, but the maximum permissible surcharge would be capped.

Figure 2: Illustrative example of the application of a self-insurance rate



While in the above example, we have hypothesised a self-insurance rate of 0.8%, the self-insurance rate derived should be based on actual chargeback costs (data which should be available from the banks).

The ability to add a self-insurance rate should be limited to those industries or circumstances where risk of chargeback is high – for example, industries that have high pre-payment risk or forward delivery risk or where 'card not present' (i.e. online and over the phone) transactions are common (and are therefore more susceptible to credit card fraud).

We appreciate that our proposal regarding a self-insurance rate would need to be developed further. We welcome further discussions with the RBA and other key stakeholders (such as travel agents) about how the concept of a self-insurance rate would work in practice and the parameters for its application.

### **3.2 IMPLEMENTATION OF DIFFERENT SURCHARGES FOR DIFFERENT CARD PAYMENTS**

LPA believes that if merchants choose to apply a single surcharge rate across all credit card schemes, they should have the option to surcharge based on the weighted average costs of acceptance, rather than the lowest cost of acceptance.

#### **3.2.1 Considerations**

Implementation of the proposed surcharging standards will require banks providing merchants with the average cost of acceptance for different card schemes, and this will form that basis at which merchants can surcharge consumers. The RBA's consultation paper highlights that when different surcharge rates apply depending on the card, consumers receive clear price signals about the costs of acceptance and can then choose to pay via a lower card payment option. While this is good in theory, implementing different surcharge rates for different card schemes will add complexity to processing card transactions and card payment experience for consumers.

As mentioned earlier, LPA Members that surcharge consumers for ticket purchases apply a standardised surcharge rate to card payment transactions in the interests of simplicity and because, for some Members, their ticketing systems are unable to accommodate multiple surcharge rates. If ticketing agents continue to standardise the surcharge rate, then the proposed standard specifies that the surcharge must be set at the lowest cost of the different card payment methods. This will mean that ticketing agents will only be able to partially recover its card payment costs.

The flow on implications are that ticketing agents will either:

- a. partially recover card payment costs through surcharging, and pass on the remainder of the costs to the organisations that use its services.
- b. discontinue to surcharge and pass on any card payment costs to the organisations that use its services.
- c. discontinue accepting payment from cards with high cost of acceptance.
- d. absorb these costs, which will mean that their business operating costs will increase.

For the first two scenarios above, this means that performing arts organisations, promoters and producers will either need to increase the ticket price to account for card payment costs or absorb



these costs as part of the cost of doing business. The issue for many parts of the live performance industry is that ticket prices have reached the maximum that consumers are willing to pay, or for example, in the contemporary music sector, ticket prices are set by the artists themselves (and not the music promoter). The cost of securing high profile artists has increased exponentially over the last decade and given ticket pricing constraints, it is difficult for event organisers to run events economically whilst still attracting a large audience. Indeed, many events (particularly, large festivals) have failed due to rising costs.

Unlike other industries where there is scope to increase prices in order to account for payment costs, this is simply not an option for many organisations in the live performance industry. Having to absorb these costs (as well as other increasing business costs) will jeopardise the viability of many performing arts organisations, producers and promoters, which will ultimately impact upon the vibrancy of the live performance industry in Australia.

In recent years, the major ticketing companies have worked closely with the Australian Consumer and Competition Commission (ACCC) to improve ticket price clarity and avoid 'drip pricing' (as required under Australian Competition Law). To address ACCC concerns about drip pricing practice, the major ticketing companies changed their business practices by standardising credit card surcharging so that ticket prices could be represented as a total single figure. Moving towards a model whereby there is a different surcharge for different payment methods (even though legally it would be acceptable under Australian Consumer Law) may be viewed as a retrograde step, which would be unfortunate given the work done by ticketing companies to address the ACCC's concerns. It would also mean more frustration for ticket buyers, with the addition of one more fee at the end of the sales transaction.

### **3.2.2 Option for applying a single surcharge rate**

LPA believes merchants should be provided with an option to apply a single surcharge rate across all card schemes based on the weighted average costs of acceptance. The weighted average calculation should take into account card payment transactions over the previous 12 or 24 months, in order to gain an historical view on consumer card payment preferences. Banks would provide merchants with the weighted average cost of acceptance as part of the statements that they are required to provide to merchants under the proposed standards.

### **3.3 TIMELINE FOR IMPLEMENTATION**

LPA believes that businesses should be given at least 36 months (if not longer) to transition to the revised standards.

### 3.3.1 Considerations

The introduction of the revised surcharging standards will mean that many ticketing agents will need to review their business models, operations, systems, technology and processes and make changes where necessary. For many ticketing agents, these changes will not be simple to implement (and could be very costly), particularly where:

- the functionality within ticketing systems do not exist to accommodate the changes
- significant revisions need to be made to the way in which the business recovers card payment costs that are excluded from the definition of costs of acceptance.

Ticketing agents will also need time to provide notice to venues, performing arts organisations, producers and promoters of any changes to the fees and charges associated with providing services. Ticketing agents will also have contractual arrangements in place with venues and producers/promoters which will be affected by the proposed changes to the surcharging standards. For some of our Members, these are long term contractual arrangements (e.g. five to ten year contracts).

### 3.3.2 Option for transition arrangements

Businesses will need adequate time to transition to the revised standards. Advice from our Members suggest that at least 36 months (if not longer) is required to do a comprehensive review of the impact of the revised surcharging standards and to implement the necessary changes to be compliant with the proposed standards. Special dispensation should also be provided to contracts that extend beyond the 36-month transition period.

## 3.4 INTERCHANGE STANDARDS

LPA does not have any specific comments to make with respect to the proposed changes to the interchange standards. However, we welcome the introduction of any measures that improve the transparency of interchange fees and that reduce the flow on costs to merchants.

## 4. CONCLUSION

In summary, LPA urges the RBA to:

- Broaden the definition of the costs of acceptance to account for chargeback risks, payment gateway fees, services provided by third party suppliers and other ancillary costs.
- Provide an option for merchants to apply a single surcharge rate based on the weighted average costs of acceptance.



- Provide merchants with at least 36 months (if not longer, to accommodate existing long term contractual arrangements) to transition to the revised standards.