

## Retail Payment System Act 2022

[Jan Etwell](#), [Scott Abel](#), [Lara Wood](#), [Rebecca Green](#), [Shane Johnstone](#), [Simon Jensen](#), [Aaron Ni](#), [Amman Bulchandani](#)

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The [Retail Payment System Act 2022](#) (Act) establishes a new regulatory regime to govern New Zealand's retail payments system and entities involved in the retail payments system (such as merchants, banks, non-bank merchant acquirers and card schemes).

The Act seeks to reduce merchant service fees on credit and debit transactions by capping interchange fees and confers monitoring functions and intervention powers over the retail payments system on the Commerce Commission (Commission). The Act received royal assent on 13 May 2022 and the majority of the provisions came into force upon receiving royal assent.

In this article we set out the legislative background to the Act, summarise the main provisions of the Act, and highlight some key consequences of contravention of the Act.

If you would like assistance in understanding how these changes might impact you or require advice on payments regulation, please contact a member of our [financial services regulation team](#).

### Background

#### What is the retail payment system?

A payment system is the arrangement that allows entities to transfer funds by facilitating the movement of payment instruments such as cash and electronic payments. A retail payments system relates to the transmission, settling and clearing of financial transactions between consumers and merchants in exchange for goods and services.

Other parties involved in such transactions include an issuer (the consumer's bank), an acquirer (the merchant's bank), a card scheme (entities that develop payments products and set system rules) and a switch (the infrastructure that sends transaction information to the issuer and acquirer, noting that schemes can also perform switching functions).

Merchant service fees are payments that a merchant makes each time a transaction occurs and can be made up of several different types of fees (including interchange fees, switching fees and scheme fees). Interchange fees are paid by the acquirer to the issuer to cover the cost of processing payments and any profit margin. Card schemes do not receive interchange fees - instead, they receive scheme fees from issuers and acquirers and set a range of interchange fee caps that issuers can charge acquirers.

The Ministry of Business, Innovation and Employment (MBIE) has noted that the interchange fee "is generally the largest component of the merchant service fee". An interchange fee is commonly described as a percentage of the value of a transaction.

#### Legislative history

In February 2016, the Government asked MBIE to examine whether New Zealand's retail payment system was producing efficient economic outcomes following merchant concerns about rising costs for electronic transactions (in light of technological developments and regulatory developments overseas). In October 2016, MBIE announced a public consultation and released an accompanying [issues paper](#) setting out five key issues identified from its study of the retail payments system.

Following a period of stakeholder consultation, MBIE released a further public [consultation paper](#) in December 2020 which noted that New Zealand's merchant service fees were higher than Australia and the UK (where interchange fees were regulated) and proposed options for regulating merchant service fees. For a full outline of the consultation history and policy development please see MBIE's [retail payments system webpage](#).

In [April](#) and [June](#) 2021 Cabinet agreed to establish a new regulatory regime to reduce interchange fees enabling the Commission to regulate and directly intervene in the retail payments system. Subsequently, the Retail Payment System Bill (Bill) was introduced to Parliament on 11 October 2021.

#### Overview of the Act

In a [media release](#), the Government noted that the Act would "help lower the fees charged when credit and debit transactions are made" and "save New Zealand businesses around NZ\$74 million a year".

The Act seeks to achieve this reduction in fees and "promote competition and efficiency in the retail payment system" in three key ways:

- Designated networks - the Act allows for retail payment networks to be "designated" for regulation and sets out some initial designated networks to which the initial pricing standards apply
- Initial pricing standard - the Act sets "initial pricing standards" that seek to reduce merchant service fees by setting a cap on interchange fees
- Commerce Commission - the Act confers broad powers and functions to the Commission to regulate and monitor the retail payment system.

### **Designation of retail payment networks**

Under the Act, the Commission can recommend to the Minister of Commerce and Consumer Affairs that a retail payment network be "designated" for regulation (following a prescribed consultation process).

Under the Act, Mastercard credit, Mastercard debit, Visa credit and Visa debit are "initial designation networks" to which "initial pricing standards" that cap interchange fees will apply.

In addition to setting caps on interchange fees, the Commission also has various other powers and functions under the Act which will apply to designated retail payment networks (as set out below).

### **Initial pricing standard**

The initial pricing standard sets a cap on interchange fees and comes into force six months after the date of royal assent.

In the first reading of the Bill, Minister David Clark noted that "the initial measures target card products issued by MasterCard and Visa because they cover the lion's share of the market for retail payments".

The Act introduces the following initial pricing standards for the MasterCard and Visa networks:

- Interchange fees for credit card transactions are capped at 0.8%, which is in line with Australia
- Interchange fees charged for online debit card transactions are capped at 0.6%
- Contactless debit card interchange fees stay at their current levels of 0.2% or less, and for swiped and inserted debit, stay at 0%.

### **Commerce Commission as regulator**

Under the Act, the Commission has broad regulatory, monitoring and enforcement powers:

- The Act allows the Commission to issue "network standards" that can be flexibly applied to either: all of; a class of; or a particular:
  - designated network
  - participant or
  - circumstance
- The Act sets out a criteria and process for issuing these network standards. The network standards can deal with matters such as information disclosure, pricing principles and limits on fees, pricing methodology and access
- The Commission may direct operators of a designated network to set or amend network rules
- The Commission may set standards that impose requirements on merchants to ensure that payment surcharges for payment services are no more than the cost to the merchant of the payment services
- The Act also provides the Commission various monitoring and investigation powers consistent with its powers under the Commerce Act 1986 (such as requesting information).

### **Consequences of contravention**

Courts may make pecuniary penalties orders for certain contraventions of the Act. The amount of the penalties is contingent on the nature of the contravention.

The maximum penalty for a contravention of a pricing standard is NZ\$500,000 for an individual and, in any other case, NZ\$5 million. There are also different pecuniary penalties for other contraventions such as contraventions of an information disclosure standard or merchant surcharging standard.

The Act also empowers the Court to take other action such as ordering compensation and granting injunctions.

## **Auckland**

188 Quay Street  
Auckland 1010

PO Box 1433  
Auckland 1140  
New Zealand

P: +64 9 358 2555

F: +64 9 358 2055

## **Wellington**

Aon Centre  
1 Willis Street  
Wellington 6011

PO Box 2694  
Wellington 6140  
New Zealand

P: +64 4 499 4242

F: +64 4 499 4141

## **Christchurch**

83 Victoria Street  
Christchurch 8013

PO Box 322  
Christchurch 8140  
New Zealand

P: +64 3 379 1747

F: +64 3 379 5659