



Surcharging - Best practices and legal requirements

Australian merchants have been allowed by the Reserve Bank to surcharge charge, credit and debit card transactions versus cash.

If a merchant does decide to impose a surcharge, he must ensure that his customer knows that a surcharge fee will apply and the amount of the fee before they enter into the transaction.

Merchants must not mislead or deceive consumers.

Some retailers chose to surcharge only charge cards like American Express and Diners, others also MasterCard and Visa and still others have started to include Australian eftpos cards. The latter is a reaction to the banks having recently reversed and increased the eftpos interchange fee.

While best practices and legal requirements for merchants, when they surcharge cards versus cash, refer to credit card surcharging, we consider it reasonable that the provisions and requirements for credit cards extend to charge, scheme debit and eftpos debit cards.

The Australian Securities and Investment Commission (ASIC) is responsible for financial services including credit. Surcharging of credit cards falls under credit for ASIC purposes. The key ASIC requirement in this regard is that businesses must ensure consumers know a fee will apply, and the amount, before the transaction occurs.

The Australian Competition and Consumer Commission (ACCC) also states that when merchants charge their customers a credit card fee, they must ensure consumers know:

- a credit card fee will apply; and
- the amount of the fee before they enter into the transaction.

If this prior disclosure does not happen, then the card holder can complain to either ASIC or the ACCC.

BACKGROUND INFORMATION

Different pricing for different payment methods (credit cards versus cash)

On 1 January 2003 the Reserve Bank abolished the 'no surcharge' rule. The 'no surcharge' rule meant that businesses were not allowed to



recover the cost of credit card transactions from customers who made credit card payments for goods and services. Instead, businesses had to recover these costs indirectly—that is, by passing on the costs of credit card transactions to all consumers of their goods and services, regardless of the payment method the individual consumer was using.

Do merchants have to charge extra for credit card transactions?

Merchants can choose whether or not to pass on the cost of accepting credit card payments directly or indirectly to consumers. Not all businesses will want to charge a fee to consumers who pay by credit card. There is no obligation on them to do so.

What merchants need to disclose to consumers?

It is important to note that not all merchants will wish to charge their customers a credit card fee. However, if a merchant does decide to impose one, they must ensure that consumers know:

- the credit card fee will apply
- the amount of the fee before they enter into the transaction.

Merchants must not mislead or deceive consumers.

Businesses should get advice about how to avoid misleading or deceiving consumers about this charge. If in doubt, the sensible thing to do is to err on the side of stronger disclosure.

Options for informing consumers (particularly for retailers) include:

- clear and prominent messages on bills or tax invoices
- clear and prominent in-store and/or point of sale signage.

When businesses supply services, this information should be provided before the contract to supply is entered into. If there is an existing contract, the purchaser should be told once any fee for credit card payment is introduced.

Want more information?

ASIC is responsible for financial services including credit.

Report non-disclosure

Merchants must ensure that consumers know a fee will apply, and the amount, before the transaction occurs. If this doesn't happen, consumers can complain to ASIC.