

# Departmental Disclosure Statement

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Retail Payment System (Ban on Merchant Surcharges) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment (**MBIE**).

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

3 September 2025.

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## Part One: General Policy Statement

This Bill amends the Retail Payment System Act 2022 to ban payment surcharges on certain in-store transactions.

The Commerce Commission estimates that consumers pay up to \$150 million in payment surcharges each year, of which an estimated \$45 million to \$65 million likely exceeds merchants' reasonable costs. Surcharges are also often not revealed until the final stage of a sale. This can be unclear to consumers and makes price comparison difficult.

In New Zealand, there are no laws preventing merchants from setting surcharges to recover their costs of accepting payments. The main requirements are set out in the Fair Trading Act 1986, which prohibits false and misleading representations as to the price of goods and services.

The Retail Payment System Act 2022 also empowers the Commerce Commission to issue merchant surcharging standards for the disclosure of information, the representation of surcharges, limits on surcharges, and record keeping. The Commission is yet to utilise these powers, which are to be used for the purpose of ensuring that surcharges do not exceed merchants' costs of using payment services for accepting retail payments.

Several jurisdictions have revisited their regulatory approaches to surcharges in recent years. Surcharges on debit and credit cards have been banned outright in the European Union, the United Kingdom, and Malaysia, with some exceptions for commercial cards and/or payments that are not subject to price regulation. Similarly, Australia is proposing, from 1 July 2026, to remove its prohibition on the ability of the operators of the EFTPOS, Mastercard and Visa networks to impose "no surcharge" rules.

This Bill proposes an initial, targeted ban to address the consumer harm that surcharges cause in in-store retail settings. This ban would apply to surcharges on in-store EFTPOS, Visa and Mastercard debit and credit payments.

This Bill also proposes:

- to enable the Commerce Commission to enforce the ban and issue a corrective notice or seek a pecuniary penalty in the event of a breach;
- to provide that any surcharge charged in contravention of the ban is unenforceable and, if paid, the consumer is entitled to a refund from the merchant;
- to retain the ability of the Commerce Commission to issue merchant surcharging standards for payments that are not subject to the ban; and
- regulation-making powers to enable the ban to be extended in future, for example, to online payments or other payment networks.

It is intended that this regime would lead to greater transparency, improve the consumer experience, and allow substandard surcharging practices to be more easily remedied.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>MBIE commissioned a competition analysis of the impacts of a possible ban on surcharging as follows:</p> <ul style="list-style-type: none"> <li>• <i>Competition analysis of banning card surcharges</i>, Axiom Economics, 23 May 2025, is (to be) proactively released on MBIE's website and made available here: <a href="http://www.mbie.govt.nz/document-library">www.mbie.govt.nz/document-library</a>.</li> </ul> <p>MBIE was also informed by information provided to other relevant domestic and overseas reviews or evaluations:</p> <ul style="list-style-type: none"> <li>• Commerce Commission, <i>Interchange fee regulation for Mastercard and Visa networks</i>, Submissions and analysis, December 2024 – July 2025, available on the Commerce Commission website: <a href="https://comcom.govt.nz/regulated-industries/retail-payment-system">https://comcom.govt.nz/regulated-industries/retail-payment-system</a>.</li> <li>• Reserve Bank of Australia (RBA), <i>Review of Retail Payments Regulation, Merchant Card Payment Costs and Surcharging</i>, July 2025, available on the RBA's website: <a href="http://www.rba.gov.au/payments-and-infrastructure/review-of-retail-payments-regulation/2025-07/">www.rba.gov.au/payments-and-infrastructure/review-of-retail-payments-regulation/2025-07/</a>.</li> <li>• European Commission: Directorate-General for Financial Stability, Financial Services and Capital Markets Union, <i>A study on the application and impact of Directive (EU) 2015/2366 on Payment Services (PSD2)</i>, 2023, available on the EU website: <a href="https://op.europa.eu/en/publication-detail/-/publication/f6f80336-a3aa-11ed-b508-01aa75ed71a1/language-en">https://op.europa.eu/en/publication-detail/-/publication/f6f80336-a3aa-11ed-b508-01aa75ed71a1/language-en</a>.</li> </ul>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p><i>Regulatory Impact Statement (RIS): Ban on merchant surcharges for accepting payments</i>, dated 17 June 2025, and an addendum to the RIS, dated 3 September 2025, are available on MBIE's website: <a href="http://www.mbie.govt.nz/document-library">www.mbie.govt.nz/document-library</a>.</p>	

<b>2.3.1. If so, did the Ministry for Regulation provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>The RIS did not meet the threshold for the Ministry for Regulation's assessment. MBIE's Regulatory Impact Assessment Review Panel evaluated the statement and found that the RIS partially meets the quality assurance criteria.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
<p>Subsequent to the original RIS, new information became available resulting in minor amendments to the original policy options analysed, but MBIE considers that the impact is not material to the analysis. That is:</p> <ul style="list-style-type: none"> <li>• The Commerce Commission released its final determination on interchange fee regulation for Visa and Mastercard networks. The estimated reduction in interchange revenue, which may be passed on to merchants as lower fees, reduced from an estimated \$260 million per year in the draft decision to \$100 million per year in the final decision. This was relevant to the net impact on merchants of the surcharging ban.</li> <li>• Additional policy decisions were made to change the scope of the initial ban outlined in Option Three of the original RIS. The changes provide that the initial ban also applies to in-store foreign-issued Visa and Mastercard debit and credit cards, and domestic-issued Visa and Mastercard prepaid debit and commercial debit and credit cards. This will make the initial ban easier for merchants and consumers to understand, reducing compliance and enforcement costs.</li> <li>• The timing for implementation of the ban may be earlier than 1 April 2026, which was indicated in the original RIS. The implementation risks are discussed in the RIS. This will be considered at select committee.</li> </ul> <p>MBIE has prepared and published an addendum to the original RIS discussing the changes.</p>	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>The Reserve Bank of Australia (<b>RBA</b>) released its proposal to introduce a ban on surcharging in Australia from 1 July 2026 for consultation. The RBA emphasised the importance of a simple ban that was easy for merchants and consumers to understand. This view was also supported by key interested parties consulted by MBIE. A link to the report is included in the response to 2.1.</p>	

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>MBIE has not been able to quantify the potential costs and benefits, and the impact on merchants and consumers, with any assurance. The RIS outlines the qualitative assessment of the impacts.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>The Commerce Commission is responsible for monitoring the retail payment system and enforcing the Retail Payment System Act 2022. Information on levels of surcharging by merchants and the Commerce Commission’s work in education and enforcement would be found on the Commerce Commission’s website: <a href="https://comcom.govt.nz/regulated-industries/retail-payment-system">https://comcom.govt.nz/regulated-industries/retail-payment-system</a>.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

MBIE did not identify any inconsistencies with international obligations.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

MBIE did not identify any inconsistencies with the principles of the Treaty of Waitangi. The Bill does not specifically impact the rights or interests of Māori.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry of Justice's website at: [www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/](http://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/).

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

**(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?**

YES

**(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?**

NO

Clause 7 inserts a new prohibition in section 28B of the Retail Payment System Act 2022 prohibiting merchants from charging a payment surcharge in certain circumstances. The Bill provides that a contravention of section 28B may result in:

- the merchant being liable for a pecuniary penalty (new section 28D).
- the Commerce Commission issuing a corrective notice to the merchant (new section 28E).

The existing provisions in the Retail Payment System Act 2022 relating to pecuniary penalty orders for contraventions of merchant surcharging standards (section 40) and contravention of a notice to take corrective action (section 41) are amended to apply to these new provisions.

**3.4.1. Was the Ministry of Justice consulted about these provisions?**

YES

MBIE consulted the offences and penalties vetting team at the Ministry of Justice as part of the policy process and on a draft of the Bill. The Ministry of Justice was comfortable with the proposal to use the existing provisions in the Retail Payment System Act 2022 for the purposes of the new prohibition.

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>MBIE consulted key agencies in developing the policy that is given effect in this Bill, including the Commerce Commission and Reserve Bank of New Zealand (<b>RBNZ</b>). A comment by the RBNZ was included in the paper to Cabinet seeking agreement to the policy (which is to be proactively released on the MBIE website: <a href="http://www.mbie.govt.nz/document-library">www.mbie.govt.nz/document-library</a>).</p> <p>Following the announcement of the Government's proposal on 28 July 2025, MBIE also consulted with the Reserve Bank of Australia, and a range of industry and merchant stakeholders with an interest in retail payments in New Zealand. The focus was to test the workability of the proposals. The feedback emphasised the importance of a simple and clear ban that is easy for merchants and consumers to understand, so as to facilitate compliance, promote price transparency and reduce friction at the till. This feedback informed the additional policy decisions given effect in the Bill.</p> <p>MBIE consulted the Commerce Commission on a draft of the Bill and incorporated the Commission's feedback where appropriate. A draft Bill was also provided to the Ministry of Regulation, the Department of Prime Minister and Cabinet, the Treasury, the Ministry of Justice, MBIE Small Business, and MBIE Tourism Stewardship and Systems.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
Section 9 of the Retail Payment System Act 2022 provides that the Crown shall not be liable to pay pecuniary penalties. The Bill provides for pecuniary penalties for non-compliance with the prohibition on surcharging in certain circumstances, and Crown agencies have the potential to be merchants who may be subject to the ban. The presumption against imposing criminal fines on the Crown is relevant here, as pecuniary penalties are analogous to criminal fines. Section 9 also provides that the High Court can make a declaration that the Crown has contravened a provision of the Act.	

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
<p>Clause 13 amends the regulation-making power in section 54 of the Retail Payment System Act 2022 to allow for the making of regulations to prescribe other circumstances in which a merchant must not charge a payment surcharge. This regulation power may extend the scope of the prohibition in new section 28B.</p> <p>In the event that the Commerce Commission has issued a merchant surcharging standard (<b>standard</b>) under section 30 of the Retail Payment System Act 2022 which overlaps with a ban later introduced through regulations, the standard would be ineffective to the extent it purported to apply to banned surcharges. This may (in effect) constitute an exemption from the Commerce Commission's standard. Clause 10 of the Bill amends section 34 to disapply the process requirements in section 31 of the Retail Payment System Act 2022 to ensure the Commerce Commission could quickly amend or revoke a standard to ensure consistency with regulations that extend the ban.</p>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>Clause 13 amends the regulation making power in section 54 of the Retail Payment System Act 2022. It provides that regulations may be made to prescribe, for the purposes of the new section 28B, other circumstances in which a merchant must not charge a payment surcharge.</p> <p>This provision provides flexibility to extend the circumstances where it is appropriate for a prohibition on payment surcharges to apply given the dynamic nature of retail payments.</p> <p>The delegated power for the Minister of Commerce and Consumer Affairs is subject to Cabinet policy requirements and statutory safeguards as specified in the new section 54(2A) and the existing provisions in section 54(2). This includes consultation with the Commerce Commission and persons the Minister considers are likely to be significantly affected by the regulations or their representatives. Any resulting regulation is secondary legislation subject to the normal requirements, including disallowance, publication and review by the Regulations Review Committee.</p>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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