

# The Australian

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## Australian IT

### ePAL mislead consumers over fee changes, says court

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**THE Federal Court has found the eftpos provider, ePAL, misled consumers over fee changes that may lead to higher costs for using debit cards in stores.**

Judge Peter Jacobson today ordered Eftpos Payments Australia Ltd to publish corrective notices in major newspapers, and pay legal costs to retailer ALDI Stores, which brought the action over misleading or deceptive conduct.

ALDI and other retailers use the eftpos system so that customers can pay for goods electronically from their debit and credit card accounts.

Earlier this year, ePAL announced a new “multi-lateral” fee model for eftpos transactions, reversing previous arrangements which saw the shopper’s bank (the card “issuer”) pay a fee to the retailer’s bank (the “acquiring” bank) for processing the payment.

The old regime meant retailers and consumers faced no charges for using the system.

However the new scheme, which starts on Saturday, swaps liability for the interchange fee to the retailer’s financial institution.

In future, merchants will bear the costs of clearing each transaction with customers’ banks, adding a financial burden that some may be unwilling or unable to bear.

The issue came to attention when the Council of Small Business Organisations of Australia warned that consumers could be slugged when ePAL starts charging merchants’ banks a five-cent fee on each transaction over \$15.

Further, shoppers at Coles and Woolworths may be protected from extra charges as both retailers are members of ePAL, along with the nation’s banks and credit unions. ALDI is not a member.

An ALDI spokeswoman said the company was very pleased that “the Federal Court’s decision has validated our concerns about public statements by ePAL” in relation to the new eftpos fee regime which starts on Saturday.

“It has been identified that a number of retailers will face increased charges as a result of the changes made by ePAL to eftpos, depending on the retailer’s acquiring bank,” she said.

“ALDI supports changes that improve the competitiveness of eftpos in the market, but is very concerned about the impact of the changes and any unjustified fee increases levied by banks on retailers beyond their additional costs.

“Coles and Woolworths will not incur these charges if they choose not to be part of the new arrangements, which they have been allowed to do.”

The court heard the net effect of the changes means other retailers’ banks will be nine to 10 cents worse off on each transaction, as they will pay 5c to the customer’s bank, whereas under the old regime they received 4 to 5 cents per transaction by the customer’s bank.

ALDI challenged ePAL over two press releases and a newspaper column written by ePAL managing director Bruce Mansfield, saying the material contained misleading statements to the effect that consumers would face no extra charges when using their cards in stores.

The press release on August 12 said: "Australian consumers should not face new charges following planned changes to eftpos interchange fees, according to ePAL, the company that manages Australia's most popular debit system.

"ePAL managing director Bruce Mansfield said the changes to come into effect later this year affected financial systems on either side of eftpos transactions, and did not involve direct charges to either consumers or retailers."

Judge Jacobson found this and the other statements misleading, as Mr Mansfield was aware that Westpac and St George banks "had notified some merchant clients that they proposed to pass on to the customers part or all of the 5 cent interchange fee from October 1", and that other banks might follow suit.

But he said Mr Mansfield had not deliberately made "false statements".

"Rather, they were inaccurate because Mr Mansfield endeavoured to take a somewhat technical and overly defensive approach to the way in which he gave his affidavit and oral evidence," the judge said.

A media spokesman for ePAL declined to comment on the outcome today, saying the company was still considering the verdict.

But independent electronic payments provider, Tyro Payments, was quick to welcome the decision.

"Today's judgment criticises ePAL for failing to be clear and open about the impact of raising eftpos interchange fees," Tyro chief executive Jost Stallmann said.

"There is no more equal playing field, not for ALDI and not for Tyro's small and medium merchants.

"In the light of the court's decision, banks should reconsider the fee increase."

Mr Stallmann said eftpos should remain a safe and low-cost debit card solution for shoppers and stores.

The ALDI spokeswoman said the company would "now determine what measures can be taken to ensure transparency and maintain a competitive environment".