

Surcharge on Card Payments: It's Finally Time to Abolish Them

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In this Submission, I strongly advocate for the abolition of any permission for traders to charge any surcharge for the cost of accepting credit cards, debit cards or any other cards, for the following profound reasons.

1. The current system is complex, routinely abused and cannot be enforced by the ACCC.
2. The current system is continuously inflationary, and inflationary pressure is increasing.
3. Some newer payment systems will put more *upward* pressure on merchant card charges.
4. The current system is tangled, opaque and repugnant in relation to GST.
5. The true cost of goods and services are not being fully disclosed in advance.
6. Surcharges are just another business overhead. The current system is strangely skewed, anomalous and unfair.
7. The current use of credit cards is now so common and widespread that this has had a major impact on suppressing the "cash economy" and tax evasion, and is to be encouraged and supported, not penalised.
8. Credit card users are currently being hit with increasing fees and less time to pay, so are now being squeezed at both ends.
9. As others have pointed out, the current system is not fit for the purpose for which it was intended.
1. **The current system is complex, routinely abused and cannot be enforced by the ACCC.**
 - 1.1 I purchased a small item from a small store in a small village on the NSW Central Coast last week. There was a sign there that stated: "All card purchases under \$10.00 incur a surcharge of 30c fee". So for a purchase of \$5.00, the surcharge is 6%. For a purchase of \$1.00, the surcharge is 30%. Legal? No. Has the ACCC stopped that charge? No.
 - 1.2 As you know, merchants are permitted to charge a credit card surcharge equal to the actual cost of accepting a card. A statement on the NAB website expresses it thus:

If you choose to surcharge, you're required to use the **most recent 12 months** transaction percentages on your monthly merchant statement. These will help you understand your Cost of Acceptance. If you have been with NAB for less than 12 months, you need to use the data you have and check again after 6 months and 12 months to ensure your surcharging amounts are correct. You need to make sure the surcharge amount does not exceed your Cost of Acceptance. The [RBA surcharging standard](#), states that merchants can only pass on what it costs them to accept each type of card transaction. Surcharging more than your Cost of Acceptance may constitute 'excessive surcharging' and can be investigated by the Australian Competition and Consumer Commission (ACCC).
 - 1.3 As you know, the RBA sets the standard under section 18 of the *Payments Systems (Regulation) Act 1998* (Cth), and that standard becomes enforceable under section 55B of the *Competition and Consumer Act 2010* (Cth).
 - 1.4 With the greatest respect, the cost of acceptance is a very unwise standard. It is extraordinarily complex and very impracticable to apply. Specifically, the actual cost of

acceptance varies between types of cards (credit, debit and others) and brands (Visa, Mastercard and others), and can vary from month to month within each card and each brand.

- 1.5 I attach (**Annexure A**) an extract of separate monthly reports from a bank to a small merchant for the months of June, October and December of 2023. As you can see, each of Visa and Mastercard have different categories of cards, and varying charges. As you can see, the cost of acceptance for the statement month for each type of card varies from month to month. Even the cost of acceptance for the “most recent 12 months” varies from month to month for each card. This merchant does not accept American Express or other types of cards. If it did, the picture would be even more complex.
- 1.6 It is highly impracticable to expect any merchant to adjust their payments systems each month or even each six months to capture even the average of the most recent 12 month cost of acceptance.
- 1.7 Moreover, it is not always possible or practicable for every merchant to ask or know what category the fee for the card being presented fits into. It is also niggly for the merchant to change their payments system to charge a different amount depending on the brand and type of card presented.
- 1.8 So many merchants therefore just charge an average percentage. Or maybe they charge the highest percentage charged by their bank on any card, just to cover themselves. Or maybe they charge the surcharge that they saw someone else charging down the road. Whatever they decide, they are clearly not charging the correct “cost of acceptance” for the particular card being used.
- 1.9 Whatever the cause, merchants are currently charging up to 2.5% of the purchase cost as credit card surcharge. 2% is very common and charges commonly vary between 1.5% and 2%, and 2.5% are not uncommon. I have come across a number of merchants who still charge a 2.5% surcharge. This apart from those merchants who charge a set fee, like the one mentioned in paragraph 1.1.
- 1.10 On my analysis of total card fees to payments over some time for one merchant who uses a NAB eftpos machine, I discerned that the average cost to the merchant was about 1%-1.1%.
- 1.11 Moreover, new eftpos payment systems are being introduced. For example, Tyro. A common Tyro product charges a flat 1% on all cards (before GST).
- 1.12 A decent merchant should therefore only charge a surcharge of 1%. So why are consumers commonly paying 1.5% to 2.0% and sometimes 2.5% as a credit card surcharge? That is not in the public interest.
- 1.13 For anyone with knowledge of the system, it is abundantly clear that a very great number of merchants are abusing the privilege of being able to charge a credit card surcharge.
- 1.14 The ACCC is too busy and does not have the resources to police section 55B of the *Competition and Consumer Act 2010* (Cth). In order to conduct a reliable investigation, the ACCC would at least need to examine the particular merchant’s costs of acceptance over a reasonably long period, examine its eftpos systems, and possibly also its revenue systems, and maybe also get copies of receipts over a reasonable period. It would use a lot of resources for the ACCC to investigate and take action against even one small merchant in the high street which is overcharging. It is therefore highly unrealistic to expect the ACCC to investigate and take action against the very great number of merchants who are charging excessive surcharges.
- 1.15 So realistically there is no-one to police the growing incidence of excessive credit card surcharge abuse. That is not in the public interest.

- 1.16 Not only is overcharging grossly unfair on consumers, but that also means that prices from many merchants are 1% to 1.5% higher than they should be, even under the current system. That is also not in the public interest.
- 1.17 Of course, overcharging adds somewhat to inflation. More about that below.
- 1.18 I note that many larger retailers don't charge any surcharge, and that the surcharge is well below 1% for those that do. For example, Coles and Woolworth's don't charge any surcharge. Aldi charges 0.05% and Vodafone 0.03%. This only serves to highlight the rip-off (by merchants or eftpos providers) that is 2% and 2.5%.
- 2. The current system is continuously inflationary, and inflationary pressure is increasing.**
- 2.1 It is axiomatic that consumers are paying surcharges of up to 2.5% or more for many goods and services paid for by credit cards. It is also axiomatic that people are using their credit cards for payment more now than ever before in Australia.
- 2.2 It is also the case that more and more merchants are now charging credit card surcharges. This is especially the case when they use the newer eftpos providers who make it really easy for the surcharge to be passed on to consumers.
- 2.3 There are some newer eftpos providers who encourage merchants to sign up to a plan where the costs of acceptance are automatically charged to the consumer. I refer to Smartpay for one. (When doing this research, enquiring as a merchant, I had to push hard a very reluctant Smartpay to disclose what their actual fee was. They kept saying it is just passed on, implying that I should not care.)
- 2.4 So, in my experience, in the last two years, there has been an exponential surge in merchants charging surcharges. But it gets worse.
- 3. Some newer payment systems will put more *upward* pressure on merchant card charges.**
- 3.1 As mentioned in paragraph 2.3, there are some eftpos providers who encourage the merchants to sign up to a plan where the costs of acceptance are automatically charged to the consumer.
- 3.2 Those eftpos providers now have a system which allows the trader to simply tick a box and a surcharge is automatically charged.
- 3.3 There is a very real danger here. When eftpos providers like Smartpay have what they consider to be sufficient market share, they have the ability, effectively by the flick of a switch, to increase their fees and thus the surcharge, without the merchant itself feeling the pain or becoming involved, because it by-passes them. Maybe the merchant might not even be made aware of, or pay much attention to, the increase. I suspect that many merchants just won't care, so long as it costs them nothing. Moreover, the process of increasing the fee can be so subliminal.
- 3.4 Clearly, this has the very serious potential to put significant *upward* pressure on merchant card payments.
- 3.5 This is the exact opposite of the desire the RBA to put downward pressure on merchant card payments and surcharges.
- 3.6 It should become very clear to the RBA that it is only when merchants themselves have to bear the "costs of acceptance" without passing them on, that one might expect merchants to seriously shop around or otherwise put pressure on their eftpos suppliers to reduce fees.

3.7 Conversely, the ability for merchants to simply pass on their “costs of acceptance” means that there is no real downward pressure on card fees. That also means that the current system is not really fit for purpose.

4. The current system is tangled, opaque and repugnant in relation to GST

- 4.1 The issue of GST on the surcharge is quite fraught. Some consumers land up paying additional GST for their purchases, and do so without the GST being disclosed.
- 4.2 Firstly, when GST is payable on the goods and services, customer is paying the surcharge on whole price, not just the GST exclusive part of the price. Thus the consumer is also paying a surcharge on the GST component of the price of the goods and services. So for goods or services sold at \$1,100.00 the included GST is \$100.
- 4.3 With a surcharge of 2% on the price (totalling \$22.00) the customer is paying \$2.00 on the GST component alone. So here we have a surcharge on the GST component of the price.
- 4.4 Then it gets even more complicated, because the surcharge amount is GST inclusive. (I refer to **Annexure B**, showing disclosures by three large banks, stating the obvious - that merchant fees include GST). Thus for that \$22.00 surcharge paid on the \$1,100.00 GST inclusive price, and a total GST inclusive surcharge of 2%, by my calculation, \$1.82 is paid as direct GST on the surcharge. **So we are paying a surcharge on the GST, and GST on the surcharge.**
- 4.5 For comparison, the GST exclusive surcharge (1.818%) on the GST exclusive price of the goods or serves (\$1,000.00), would be \$18.18. But our consumer paid a surcharge of \$22.00. The difference is, of course, \$3.82. \$2.00 of that is the surcharge on the GST and \$1.82 is the GST on the surcharge. Simply put, that amounts to a tax on a tax. That is quite repugnant.
- 4.6 That means that for every purchase of \$1,000 (before GST) with a pre-GST surcharge of 1.818%, the consumer is (unbeknown to the consumer and probably undisclosed) paying an addition GST of \$1.82. Over the whole country each day, that amounts to a very considerable amount of tax being secretly collected.
- 4.7 It is a rare thing to see a tax invoice that discloses the GST paid on the surcharge. That is unlawful, as I understand tax invoice requirements. That also means that purchasers who are registered for GST are being deprived of the right to offset GST paid by them against their GST collections. In **Schedule 1** below, I provide a short analysis of samples of three receipts with surcharges.
- 4.8 There is a very good argument that for a merchant, card acceptance fees are an overhead, like rent and electricity, so merchants are not actually selling card acceptance (or rent for space or electricity used for the customer) so should not be allowed to charge GST on the cost of acceptance. This is addressed further below.
- 4.9 However, it should be unnecessary to address that. Almost every merchant offsets any GST paid on their costs of acceptance against GST received, so it is not any burden for merchants not to charge GST on the surcharge.
- 4.10 If, despite the many calls to abolish surcharges, the RBA nevertheless eventually decides to allow any kind of surcharges, the RBA needs to expressly address the issue of GST by making it very clear that GST on the costs of acceptance must **not** be included in any surcharge.

5. The true cost of goods and services are not being fully disclosed in advance.

- 5.1 It happens so frequently, as research by Choice has shown, that consumers are often not aware that a surcharge will be charged before they pay for goods or services. This happens very frequently in restaurants, for example.

- 5.2 Large retailers like Aldi therefore get away with displaying prices excluding the surcharge. This distorts competition with other large food retailers who don't charge a surcharge.
- 5.3 Presumably Aldi can get away with not disclosing surcharge inclusive prices under paragraph (a) of subsection 48(7) of the Australian Consumer Law ("**ACL**"), which states that the "single price" need not include "a charge that is payable at the option of the other person". Aldi's argument must be that the customer is exercising the option to pay with a credit card and is opting to accept the surcharge.
- 5.4 Nevertheless there is a good argument that Aldi's conduct is, or is likely to be, misleading and deceptive under s.18 of the ACL, given the vast percentage of customers who pay by credit card (*ACCC v Signature Security Group*, [2003] FCA 3).
- 5.5 Be that as it may, it gets worse. It is often the case that when buying airline tickets or other goods or services online, consumers do not have a realistic, or any, choice to pay otherwise than by card.
- 5.6 Therefore the surcharge is not a choice and should be included in the "single price" displayed for the goods and services. Surcharges are not so included, and the ACCC appears to be impotent in enforcing that law.
- 5.7 Removing all surcharges will remove a significant problem for the ACCC as well as removing a very nasty thorn in the side of consumers.
- 6. Surcharges are just another business overhead. The current system is strangely skewed, anomalous and unfair.**
- 6.1 There is a very good argument that for a merchant, card acceptance fees are an overhead, just like rent, electricity, gas, air-conditioning repairs, office supplies, tea and biscuits, so merchants are not actually selling card acceptance (or rent for space or electricity used for the customer) so should not be allowed to charge for the cost of acceptance.
- 6.2 Indeed, it would appear the costs of renting an eftpos machine is not part of the "costs of acceptance".
- 6.3 The argument must be that the difference between other overheads and the "cost of acceptance" is that the "cost of acceptance" of a particular transaction can be identified.
- 6.4 I trust that I have established in section 1 above that that is not the case. The actual and true cost of acceptance of a particular type of card on a particular day, cannot be identified by many merchants. The exceptions are dealt with in section 2 above.
- 6.5 One has to ask why, of all the overheads, the cost of acceptance overhead (as distinguished from the cost of renting an eftpos machine, and all others) is allowed to be specifically surcharged? Is it because that particular overhead can supposedly be identified. If so, a number of obvious comments flow.
- 6.6 The first and obvious one is that just because the supposed cost of acceptance can be identified, is not an economic, equitable or other justification for allowing merchants to pass on the cost to consumers.
- 6.7 Of all the possible overheads that a business has, it is odd and anomalous that this one overhead can be separately and specifically surcharged, rather than incorporated into the price.
- 6.8 Do restaurants charge patrons for the sugar they personally use? Or for the salt they use? Or for rental of the table and chairs? Silly. So why this?

- 6.9 Credit card surcharges are just another unnecessary cost and burden to consumers, who really don't need any additional costs at the moment, especially for the vast majority of people who don't earn that much and whose expenditure is a high percentage of their income
- 7. The current use of credit cards is now so common and widespread that this has had a major impact on suppressing the "cash economy" and tax evasion, and is to be encouraged and supported, not penalised.**
- 7.1 Even as recently as 10 years ago, I came across very many shop merchants and contractors who refused to accept any payment other than cash.
- 7.2 It does not take a genius to work out that those merchants and contractors were accepting only cash payments for the simple and unequivocal purpose of evading tax.
- 7.3 However, today, even those die-hard shopkeepers and contractors have caved in to the economic necessity of having to accept credit card payments. The advent of the Covid-19 pandemic was probably a significant factor in accelerating this development.
- 7.4 Thus the use of credit cards is a very good thing to obstruct those shopkeepers, other merchants and contractors who would prefer to not declare their cash income and prefer to evade paying tax that is lawfully payable.
- 7.5 But still I am aware of a number of people who refuse to pay any surcharge and are only paying in cash when there is a surcharge for use of a credit card. This is a retrograde position. While it saves these consumers a considerable amount of money, it fosters tax evasion by the merchants. Even more so because if a merchant receives 10% of their sales in cash, it is much easier to hide that 10% and declare and pay tax only on the 90%.
- 7.6 Therefore, the use of credit and other cards should be encouraged and supported by the RBA. Instead, their use is continuously penalised with surcharges (and bank fees).
- 8. Credit card users are currently being hit with increasing fees by banks and less time to pay, so are now being squeezed at both ends**
- 8.1 To my personal knowledge, just this year I have seen notices from various banks increasing credit card fees and reducing payment times.
- 8.2 As the RBA is probably aware, in 2022 NAB took over Citibank's retail businesses, including Citibank's credit and debit cards. Even since inception, Citibank had a rewards credit card. I had one since 2000. There was never any annual fee. However, in early 2024, NAB brought in a \$149.00 annual fee for the card.
- 8.3 The due date for payment of a Citibank statement was always "up to 55 days", which in reality was about 25 days after the statement date. In September 2024, NAB reduced that to "up to 44 days", being about 14 days after the statement date.
- 8.5 In August 2024, Latitude Financial announced a card fee of \$8.00 per month for its 28 Degrees card. Since inception, there was never any fee for the card.
- 8.5 In May 2024, the Commonwealth Bank of Australia also reduced the period to pay from about 25 days after the statement date ("up to 55 days") to about 14 days after the statement date ("up to 44 days").
- 8.6 These cases are only the ones I am aware of. There may be many more. This is besides the extraordinarily high interest rates charged by the banks when the final balance of a card statement is not paid in full and on time. This is besides the fees that banks charge for any dishonour and for various other things.
- 8.7 These cases are only a few samples of how the banks are now squeezing their credit card users to get more money from them.

8.8 It is egregious that credit card users are also being hit with a surcharge when they use their cards.

9. As others have pointed out, the current system is not fit for the purpose for which it was intended.

9.1. Clancy Yeates, the Deputy Business Editor of the Sydney Morning Herald, in an article on 21 October 2024 entitled "*Why those pesky surcharges are no longer doing their job*", makes the very good point that surcharges are no longer fit for purpose.

10. Conclusion

10.1 I trust that I have demonstrated:

- (a) that the current system of charging the "costs of acceptance" is very complex;
- (b) the regular abuse by many merchants of the current system and the inability of the ACCC to police the charging of excessive surcharges;
- (c) the ongoing and increasing inflationary effect of the current system;
- (d) that newer payment systems will put even more *upward* pressure on merchant card charges,
- (e) how tangled, opaque and repugnant the current system is in relation to GST;
- (f) how the current system distorts the full disclosure in advance of the cost of goods and services;
- (g) how anomalous, skewed and unfair the charging of this one business overhead is;
- (h) how important it is to encourage the use of credit cards to suppress tax evasion rather than penalise the use of cards;
- (i) how credit card users are increasingly being charged more by credit card issuers, and are thus being squeezed at both ends; and
- (j) that the current system is no longer fit for purpose.

10.2 I therefore propose that the time has come for the RBA to finally abolish card surcharges on credit cards, debit cards and other cards.

If the RBA would like documentary evidence of any of the facts here stated, please get in touch.

SCHEDULE 1

I have annexed samples of three receipts, as Annexure C, Annexure D and Annexure E. They have been de-identified.

I will discuss each one in turn. These are just three examples of current receipts, which show a variety of information.

Annexure C

C.1 This is a receipt for a product or service with GST. The price for the product or services is \$30,000 including GST. The GST included in that amount is correctly shown as \$2,730.

C.2 The surcharge is shown after the GST. The surcharge appears to be a clear cut 1.5%, equalling \$0,45. If that is correct, the GST part of the surcharge is not shown.

C.3 It is possible, though unlikely, that the surcharge amount does not include GST.

C.4 It is possible, though unlikely, that the cost of acceptance is 1.4778% rather than 1.5%, so that the GST amount shown includes the GST on the surcharge.

- C.5 The most likely case is that there is GST on the surcharge but that GST amount is not disclosed.

Annexure D

- D.1 This is one of those cases where both a tax invoice is provided separately from the credit card receipt.
- D.2 In this case, the goods were GST free. The "tax invoice" shows the purchase price of \$8.00 and nothing else.
- D.3 Only the credit card receipt shows the surcharge. The surcharge is stated to be 1.25%, but actually appears to be 1.125%.
- D.4 The credit card receipt then states "10% Tax included, \$0.73". That is questionable, because the goods themselves are supposed to be GST free. The actual tax invoice does not state that any GST was included and does not state the amount of the GST.
- D.5 It is not possible to clearly discern if that \$0.73 is *supposed* to be the GST on the pre-surcharge price (which would be \$0.72727) or GST on the surcharge inclusive price of \$8.09 (which would be \$0.73545).
- D.3 It appears to me the better answer is to say that the \$0.73 is the *supposed* GST on the pre-surcharge price of \$8.00. The GST on the surcharge inclusive price, one expects, would be rounded up to \$0.74.

Annexure E.

- E.1 This is a combined tax invoice and credit card receipt for the purchase of goods or services which include GST.
- E.2 In the main part of the receipt, one has the price for the goods or services, being \$42.69, the surcharge of \$0.28, the total price of \$42.97 and the GST included, of \$3.88 I clearly displayed.
- E.3 That GST of \$3.88 is actually only the GST on the pre-surcharge price.
- E.4 Then in the small print below, there is the statement "A Surcharge of \$0.28 inc. GST was applied".
- E.5 At least that statement is made, although it does not identify the GST amount of the surcharge, which should be \$0.025.
- E.6 Ultimately the receipt is misleading or is likely to mislead because it displays clearly a GST amount in the main section (\$3.88) which is actually incorrect. It should be \$3.90.
-