

SUBMISSION

Retail Payment System Bill

November 2021

Restaurant Association of New Zealand submission to the Economic Development, Science and Innovation Committee

Submission: Retail Payment System Bill

OVERVIEW

The Restaurant Association of New Zealand (the Association) welcomes the opportunity to make a written submission on the *Retail Payment System Bill* (the Bill).

The Restaurant Association supports all endeavours to ensure retail payment systems deliver long-term and equitable benefits to both consumers and merchants. We support the overarching intention of the Bill, and efforts to ensure the regulations support competition and economic efficiency in the retail payment system.

INTRODUCTION

The Association supports the effort to ensure New Zealand's retail payment systems are equitable and promote long term economic growth for business owners across Aotearoa, particularly those in the hospitality sector who now face a steep road to economic recovery.

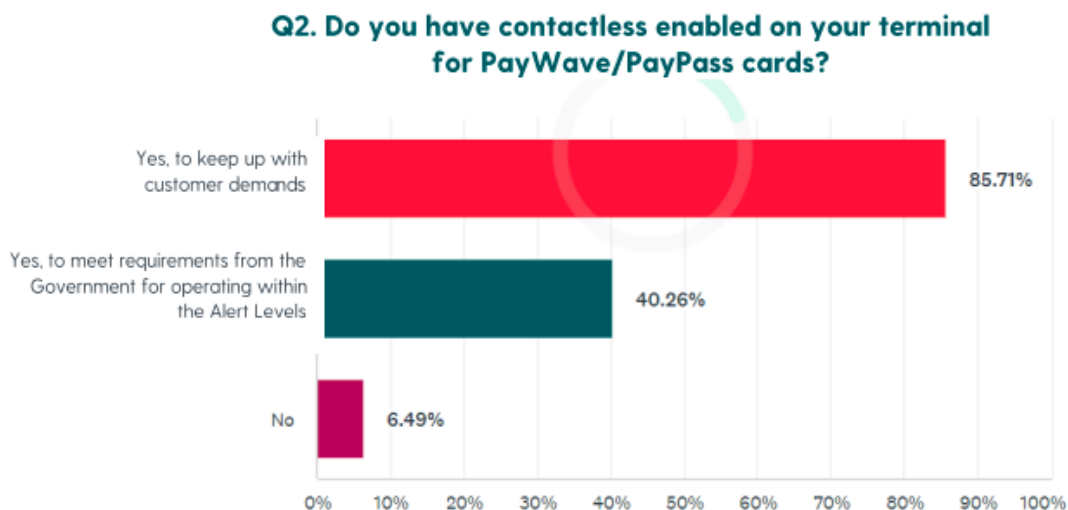
As noted in the Association's submission in response to the *Regulating to reduce Merchant Service Fees* consultation (Merchant Service Fees consultation), submitted to the Ministry of Business, Employment and Innovation (MBIE), 99.26% of our members either agreed or strongly agreed merchant fees should be regulated and 69% of them indicated they would prefer direct regulation.

The Association commends the Government for taking this much needed step in ensuring equitable competitive conditions for business, particularly for small businesses, noting the majority of hospitality outlets are.

Well before the pandemic, the prominence of contact debit cards and online transactions had increased. Merchants of all sizes have largely had to absorb these costs, particularly smaller businesses who do not possess the bargaining power to negotiate lower fees. These costs were further compounded as businesses were faced with no other choice but to adopt contactless payments due to public health concerns while dealing with the debilitating financial pressures brought upon by COVID-19.

In an Association Member Survey, ***Feedback on the Retail Payment System Bill***, conducted for the purpose of this submission and carried out in November 2021, 86% of Members indicated that they adopted contactless payment methods due to customer demands. These

demands have increased over the past 20 months due to the requirements for operating within the Alert Level framework.



Survey Snapshot: Member Feedback on the *Retail Payment System Bill*

Ultimately, the Association believes that regulating merchant fees will go some way in supporting the revitalisation of small business, particularly those in the hospitality sector who have faced exorbitant merchant fees for far too long.

For the Association and the hospitality sector more generally, we submit that during review of the Bill, the Committee considers its contents with the following areas in mind:

- *Education* - make sure the hospitality industry is well informed of the new obligations imposed on merchants by the Bill
- *Technology* - ensure the proposed regulatory arrangement is flexible enough to address the intricacies of the rapidly evolving payment ecosystem
- *Other unregulated payment systems* - the majority of e-commerce, mobile wallets, and Buy-Now Pay-Later service providers generate revenue through merchant fees that are significantly higher than fees incurred via contactless debit and credit card transactions.

EDUCATION

The primary focus for the Association is ensuring that the hospitality industry is well informed of the new obligations imposed on merchants by the Bill. Given the Bill has been tabled in Parliament during the pandemic, the Association submits that due importance be placed on ensuring educating all those who will be impacted - especially merchants - on the new obligations the Bill will impose on businesses. For example, the failure to comply with the new standards outlined in the Bill can result in the issuing of compliance notices and penalties up to \$30,000 for continued non-compliance.

Given the severe consequences merchants face in the case that they do not comply, the Association submits the Government has a duty to ensure business owners are well informed of these changes and the potential repercussions of non-compliance.

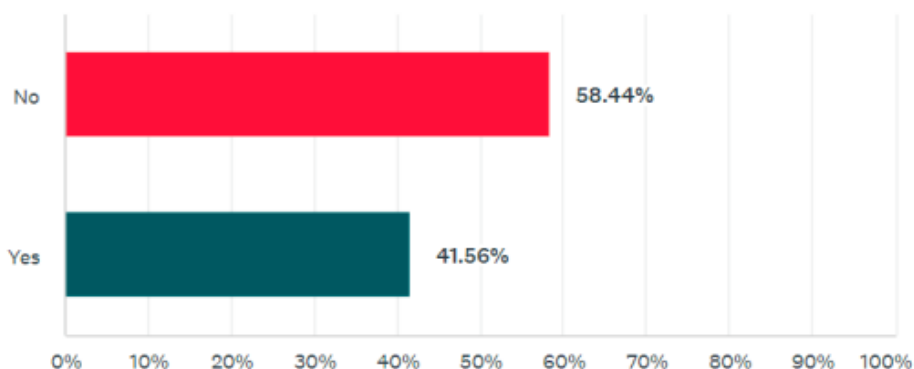
The Association recommends Government, prior to the Bill's commencement, develop robust educational and training opportunities for merchants to ensure compliance and prevent any unattended breaches.

As emphasised in our response to MBIE's *Regulating to reduce Merchant Service Fees* consultation: all operators should have access to clear information and how changes in this space affect them. Not all SMEs are able to tap into the educational resources and information hubs provided by associations. This is particularly important at a time where hospitality operators are occupied in adjusting their businesses to changing alert levels and attempting to recoup financial losses as a result of the ongoing lockdown.

The Association submits that to ensure these changes do not unduly punish small business owners, the Commission, when developing merchant surcharge standards, ought to provide clear guidelines as to what is deemed "reasonable" surcharging. Currently there is little awareness within the industry about the Bill and proposed non-compliance penalties.

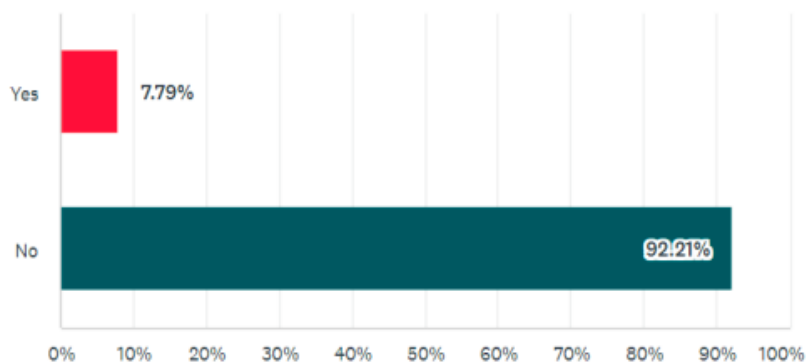
The Association's *Feedback on the Retail Payment System Bill* Member Survey highlighted that 42% of respondents were unaware that the Bill proposes to regulate merchant surcharging and 92% were unaware that the Bill proposes non-compliant merchants be issued with a corrective notice or a fine for continued non compliance.

Q4. Are you aware that this Bill (Retail Payments System Bill) proposes regulating merchant surcharging?



Survey Snapshot: Member Feedback on the *Retail Payment System Bill*

Q5. Are you aware that the same Bill proposes non-compliant merchants be issued with a corrective notice or a fine of up to \$10,000 for individuals and \$30,000 for a body corporate for continued non-compliance?

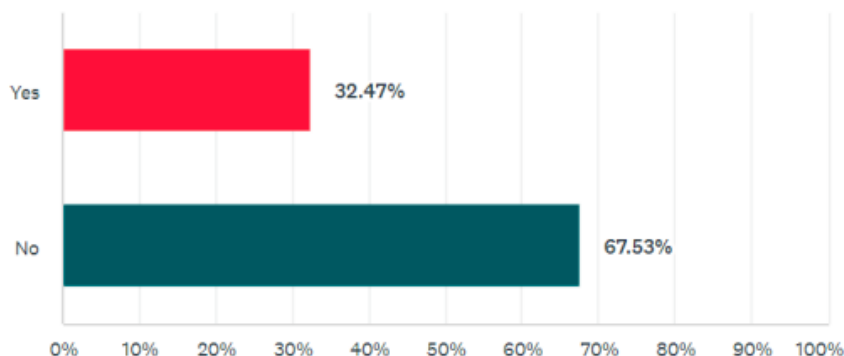


Survey Snapshot: Member Feedback on the *Retail Payment System Bill*

Fines for non-compliance would be unreasonable unless the new requirements were transparent and clearly communicated, particularly as operators are grappling to keep and adhere to significant operational changes required across their business due to newly introduced COVID-19 operating measures.

Just under a third of Restaurant Association members currently apply a credit card surcharge to cover the cost of accepting credit cards. On average the amount of the surcharge currently applied is a percentage-based charge of 2%.

Q1. Do you currently apply a credit card surcharge to cover the cost of accepting credit cards?

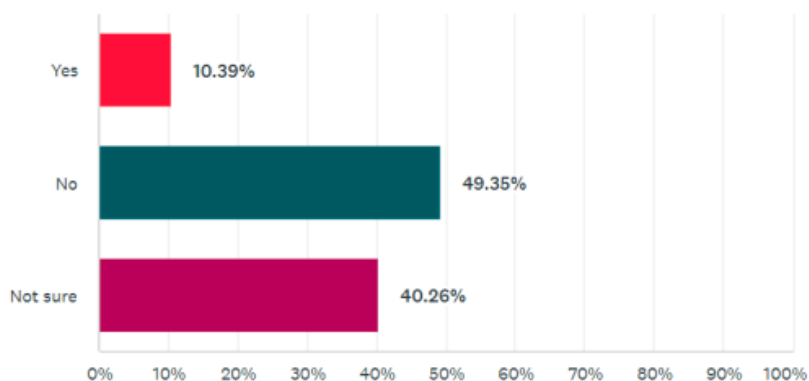


Survey Snapshot: Member Feedback on the *Retail Payment System Bill*

TECHNOLOGY

The Association is aware that banks and other providers remain of the view that the Government should not intervene by way of regulation, stating that regulation will reduce innovation and competition in the payment systems sector, adversely impacting both merchants and consumers. The Association remains unconvinced by this argument, with 49% of Members believing regulation of payments will not hinder innovation.

Q3. Do you believe that regulation of the retail payment system could hinder innovation of new payment systems technologies?



Survey Snapshot: Member Feedback on the *Retail Payment System Bill*

Both domestically and internationally, the pressures of competition have been unsuccessful

in fixing interchange fees in line with costs. It is our view that the monopoly generated by the lack of regulation has significantly inhibited competition. MBIE's *Regulatory Impact Statement* dated 30 March 2021 reported that stakeholders found it difficult to establish new card schemes due to New Zealand's relatively small market.

It also goes without saying that the emergence of new technologies brings its own challenges. In an address given to the Australian Payments Network on 7 December 2020, the Governor of the Reserve Bank of Australia Mr Philip Lowe highlighted that the structure of payment systems is evolving and suggests it is better to conceptualise payments systems as a payment ecosystem. Within the payment ecosystem, payment chains are longer and involve multiple entities and technologies. The Association asks the Committee to turn its collective mind to ensuring the proposed regulatory arrangement is flexible enough to address the intricacies of the rapidly evolving payment ecosystem.

The Association also shares the concern raised by MBIE in its regulatory impact statement regarding the criteria for making a designation in section 12. It presents a high threshold that risks preventing any part of the system from being regulated if it is decided that no parties meet the designation threshold. Although the risk is low it is still a matter of concern, given section 12 requires the Commerce Commission to consider multiple factors when making a recommendation, coupled with the requirement to consult the affected parties, who are often well-resourced actors, capable of influencing a proposal.

OTHER UNREGULATED PAYMENT SYSTEMS

The Association welcomes the Government's decision to align Aotearoa New Zealand with the rest of the developed world with this Bill, as merchants have paid high merchant fees for far too long.

Despite being outside the direct scope of considerations in this Bill, the Association encourages the Committee to think about the high charges associated with e-commerce, mobile wallets, and Buy-Now Pay-Later (BNPL) services during its consideration of this Bill. While the majority of hospitality proprietors do not use BNPL and related services, their ambit and fees are an issue on the horizon that the Government should turn its mind to.

An Official Information Act (OIA) response published on the MBIE website noted BNPL providers charge merchants a commission of 4% to 5% per transaction. Although larger merchants have negotiated lower fees, this is essentially an impossibility for small businesses that do not possess either the time or bargaining power. These figures are especially

concerning as providers have adopted stringent "no surcharge rules" within their contractual agreement, disabling merchants to recoup these costs via surcharging.

The Association submits that it is only fair that, as we look to introduce a regulatory regime for retail payment systems, the Committee also takes into consideration that the majority of BNPL service providers generate revenue through merchant fees that are significantly higher than fees incurred via contactless debit and credit card transactions.

With new providers entering the market everyday, the Association would like to see the Government get in front of these new payment methods and ensure small businesses are not at the whim of these unregulated actors, while they struggle to remain afloat following the economic devastation of COVID-19.

CONCLUSION

It is essential that New Zealand operates under a sound, secure and supervised retail system. We consider that in its implementation, attention must be given to ensuring small business owners understand and are educated around the consequences of non-compliance, and the Bill should remain flexible enough to support innovation.

ABOUT THE ASSOCIATION

The Restaurant Association is the link between good food, and good business. It supports New Zealand's diverse and creative hospitality businesses to deliver first class experiences to diners. Since its humble beginnings in 1972, it has worked to offer advice, help and assistance in every facet of the vibrant and diverse hospitality industry.

The organisation now represents, advocates and cheerleads for more than 2500 hospitality businesses within New Zealand. It offers 24/7 advice and assistance on key industry issues, from property lease advice to wellness in the workplace. The Association also works in partnership with the Ministry of Social Development to deliver the *HospoStart* and *Springboard* training programmes around the country.

CONTACT

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