

# > Allens

## EXCESSIVE PAYMENT SURCHARGING REFORMS

### > What is changing and how does it affect you?

- > All merchants will be prohibited from charging excessive payment surcharges for certain payment methods.
- > The prohibition already applies to 'large' merchants and will apply to all other merchants from 1 September 2017. The ACCC is urging small businesses to start preparing now for the ban.
- > Under the new law, businesses can only pass on to customers what it costs them to process a payment (the cost of acceptance). Certain costs can be taken into account in calculating the cost of acceptance.
- > Payment methods covered include Visa's and MasterCard's credit and debit cards, EFTPOS and the American Express Companion Card system.
- > The ACCC can require merchants to substantiate the amount of a payment surcharge and/or the cost of processing a payment which attracts a surcharge.

### > ACCC's enforcement powers

- > The ACCC has the power to issue 'surcharge information notices' to any corporation which:
  - charges a payment surcharge; or
  - processes a payment for which a surcharge is charged.
- > The notice can require the recipient to provide documents or information to the ACCC evidencing the amount of a payment surcharge, and the cost of processing a payment which attracts a surcharge.
- > Non-compliance with the ban can attract penalties of up to \$1.1 million per contravention.

### > Key concepts

#### EXCESSIVE PAYMENT SURCHARGE

- > A payment surcharge is excessive if it is of a type covered by the RBA's Standard and it exceeds the cost of acceptance as set out in the RBA's Standard.
- > Merchants cannot use other names eg, 'booking fee' to avoid the regime if the charge is actually related to the choice of payment method.

#### COST OF ACCEPTANCE

- > The cost of acceptance is calculated over a particular 12-month reference period.
- > Merchants should be prepared to amend their payment surcharges to account for changes to the cost of acceptance over time.
- > Banks and payment facilitators are required to provide statements that clearly set out average costs of acceptance for each card scheme. This amount will be set out as a percentage.

#### THE COSTS THAT CAN BE TAKEN INTO ACCOUNT

- > The permitted surcharge cannot exceed the cost of acceptance for that card scheme. The cost of acceptance is to be expressed as a percentage of the total value of card transactions and is the total of the direct costs of the payment method as set out below.



### > What are some of the key issues for merchants?

- > Calculating and substantiating (with appropriate evidence) the average cost of acceptance as a percentage of the total value of card transactions.
- > Practical issues around initial implementation of changes to payment surcharges, monitoring the cost of acceptance over time, and implementing any changes to payment surcharges on an ongoing basis.
- > Maintaining compliance with existing Australian Consumer Law requirements eg, relating to drip pricing or false or misleading representations, while responding to the new rules on payment surcharges.

## > Do the new rules already apply to your business?

Enforcement started against large merchants on 1 September 2016. A large merchant is one who, together with any related bodies corporate, meets any TWO of the following criteria:

- > Consolidated gross revenue of \$25m or more
- > Consolidated gross assets of \$12.5m or more
- > 50 or more employees

All other merchants have until 1 September 2017 to ensure that they comply with the new rules.

Allens is ranked:

### > TOP TIER

Competition/Antitrust – Australia  
*Chambers Asia-Pacific 2017*

### > TOP TIER

'Elite' ranking – Australia  
*Global Competition Review 2017*

## > What should you do to prepare?

Merchants should take the following steps to prepare for the new rules:

- > **Decide** whether you wish to have a payment surcharge or whether you wish to incorporate payment system costs into your overall prices.

### If you wish to have a payment surcharge:

- > **Calculate** the cost of acceptance and permitted surcharge according to the RBA's Standard for each card scheme.
- > **Assess** whether your current surcharges exceed the permitted surcharge.
- > **Implement** changes to your surcharges where they exceed the permitted surcharge.
- > **Develop** a process for the ongoing calculation and amendment of your payment surcharges, given that the 12-month reference period and cost of acceptance may continue to change.
- > **Record** the calculation process and retain key documents to substantiate the calculation of the average cost of acceptance in case the ACCC issues a surcharge information notice.

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