

# Retail Payment System

## Our role under the Retail Payment System Act 2022

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## Our role under the Retail Payment System Act 2022

1. This note summarises the purposes and principles of the Retail Payment System Act 2022 (the **Act**) and our key functions and powers under the Act.
2. The Act can be viewed at:  
<https://www.legislation.govt.nz/act/public/2022/0021/latest/whole.html>.

### Purposes and principles of the Act

3. The purpose of the Act is to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers (including businesses) in New Zealand.<sup>1</sup>
4. Our functions and powers must be exercised for that purpose.<sup>2</sup>
5. In addition, in deciding whether to exercise our functions and powers, and in exercising them, we must take into account the following principles to the extent that we consider them relevant:<sup>3</sup>
  - 5.1 that merchants and consumers should pay no more than reasonable fees for the supply of payment services; and
  - 5.2 that the retail payment system provides a reasonable degree of transparency.
6. The Act also includes functions and powers in relation to merchant surcharging standards.<sup>4</sup> The purpose is to ensure that payment surcharges for payment services are no more than the cost to the merchant of the payment services used for accepting retail payments.<sup>5</sup>
7. Our functions and powers in relation to merchant surcharges must also be exercised for this purpose.<sup>6</sup>

### Our functions and powers under the Act

8. The core functions and powers of the Commission in relation to the retail payment system are:
  - 8.1 market monitoring and information dissemination;
  - 8.2 regulation-making; and
  - 8.3 investigating, monitoring and enforcement.

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<sup>1</sup> Section 3 of the Act.

<sup>2</sup> Section 4(1) of the Act.

<sup>3</sup> Section 4(2) of the Act.

<sup>4</sup> Subpart 1 of Part 3 of the Act.

<sup>5</sup> Section 29(1) of the Act.

<sup>6</sup> Section 29(2) of the Act.

9. It is also the Commission's function to co-operate with and assist other law enforcement or regulatory agencies that carry out a role in relation to the retail payment system.<sup>7</sup>

### **Market monitoring and information dissemination**

10. Amongst other functions under the Act, the Commission's functions in relation to the retail payment system are:<sup>8</sup>
  - 10.1 to monitor competition and efficiency in the retail payment system;
  - 10.2 to conduct inquiries, reviews and studies into any matter relating to the retail payment system in New Zealand.
11. It is also the Commission's function to make available reports, summaries, and information about the things referred to in paragraphs 10.1 and 10.2 above.<sup>9</sup>

### **Regulation-making**

#### *Designation*

12. The Act prescribes a designation regime, under which any retail payment network (other than the cash retail payment network) may be designated by Order in Council by the Governor-General on the recommendation of the Minister.<sup>10</sup>
13. The Minister may recommend to the Governor-General that a retail payment network be designated only after receiving a recommendation from the Commission. In deciding whether to make a recommendation, the Minister may accept or reject the Commission's recommendation, request the Commission reconsider any matter, or make any other decision the Minister considers is in the public interest.<sup>11</sup>
14. Schedule 1 of the Act sets out initial designations of the Visa and Mastercard credit and debit networks.<sup>12</sup>

#### *Network standards*

15. Once a retail payment network is designated, the Commission may issue network standards that impose requirements on participants in designated networks and/or set out requirements applying to designated networks with which participants must ensure compliance.<sup>13</sup>
16. A network standard may apply:<sup>14</sup>

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<sup>7</sup> Section 6(d) of the Act.

<sup>8</sup> Sections 6(a) and (b) of the Act.

<sup>9</sup> Section 6(c) of the Act.

<sup>10</sup> Section 11(1) of the Act.

<sup>11</sup> Section 11(2) of the Act.

<sup>12</sup> Subpart 2 of Part 1 of Schedule 1.

<sup>13</sup> Section 17(2) of the Act.

<sup>14</sup> Section 17(3) of the Act.

- 16.1 to all participants in designated networks, a particular participant, or a class of participants;
  - 16.2 to all designated networks, a particular designated network, or a class of designated networks;
  - 16.3 in all circumstances, particular circumstances, or a class of circumstances (for example, in relation to payment products or payment methods).
17. Network standards may deal with, or otherwise relate to, information disclosure, pricing for payment services, and access requirements for aspects of a designated network.<sup>15</sup>
18. Schedule 1 of the Act sets out the Initial Pricing Standard which regulates interchange fees charged on transactions within the Visa and Mastercard credit and debit networks.<sup>16</sup>

#### *Direction notices*

19. Once a network is designated, the Commission may also, by direction notice, direct one or more participants of a designated network to take specified action in accordance with the direction.<sup>17</sup>
20. A direction may require one or more operators to set, amend, notify amendments to, or obtain the Commission's approval for substantive amendments to, network rules.<sup>18</sup>

#### *Merchant surcharging standards*

21. The Commission may also issue merchant surcharging standards imposing requirements on merchants that use payment services for retail payments.<sup>19</sup>
22. A merchant surcharging standard may apply:<sup>20</sup>
- 22.1 to all merchants that accept payment services from networks or a class of those merchants;
  - 22.2 to all networks, a particular network, or a class of networks;
  - 22.3 in all circumstances, particular circumstances, or a class of circumstances (for example, in relation to payment methods or payment products).

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<sup>15</sup> Section 20 of the Act.

<sup>16</sup> Subpart 3 of Part 1 of Schedule 1.

<sup>17</sup> Section 24(1) of the Act.

<sup>18</sup> Section 24(2) of the Act.

<sup>19</sup> Section 30(2) of the Act.

<sup>20</sup> Section 30(3) of the Act.

23. Merchant surcharging standards may deal with or otherwise relate to, the disclosure of information, representation of surcharges, limits on surcharges and record keeping.<sup>21</sup>

### **Investigation, monitoring and enforcement**

24. The Commission is responsible for monitoring and enforcing obligations arising under or in connection with the Act.
25. For further information on our approach to compliance and enforcement, refer to the following documents on our website:
- 25.1 Transparency Statement<sup>22</sup> – information on how we gather information to prevent, investigate and respond to regulatory non-compliance.
  - 25.2 Enforcement Criteria<sup>23</sup> – setting out the criteria we apply when making decisions on whether to open an investigation, and what enforcement action we may take at the end of an investigation.
  - 25.3 Enforcement Response Guidelines<sup>24</sup> – outlining the way in which we exercise our enforcement discretion, including the factors we will take into account when deciding what enforcement response to use.
  - 25.4 Investigation Guidelines<sup>25</sup> – setting out how we undertake investigations and what parties can expect to happen during an investigation.

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<sup>21</sup> Section 32 of the Act.

<sup>22</sup> Accessed at: <https://comcom.govt.nz/about-us/our-policies-and-guidelines/transparencystatement#:~:text=to%20detect%2C%20investigate%20and%20prosecute,respond%20to%20regulatory%20non%E2%80%91compliance>.

<sup>23</sup> Accessed at: <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria>.

<sup>24</sup> Accessed at: <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-response-guidelines>.

<sup>25</sup> Accessed at: [https://comcom.govt.nz/data/assets/pdf\\_file/0028/89821/Competition-and-Consumer-Investigation-Guidelines-July-2018.pdf](https://comcom.govt.nz/data/assets/pdf_file/0028/89821/Competition-and-Consumer-Investigation-Guidelines-July-2018.pdf).