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## Review of Retail Payments Regulation – First Phase: Merchant Card Payment Costs and Surcharging

Thank you for the opportunity to make a submission to this inquiry.

National Seniors Australia (NSA) is the leading advocacy organisation for older Australians. Through our research and advocacy activities, NSA works to improve the wellbeing of all older Australians, including self-funded retirees, pensioners, part-pensioners, veterans, and carers.

Maintaining cash as accessible and accepted is an important part of the financial system, both as a payment method and store of value. Cash is important to seniors for a range of reasons, including reliability, budgeting, and security. Seniors, like most people, also value the convenience of card payments.

All consumers, but especially those on low fixed incomes, are concerned about the issue of surcharges or merchant fees attached to digital transactions. These charges appear to be increasing, unavoidable, and under-disclosed, leading to significant consumer anger at a time that cost-of-living pressures are high.

Our position is that Australia should return to a no-surcharge basis, as the system of surcharges has become uncompetitive, unfair, and unwieldy. Surcharges are a cost of doing business that should be incorporated into the purchase price of goods and services rather than as a separate charge that is applied at the end of a purchase.

### **Are surcharging rules too complicated to regulate?**

Based on complaints from our members, we have concerns that retailers are not being up front with consumers about the different surcharges they charge and the different payment options. As the RBA noted in the issues paper, it is difficult for competition authorities to enforce the surcharging rules or for consumers to hold retailers to account.

The federal Parliament recently passed the *Commonwealth Entities (Payment Surcharges) Bill 2024* and related legislation<sup>1, 2, 3</sup>. According to the federal treasurer Dr Jim Chalmers, these Bills were motivated by “advice that the collection by a Commonwealth entity of a payment surcharge is likely unlawful in certain circumstances without a legislative basis to permit it”<sup>4</sup>.

This came after it emerged that the NSW state government may have been unlawfully collecting merchant fee charges<sup>5</sup>. The NSW government had legal advice that the surcharges were unlawful from February 2016, though the surcharges had been collected since 2012.

If even the federal government, which can resolve these issues by retrospective legislation extending back to 2003, can wrongly collect surcharges for decades then how can consumers, regulators, or businesses be sure surcharges are being correctly collected?

If a consumer only knows what a surcharge is after they pay, then this fails to encourage consumers to seek cheaper payment options. A recent survey found 66% of people had often experienced an unexpected debit card surcharge<sup>6</sup>. If the point of payment systems, like tap and go, is to provide convenience to time poor consumers, what hope is there that consumers will spend their limited time seeking alternatives either by changing the place their shop or by using an alternative payment method at the point of sale.

The current surcharging regime is unworkable for consumers, businesses, and regulators. The simple solution is to return to a ban on surcharges.

## **Surcharging: Single-rate plans limit regulatory options**

Surcharging has failed in its intended goal of sending a price signal to consumers. Part of the intent behind removing the ‘no-surcharge’ rule was to send a price signal to consumers about the relative costs of different payment methods. But this has broken down as retailers have the option to charge a single percentage surcharge, encouraged by ‘single-rate payment plans’, as the RBA notes. Where the underlying cost of processing the payment is obscured by these single rates, it is not possible for consumers to seek a lower surcharge from using different card payment networks.

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<sup>1</sup> [Commonwealth Entities \(Payment Surcharges\) Bill 2024 – Parliament of Australia](#)

<sup>2</sup> [Commonwealth Entities \(Payment Surcharges\) Tax \(Imposition\) Bill 2024 – Parliament of Australia](#)

<sup>3</sup> [Commonwealth Entities \(Payment Surcharges\) \(Consequential Provisions and Other Matters\) Bill 2024 – Parliament of Australia](#)

<sup>4</sup> [Government acting swiftly on Commonwealth surcharges | Treasury Ministers](#)

<sup>5</sup> [NSW Government takes action after customers unlawfully charged for merchant fees – NSW government](#)

<sup>6</sup> [Sneaky card surcharges hitting two-thirds of Australians' pockets – Choice](#)

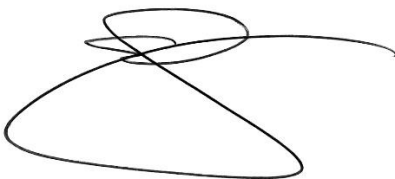
The development of these single-rate payment plans also limits the effectiveness of potential policy solutions. A ban on debit card surcharges may not adequately capture these single-rate surcharges. While Least-Cost Routing may have been a potential solution, this is undermined if these cost savings are taken by payment service providers who then charge a single-rate to retailers which is then surcharged onto consumers.

Australia should follow the lead of the European Union and United Kingdom in banning surcharges, at least for Mastercard, Visa, and eftpos cards. This would align with the option raised by the RBA of a ban on surcharges for cards subject to interchange regulation, that is, excluding cards like American Express and Diners Club.

### **The cost of accepting payment is a cost of doing business**

Given recent developments in surcharges, we believe the only practicable approach is to ban card surcharges for cards subject to interchange regulation. If retailers can charge a single rate of surcharge for debit and credit cards, then they can reflect this cost in the purchase price of goods and services. This would also resolve the issue of excessive and surprise surcharges.

Yours Sincerely



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