

EXPLANATORY DOCUMENT

Banking Act 1959

Banking Amendment (Credit Card) Regulation 2014

Section 71 of the *Banking Act 1959* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Regulation 4 of the *Banking Regulations 1966* (the Regulations) provides that credit card acquiring and issuing is 'banking business', which has the effect that members of approved schemes (MasterCard and Visa) have to be authorised deposit-taking institutions (ADIs).

In 2004, the eligibility for membership of the MasterCard and Visa credit card systems was broadened by creating a new class of ADIs called specialist credit card institutions (SCCIs). SCCIs can engage in credit card issuing or acquiring, but not other banking business.

The Government has announced that it will open up access to the MasterCard and Visa card schemes by removing the requirement that issuers (institutions that issue cards to customers) and acquirers (institutions that accept payment by card on behalf of merchants) be required to be ADIs. Banking regulation has been found to be more onerous than is necessary to manage the risk associated with card issuing and acquiring.

Opening up access to non-ADIs is likely to increase competition and innovation in card issuing and acquiring, resulting in downward pressure on fees and charges, and better service to merchants and end users (which include consumers, business and government). Non-ADIs would also not be subject to the ongoing costs associated with supervision by the Australian Prudential Regulation Authority.

All new entrants will need to meet the same consumer credit regulations that currently apply to banks and SCCIs under the *National Consumer Credit Protection Act 2009*. The proposed credit card access reforms will not alter these general consumer credit protections.

The card schemes will be responsible for determining which entities may become card issuers or acquirers under their schemes; subject to a risk management framework imposed by the Reserve Bank of Australia (RBA). As a result, the SCCI framework is no longer required.

The proposal was subject to consultation by the RBA in May and December 2013. The RBA then produced a Regulation Impact Statement (RIS) in March 2014. The RIS is available at: ris.dpmc.gov.au/2014/04/17/payment-card-access-regimes-details-stage-regulation-impact-statement-reserve-bank-of-australia-3/

Items 1 and 2 in Schedule 1 to the *Banking Amendment (Credit Card) Regulation 2014* repeal the definitions that were introduced at the same time as regulation 4 in the *Banking Amendment Regulations 2003 (No. 1)* to support the operation of regulation 4. It also removes the definition of 'limit' to clarify the operation of the Regulations.

Item 3 repeals regulation 4 which thereby removes the requirement that members of approved schemes (MasterCard and Visa) must be ADIs.

Item 4 removes accounts with a SCCI as an account that is not protected under the Financial Claims Scheme because the SCCI framework is being removed.

The changes take effect on 1 January 2015. Implementation of the new regulatory framework will require the Payments System Board of the RBA to vary the Credit Card Access Regimes to provide for reporting requirements and disclosure of eligibility and assessment criteria for Scheme membership. The Australian Payments Clearing Association will also need to vary related Bulk Electronic Clearing System rules to allow certain non-ADIs to continue to participate in the system after the removal of the SCCI framework.

The *Banking Act 1959* does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation Draft