



Competition and Consumer Amendment (Payment Surcharges) Act 2016

No. 9, 2016

An Act to amend the *Competition and Consumer Act 2010*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Competition and Consumer Amendment (Payment Surcharges) Act 2016

No. 9, 2016

An Act to amend the *Competition and Consumer Act 2010*, and for related purposes

[Assented to 25 February 2016]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Competition and Consumer Amendment (Payment Surcharges) Act 2016*.

No. 9, 2016

Competition and Consumer Amendment (Payment Surcharges) Act
2016

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day this Act receives the Royal Assent.	25 February 2016

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Competition and Consumer Act 2010

1 Subsection 4(1)

Insert:

electronic communication means a communication of information by means of guided and/or unguided electromagnetic energy:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms.

2 After subsection 6(2E)

Insert:

(2F) In addition to the effect that this Act (other than Parts IIIA, VIIA and X) has as provided by another subsection of this section, this Act (other than Parts IIIA, VIIA and X) has, by force of this subsection, the effect it would have if:

- (a) each reference in Part IVC to a payment surcharge were a reference to a payment surcharge charged for processing a payment made by means of a postal, telegraphic, telephonic, or other like service (including electronic communication); and
- (b) each reference to a corporation included a reference to a person not being a corporation.

3 After Part IVB

Insert:

Part IVC—Payment surcharges

Division 1—Preliminary

55 Object of this Part

The object of this Part is to ensure that payment surcharges:

- (a) are not excessive; and
- (b) reflect the cost of using the payment methods for which they are charged.

55A Definitions

In this Part:

excessive, in relation to a payment surcharge, has the meaning given by subsection 55B(2).

infringement notice compliance period has the meaning given by subsection 55M(1).

listed corporation has the meaning given by section 9 of the *Corporations Act 2001*.

payment surcharge means:

- (a) an amount charged, in addition to the price of goods or services, for processing payment for the goods or services; or
- (b) an amount (however described) charged for using one payment method rather than another.

Reserve Bank standard means a standard determined under section 18 of the *Payment Systems (Regulation) Act 1998* after the commencement of this definition.

surcharge information notice has the meaning given by subsection 55C(3).

surcharge participant has the meaning given by subsection 55C(2).

Division 2—Limit on payment surcharges

55B Payment surcharges must not be excessive

- (1) A corporation must not, in trade or commerce, charge a payment surcharge that is excessive.
- (2) A payment surcharge is *excessive* if:
 - (a) the surcharge is for a kind of payment covered by:
 - (i) a Reserve Bank standard; or
 - (ii) regulations made for the purposes of this subparagraph;and
 - (b) the amount of the surcharge exceeds the permitted surcharge referred to in the Reserve Bank standard or the regulations.
- (3) Subsection (1) does not apply to a corporation who is exempted from its operation by the regulations.

Division 3—Information about payment surcharges

55C Surcharge information notices

- (1) The Commission may, by written notice given to a surcharge participant, require the participant to give to the Commission information or documents evidencing either or both of the following:
 - (a) the amount of a payment surcharge;
 - (b) the cost of processing a payment in relation to which a payment surcharge was paid.
- (2) A corporation is a *surcharge participant* if, in trade or commerce, the corporation:
 - (a) charges a payment surcharge; or
 - (b) processes a payment for which a payment surcharge is charged.
- (3) The notice given by the Commission to the surcharge participant is a *surcharge information notice*.
- (4) The surcharge information notice must specify:

- (a) the kinds of information or documents to be given to the Commission; and
- (b) the period for giving the information or documents.

55D Extending periods for complying with notices

- (1) A surcharge participant that has been given a notice under section 55C may, at any time within 21 days after the notice was given to the participant, apply in writing to the Commission for an extension of the period for complying with the notice.
- (2) The Commission may, by written notice given to the surcharge participant, extend the period within which the participant must comply with the notice.

55E Participant must comply with notice

- (1) A surcharge participant commits an offence if:
 - (a) the surcharge participant is given a surcharge information notice; and
 - (b) the surcharge participant fails to comply with the notice within the period for so complying.

Penalty: 30 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

Division 4—Infringement notices

55F Purpose and effect of this Division

- (1) The purpose of this Division is to provide for the issue of an infringement notice to a person for an alleged contravention of section 55B as an alternative to proceedings for an order under section 76 for the payment of a pecuniary penalty.
- (2) This Division does not:
 - (a) require an infringement notice to be issued to a person for an alleged contravention of section 55B; or

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- (b) affect the liability of a person to proceedings under section 76 in relation to an alleged contravention of section 55B if:
 - (i) an infringement notice is not issued to the person for the contravention; or
 - (ii) an infringement notice issued to the person for the contravention is withdrawn under section 55N; or
 - (c) prevent a court from imposing a higher penalty than the penalty specified in the infringement notice if the person does not comply with the notice.

55G Issuing an infringement notice

- (1) If the Commission has reasonable grounds to believe that a person has contravened section 55B, the Commission may issue an infringement notice to the person.
- (2) The Commission must not issue more than one infringement notice to the person for the same alleged contravention of section 55B.
- (3) The infringement notice does not have any effect if the notice:
 - (a) is issued more than 12 months after the day that the contravention of section 55B is alleged to have occurred; or
 - (b) relates to more than one alleged contravention of section 55B by the person.

55H Matters to be included in an infringement notice

- (1) An infringement notice must:
 - (a) be identified by a unique number; and
 - (b) state the day on which it is issued; and
 - (c) state the name and address of the person to whom it is issued; and
 - (d) identify the Commission and state how it may be contacted; and
 - (e) give details of the alleged contravention, including the day of the alleged contravention; and
 - (f) state the maximum pecuniary penalty that the court could order the person to pay under section 76 for the alleged contravention; and
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- (g) specify the penalty that is payable in relation to the alleged contravention; and
- (h) state that the penalty is payable within the infringement notice compliance period for the notice; and
- (i) state that the penalty is payable to the Commission on behalf of the Commonwealth; and
- (j) explain how payment of the penalty is to be made; and
- (k) explain the effect of sections 55K, 55L, 55M and 55N.

55J Amount of penalty

The penalty to be specified in an infringement notice that is to be issued to a person in relation to an alleged contravention of section 55B must be:

- (a) if the person is a listed corporation—600 penalty units; or
- (b) if the person is a body corporate other than a listed corporation—60 penalty units; or
- (c) if the person is not a body corporate—12 penalty units.

55K Effect of compliance with an infringement notice

- (1) This section applies if:
 - (a) an infringement notice for an alleged contravention of section 55B is issued to a person; and
 - (b) the person pays the penalty specified in the infringement notice within the infringement notice compliance period and in accordance with the notice; and
 - (c) the infringement notice is not withdrawn under section 55N.
- (2) The person is not, merely because of the payment, regarded as having contravened section 55B.
- (3) No proceedings (whether criminal or civil) may be started or continued against the person, by or on behalf of the Commonwealth, in relation to the alleged contravention of section 55B.

55L Effect of failure to comply with an infringement notice

If:

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- (a) an infringement notice for an alleged contravention of section 55B is issued to a person; and
 - (b) the person fails to pay the penalty specified in the infringement notice within the infringement notice compliance period and in accordance with the notice; and
 - (c) the infringement notice is not withdrawn under section 55N;
- the person is liable to proceedings under section 76 in relation to the alleged contravention of section 55B.

55M Infringement notice compliance period for infringement notice

- (1) Subject to this section, the ***infringement notice compliance period*** for an infringement notice is the period of 28 days beginning on the day after the day that the infringement notice is issued by the Commission.
- (2) The Commission may extend, by notice in writing, the infringement notice compliance period for the infringement notice if the Commission is satisfied that it is appropriate to do so.
- (3) Only one extension may be given and the extension must not be for longer than 28 days.
- (4) Notice of the extension must be given to the person who was issued the infringement notice.
- (5) A failure to comply with subsection (4) does not affect the validity of the extension.
- (6) If the Commission extends the infringement notice compliance period for an infringement notice, a reference in this Division to the infringement notice compliance period for an infringement notice is taken to be a reference to the infringement notice compliance period as so extended.

55N Withdrawal of an infringement notice

Representations to the Commission

- (1) A person to whom an infringement notice has been issued for an alleged contravention of section 55B may make written

representations to the Commission seeking the withdrawal of the infringement notice.

- (2) Evidence or information that the person, or a representative of the person, gives to the Commission in the course of making representations under subsection (1) is not admissible in evidence against the person or representative in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

Withdrawal by the Commission

- (3) The Commission may, by written notice (the ***withdrawal notice***) given to the person to whom an infringement notice was issued, withdraw the infringement notice if the Commission is satisfied that it is appropriate to do so.
- (4) Subsection (3) applies whether or not the person has made representations seeking the withdrawal.

Content of withdrawal notices

- (5) The withdrawal notice must state:
 - (a) the name and address of the person; and
 - (b) the day on which the infringement notice was issued to the person; and
 - (c) that the infringement notice is withdrawn; and
 - (d) that proceedings under section 76 may be started or continued against the person in relation to the alleged contravention of section 55B.

Time limit for giving withdrawal notices

- (6) To be effective, the withdrawal notice must be given to the person within the infringement notice compliance period for the infringement notice.

Refunds

- (7) If the infringement notice is withdrawn after the person has paid the penalty specified in the infringement notice, the Commission must refund to the person an amount equal to the amount paid.

4 Subsection 75B(1)

Before “60C”, insert “55B”.

5 After subparagraph 76(1)(a)(i)

Insert:

(ia) section 55B;

6 Paragraph 76(1A)(ba)

Before “60C”, insert “55B”.

7 Paragraph 76(1B)(aa)

Before “60C”, insert “55B”.

8 After subparagraph 80(1)(a)(ii)

Insert:

(ia) section 55B;

9 Subsection 82(1)

Before “60C”, insert “55B”.

10 Section 83

Before “60C”, insert “55B”.

11 Paragraphs 84(1)(b) and (3)(b)

Omit “or Part IVB or V”, substitute “Part IVB, section 55B or Part V”.

12 Subsection 86(1A)

Omit “or Part IVB”, substitute “, Part IVB or section 55B”.

13 Subsection 86(2)

After “Part IVB”, insert “or section 55B”.

14 Paragraph 86A(1)(b)

After “Part IVB”, insert “or section 55B”.

15 Subsection 86C(4) (paragraph (a) of the definition of *contravening conduct*)

Before “60C”, insert “55B,”.

16 Subsection 87(1)

Before “60C”, insert “55B,”.

17 After paragraph 87(1A)(b)

Insert:

(baa) on the application of the Commission in accordance with subsection (1BAA) on behalf of a class of persons who have suffered, or who are likely to suffer, loss or damage by conduct of another person that was engaged in in contravention of section 55B; or

18 After subsection 87(1B)

Insert:

(1BAA) The Commission may make an application under paragraph (1A)(b) on behalf of a class of persons identified in the application who have suffered, or are likely to suffer, loss or damage by conduct of another person that was engaged in in contravention of section 55B.

*[Minister’s second reading speech made in—
House of Representatives on 3 December 2015
Senate on 4 February 2016]*

(210/15)
