

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Australian Citizenship Act 2007

Customs Act 1901

Migration Act 1958

Home Affairs Legislation Amendment (Credit Card and PayPal Surcharge)

Regulations 2020

The *Australian Citizenship Act 2007* (the Citizenship Act) provides for the process of becoming an Australian citizen, the circumstances in which citizenship may cease, and some other matters related to citizenship.

The *Customs Act 1901* (the Customs Act) relates to customs functions and provides, amongst other things, for the importation and exportation of goods, to and from Australia.

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Section 54 of the Citizenship Act, subsection 270(1) of the Customs Act and subsection 504(1) of the Migration Act relevantly provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Citizenship Act, the Customs Act or the Migration Act.

In addition, regulations may be made pursuant to the provisions of the Citizenship Act, the Customs Act and the Migration Act listed in [Attachment A](#).

The purpose of the *Home Affairs Legislation Amendment (Credit Card and PayPal Surcharge) Regulations 2020* (the Regulations) is to amend the *Australian Citizenship Regulation 2016* (the Citizenship Regulation), the *Customs Regulation 2015* (the Customs Regulation) and the *Migration Regulations 1994* (the Migration Regulations) to increase the surcharge applied to Visa and MasterCard credit card, and PayPal, payments for certain fees and charges, including visa application charges, nomination and sponsorship fees, citizenship-related fees and customs duties and taxes.

Merchant fees are charged to the Department of Home Affairs (the Department) by financial services providers where Departmental clients make payments using credit card or Paypal facilities. Under the Citizenship Regulation, the Customs Regulation and the Migration Regulations, these merchant fees are recoverable from clients via a credit card or PayPal surcharge. The recovery of merchant fees through a surcharge is allowed under the Reserve Bank of Australia (the RBA) surcharging standards and is consistent with the cost recovery guidelines issued by the Department of Finance.

The Department has re-assessed the appropriate level of surcharge in accordance with the RBA surcharging standards. The revised surcharge amounts – an increase by 0.08 per cent for payments made using Visa and MasterCard credit cards, and by 0.01 per cent for

payments made using PayPal – ensure an appropriate level of cost recovery, by reducing the gap between the merchant fees charged by financial services providers and the surcharge collected by the Department.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment B](#).

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments. No Regulation Impact Statement is required. The OBPR consultation reference is 26005.

No external consultation was undertaken for the purposes of the Regulations as the amendments do not substantially alter existing arrangements. This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

The Regulations commence on 1 July 2020 to align with changes to Departmental systems.

The Department follows standard practices to notify clients about the Regulations, including updating its website and notifying peak bodies.

Further details of the Regulations are set out in [Attachment C](#).

The Citizenship Act, the Customs Act and the Migration Act specify no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

AUTHORISING PROVISIONS

Section 54 of the *Australian Citizenship Act 2007* (the Citizenship Act), subsection 270(1) of *Customs Act 1901* (the Customs Act) and subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Citizenship Act, the Customs Act or the Migration Act.

In addition, the following provisions apply:

- paragraph 46(1)(d) of the Citizenship Act, which provides that an application under a provision of the Citizenship Act must be accompanied by the fee (if any) prescribed by the regulations;
- subsection 270(1A) of the Customs Act, which provides that the regulations may make provision for and in relation to:
 - (a) the charging and recovery of fees in respect of any matter under the Customs Act or the regulations;
 - (b) the way in which fees are to be paid;
 - (c) the persons who may be paid fees on behalf of the Commonwealth; and
 - (d) the remission, refund or waiver of fees of a kind referred to in paragraph (a) or the exempting of persons from the payment of such fees; and
- paragraph 504(1)(a) of the Migration Act, which provides that the Governor-General may make regulations:
 - (a) making provision for and in relation to:
 - (i) the charging and recovery of fees in respect of any matter under the Migration Act or the regulations, including the fees payable in connection with the review of decisions made under the Migration Act or the regulations, whether or not such review is provided for by or under the Migration Act;
 - (ii) the charging and recovery of fees in respect of English language tests conducted by or on behalf of the Department;
 - (iii) the way, including the currency, in which fees are to be paid; or
 - (iv) the persons who may be paid fees on behalf of the Commonwealth.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Home Affairs Legislation Amendment (Credit Card and PayPal Surcharge) Regulations 2020

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

Schedule 1 to the *Home Affairs Legislation Amendment (Credit Card and PayPal Surcharge) Regulations 2020* (the Amendment Regulations) amends the *Australian Citizenship Regulation 2016*, the *Customs Regulation 2015* and the *Migration Regulations 1994* to revise the surcharge applicable to Visa and MasterCard credit card, and PayPal, payments for certain fees and charges, including visa application charges, nomination and sponsorship fees, citizenship-related fees and customs duties and taxes.

The Department of Home Affairs (the Department) has re-assessed the appropriate level of surcharge in accordance with the ‘reasonable cost of acceptance’ guidance provided by the Reserve Bank of Australia (the RBA). The revised surcharge amounts are as follows:

- for payments made by Visa or MasterCard – the surcharge rate is being increased by 0.08 per cent (that is, from 1.32 per cent to 1.4 per cent). This increase is being limited to Visa and MasterCard credit card payments alone, as the majority of credit card payments are made using these two payment options. In addition, the surcharge rate for the other credit card options is already 1.4 per cent or higher; and
- for payments made using PayPal – the surcharge rate is being increased by 0.01 per cent (that is, from 1 per cent to 1.01 per cent). This will allow for the full recovery of the fees charged by PayPal.

The recovery of merchant fees through a surcharge is allowed under the RBA surcharging standards and is consistent with the cost recovery guidelines issued by the Department of Finance. The revised surcharge amounts will ensure an appropriate level of cost recovery, by reducing the gap between the merchant fees charged by financial services providers and the surcharge collected by the Department.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Peter Dutton MP, Minister for Home Affairs

Details of the Home Affairs Legislation Amendment (Credit Card and PayPal Surcharge) Regulations 2020

Section 1 – Name

This section provides that the name of this instrument is the *Home Affairs Legislation Amendment (Credit Card and PayPal Surcharge) Regulations 2020*.

Section 2 – Commencement

This section provides for the commencement of the instrument.

The whole of the instrument commences on 1 July 2020 to align with the roll-out of changes to the relevant Departmental systems.

Section 3 – Authority

This section provides that the instrument is made under the *Australian Citizenship Act 2007* (the Citizenship Act), the *Customs Act 1901* and the *Migration Act 1958* (the Migration Act).

Section 4 – Schedules

This section provides for how the amendments in this instrument operate.

Schedule 1 – Amendments

The Department of Home Affairs (the Department) offers credit card and PayPal facilities to Departmental clients for the payment of certain fees and charges. Where payments are made using these facilities, merchant fees are charged to the Department by financial services providers. These merchant fees are recovered from clients via a credit card or PayPal surcharge, provided for under the following legislative provisions:

- under section 16 of the *Australian Citizenship Regulation 2016*, in relation to credit card and PayPal payments for fees to accompany an application under a provision of the Citizenship Act (unless payment is made in New Zealand currency or Singaporean currency);
- under sections 150B and 150C of the *Customs Regulation 2015*, in relation to credit card and PayPal payments for customs duties, taxes, charges, fees, securities, penalties or amounts specified in infringement notices; and
- under regulations 5.41A and 5.41B of the *Migration Regulations 1994* (the Migration Regulations), in relation to credit card and PayPal payments for certain fees and charges under the Migration Regulations (including for the payment of visa application charges, nomination and sponsorship fees, and visa evidence charges).

Prior to these amendments, under these provisions, the PayPal surcharge was set at 1 per cent of the amount of the payment, while credit card surcharges were as follows:

- Visa or MasterCard – 1.32 per cent of the amount of the payment;
- American Express or Japan Credit Bureau – 1.4 per cent of the amount of the payment;
- Diners Club International – 1.99 per cent of the amount of the payment; and
- China UnionPay credit card – 1.9 per cent of the amount of the payment.

The Department has re-assessed the appropriate level of surcharge in accordance with the ‘reasonable cost of acceptance’ guidance provided by the Reserve Bank of Australia (the RBA). The revised surcharge amounts are as follows:

- for payments made by Visa or MasterCard – the surcharge rate is being increased by 0.08 per cent (that is, from 1.32 per cent to 1.4 per cent). This increase is being limited to Visa and MasterCard credit card payments alone, as (a) the majority of credit card payments are made using these two payment options; and (b) the surcharge rate for the other credit card options is already 1.4 per cent or higher; and
- for payments made using PayPal – the surcharge rate is being increased by 0.01 per cent (that is, from 1 per cent to 1.01 per cent). This will allow for the full recovery of the fees charged by PayPal.

The recovery of merchant fees through a surcharge is allowed under the RBA surcharging standards and is consistent with the cost recovery guidelines issued by the Department of Finance.

The purpose of the revised surcharge amounts is to ensure an appropriate level of cost recovery, by reducing the gap between the merchant fees charged by financial services providers and the surcharge collected by the Department.

Australian Citizenship Regulation 2016

Item [1] – Subparagraph 16(1)(b)(i)

This item omits the percentage “1.32%” and substitutes the new percentage “1.4%”.

The amendment made by this item increases the amount of the credit card surcharge applied to payments made by a Visa or MasterCard credit card, from 1.32 per cent to 1.4 per cent, for fees accompanying an application under a provision of the Citizenship Act.

Item [2] – Paragraph 16(1)(c)

This item omits the percentage “1%” and substitutes the new percentage “1.01%”.

The amendment made by this item increases the amount of the surcharge applied to payments made by PayPal, from 1 per cent to 1.01 per cent, for fees accompanying an application under a provision of the Citizenship Act.

Customs Regulation 2015

Item [3] – Paragraph 150B(2)(a)

This item omits the percentage “1.32%” and substitutes the new percentage “1.4%”.

The amendment made by this item increases the amount of the credit card surcharge applied to payments made by a Visa or MasterCard credit card, from 1.32 per cent to 1.4 per cent, for customs duties, taxes, charges, fees, securities, penalties or amounts specified in infringement notices.

Item [4] – Subsection 150C(2)

This item omits the percentage “1%” and substitutes the new percentage “1.01%”.

The amendment made by this item increases the amount of the surcharge applied to payments made by PayPal, from 1 per cent to 1.01 per cent, for customs duties, taxes, charges, fees, securities, penalties or amounts specified in infringement notices.

Migration Regulations 1994

Item [5] – Paragraph 5.41A(2)(a)

This item omits the percentage “1.32%” and substitutes the new percentage “1.4%”.

The amendment made by this item increases the amount of the credit card surcharge applied to payments made by a Visa or MasterCard credit card, from 1.32 per cent to 1.4 per cent, for certain fees and charges under the Migration Regulations, including for the payment of visa application charges, nomination and sponsorship fees, and visa evidence charges.

Item [6] – Subregulation 5.41B(2)

This item omits the percentage “1%” and substitutes the new percentage “1.01%”.

The amendment made by this item increases the amount of the surcharge applied to payments made by PayPal, from 1 per cent to 1.01 per cent, for certain fees and charges under the Migration Regulations, including for the payment of visa application charges, nomination and sponsorship fees, and visa evidence charges.