
ACCC to crack down on excessive card surcharges

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Authors: Joni Jacobs and Sylvia Ng

In brief

The Reserve Bank of Australia Payments Systems Board (PSB) has now published its Standard, governing how merchants should calculate surcharges for customers who use their credit or debit card in transactions. Under the new regime, any surcharge imposed by merchants must be limited to the permitted 'costs of acceptance', as defined in the Standard.

The Australian Competition and Consumer Commission (ACCC) will begin enforcing the ban on excessive surcharges by large merchants from 1 September 2016, and all other merchants from 1 September 2017.

To avoid regulatory action, clients who impose credit or debit card surcharges should identify and quantify those costs that can be legitimately passed on to a consumer as a surcharge (such as bank fees and terminal costs). Any surcharges which exceed the permitted costs of acceptance will be taken to be excessive and subject to scrutiny.

In detail

In our LegalTalk Alert in March - [Businesses banned from charging excessive surcharges](#), we outlined the background to this reform and the legislative scheme. In summary, the *Competition and Consumer Amendment (Payment Surcharges) Act 2015* (Cth) (the Act) amended the *Competition and Consumer Act 2010* (Cth) (CCA) by prohibiting a corporation, in trade or commerce, from charging an excessive payment surcharge.

The Act is intended to ensure that payment surcharges:

- are not excessive, and
- reflect the merchant's cost of using the payment methods chosen by consumers.

The PSB has now published its Standard which governs how merchants should calculate surcharges they wish to charge customers for using their credit or debit cards when making payments. Surcharges will be taken to be excessive where they exceed the permitted 'costs of acceptance', as defined in the Standard.

The new regime will limit the amount merchants can surcharge customers for use of most credit and debit cards, including EFTPOS, Debit MasterCard, MasterCard Credit, Visa Debit, Visa Credit and American Express cards. The Standard defines what merchants are able to include in setting a surcharge and will be linked to the direct costs of the payment method, such as bank fees, terminal costs, cross-border transaction fees and fraud prevention services. Under the new regime, banks will be required to provide merchants with information about the costs of processing credit or debit card transactions.

The Standard sets out a two-staged implementation, with the ban commencing on 1 September 2016 for 'large merchants' and 1 September 2017 for all other merchants. The Standard defines a 'large merchant' to be one that satisfies at least two of the following requirements:

- it has a consolidated gross revenue of \$25 million or more
- the value of its consolidated gross assets is \$12.5 million or more, or
- it employs 50 or more employees.

The ban has no effect on businesses that choose not to impose a payment surcharge, such as the many businesses in Australia that incorporate payment system costs into their overall pricing for products or services.

The ACCC is finalizing guidance material for consumers and merchants, which will provide further information on the ACCC's enforcement role, detail what merchants need to do in order to comply, and how consumers can make complaints if they believe a merchant has charged a payment surcharge that is excessive.

Failure to comply with the Act may result in infringement notices (currently \$108,000 for a listed corporation and \$10,800 for a non-listed corporation) and/or an action by the ACCC for pecuniary penalties. The ACCC has been vocal in saying that it won't turn a blind eye to possible breaches, particularly for those large businesses clearly on notice of these changes.

The takeaway

If your business imposes payment surcharges on customers, the new regime has important implications for you. While merchants will still be able to impose a surcharge on different payment methods, this amount will be limited.

At PwC, our legal and financial services teams have the expertise to conduct a systematic review of your payment acceptance practices and provide you with practical legal and financial services advice to ensure your business is compliant with the forthcoming requirements.

If you would like:

- to understand more about the Standard,
- assistance on how your business can identify and quantify those costs of acceptance that can be passed on to a consumer as a permitted surcharge,
- to understand more about the ACCC's role as enforcer of the regime and its proposed online guidance material, or
- practical legal advice on what your business needs to do in order to comply with the new regime,

please contact PwC's legal team (contact details below).

Let's talk

Tony O'Malley, Partner
+61 (2) 8266 3015
tony.omally@au.pwc.com

Murray Deakin, Partner
+61(2) 8266 2448
murray.deakin@au.pwc.com

Sylvia Ng, Director
+61 (2) 8266 0338
sylvia.ng@au.pwc.com

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