

Banning Excessive Credit-Card Surcharges

On 25 February 2016 the *Competition and Consumer Amendment (Payment Surcharges) Act 2016* became law. The purpose of the amendment is to prohibit businesses from charging a payment surcharge that is in excess of the costs they incur for accepting that payment type. The amendment also provided the ACCC with new powers of enforcement.

What payment types are affected?

The excessive surcharge ban applies to following four payment types:

1. Eftpos (debit and prepaid)
2. MasterCard (credit, debit and prepaid)
3. Visa (credit, debit and prepaid)
4. American Express “companion cards” (American Express cards issued through an Australian financial service provider, rather than directly through American Express).

BPAY, PayPal, Diners Club cards, UnionPay, American Express cards issued directly by American Express, and cheques are unaffected by the surcharge ban.

Who is affected?

Any business that imposes a payment surcharge on one of the payment types listed above will be affected by the ban.

Large businesses must comply with the ban from **1 September 2016**.

A large business is defined as one that meets at least two of the following standards:

- consolidated gross revenue for financial year ending 30 June 2015 of \$25 million or more
- value of consolidated gross assets at 30 June 2015 of \$12.5 million or more
- 50 or more employees (whether full time, part time, casual or otherwise) at 30 June 2015.

All other business must comply with the ban from **1 September 2017**.

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When does a surcharge become “excessive”?

Businesses are not prohibited from recovering the costs in accepting certain payment types.

A payment surcharge is only deemed “excessive” if the surcharge exceeds the business’ costs of acceptance for each designated payment type.

Business costs of acceptance are based on what the business is charged by the payment facilitator and typically include:

- merchant service fees
- fees paid for the rental and maintenance of payment card terminals
- any other fees incurred in processing card transactions, including cross-border transaction fees, switching fees, and fraud related chargeback fees (but not the cost of any actual chargebacks).

How does a business calculate the costs of acceptance for each designated payment type?

From **1 June 2017**, a business’ monthly statements from its payment facilitator will be required to outline, as a percentage of a transaction, the cost of acceptance for each applicable payment type. For medium and small businesses required to be compliant from 1 September 2017, this will simplify the process of calculating their maximum permitted payment surcharge.

The RBA & ACCC anticipate that most large businesses required to be compliant with the ban by 1 September 2016 will have kept records - or be able to request records - of their payment costs over the previous year. In this instance, **a large business’ maximum permitted payment surcharge is the average percentage cost of acceptance for each designated payment type over the previous year.** Large businesses are responsible for calculating this figure, and for keeping all relevant records.

What are the penalties for breaching the new laws?

Entity	Penalty Units	Dollar Amount
Listed Corporation	600	\$108,000
Body Corporate	60	\$10,800
Person other than Body Corporate	12	\$2,160

In order to enforce the ban, the ACCC has been given the power to issue surcharge information notices to businesses and banks, requiring that they provide evidence of the actual costs incurred by a business for accepting a payment method.

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Further information

More information is available at <https://www.accc.gov.au/business/pricing-surcharging/payment-surcharges>.

If you have questions about the information provided in this overview, please email:
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