



Commonwealth Entities (Payment Surcharges) (Consequential Provisions and Other Matters) Act 2024

No. 103, 2024

An Act to deal with consequential matters arising from the enactment of the *Commonwealth Entities (Payment Surcharges) Act 2024* and with certain payment surcharges, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

Contents

1	Short title.....	2
2	Commencement.....	2
3	Schedules.....	3
Schedule 1—Consequential amendments		4
Part 1—Amendment of migration legislation		4
<i>Migration (Credit Card Surcharge) Instrument (LIN 24/024) 2024</i>		4
<i>Migration (PayPal Surcharge) Instrument (LIN 24/025) 2024</i>		4
<i>Migration Regulations 1994</i>		4
<i>Migration Regulations 1994 - Specification of Circumstances in Which a PayPal Surcharge Must be Waived or Refunded 2016/084 - IMMI 16/084</i>		4
Part 2—Other amendments		6
<i>Administrative Decisions (Judicial Review) Act 1977</i>		6
<i>Australian Citizenship Regulation 2016</i>		6
<i>Customs Regulation 2015</i>		7
Schedule 2—Payment surcharges charged before commencement		8
Part 1—Definitions		8
Part 2—Payment surcharges charged and collected before commencement		9
Part 3—Commonwealth entities (payment surcharges) tax		11



Commonwealth Entities (Payment Surcharges) (Consequential Provisions and Other Matters) Act 2024

No. 103, 2024

An Act to deal with consequential matters arising from the enactment of the *Commonwealth Entities (Payment Surcharges) Act 2024* and with certain payment surcharges, and for related purposes

[Assented to 2 December 2024]

The Parliament of Australia enacts:

*No. 103,
2024*

*Commonwealth Entities (Payment Surcharges) (Consequential
Provisions and Other Matters) Act 2024*

1

1 Short title

This Act is the *Commonwealth Entities (Payment Surcharges) (Consequential Provisions and Other Matters) Act 2024*.

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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	2 December 2024
2. Schedule 1	At the same time as the commencement of the <i>Commonwealth Entities (Payment Surcharges) Act 2024</i> . However, the provisions do not commence at all if that Act does not commence.	3 December 2024
3. Schedule 2, Parts 1 and 2	At the same time as the commencement of the <i>Commonwealth Entities (Payment Surcharges) Act 2024</i> . However, the provisions do not commence at all if that Act does not commence.	3 December 2024
4. Schedule 2, Part 3	The later of: (a) the commencement of the <i>Commonwealth Entities (Payment Surcharges) Act 2024</i> ; and (b) the commencement of the <i>Commonwealth Entities (Payment Surcharges) Tax (Imposition) Act 2024</i> .	3 December 2024

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	However, the provisions do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.	

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.

Note: The provisions of a legislative instrument (the *principal instrument*) amended by this Act, and any other provisions of the principal instrument, may be amended or repealed by a legislative instrument made under the enabling provision for the principal instrument (see subsection 13(5) of the *Legislation Act 2003*).

Schedule 1—Consequential amendments

Part 1—Amendment of migration legislation

Migration (Credit Card Surcharge) Instrument (LIN 24/024) 2024

1 The whole of the instrument

Repeal the instrument.

Migration (PayPal Surcharge) Instrument (LIN 24/025) 2024

2 The whole of the instrument

Repeal the instrument.

Migration Regulations 1994

3 Subregulation 2.12JA(1) (notes 1 and 2)

Repeal the notes.

4 Subregulation 2.12N(3) (notes 1 and 2)

Repeal the notes.

5 Regulations 5.41A and 5.41B

Repeal the regulations.

Migration Regulations 1994 - Specification of Circumstances in Which a PayPal Surcharge Must be Waived or Refunded 2016/084 - IMMI 16/084

6 The whole of the instrument

Repeal the instrument.

7 Application of amendments

- (1) The amendments made by this Part apply in relation to a payment of a fee or charge, or part of a fee or charge, made on or after the commencement of this item.
- (2) To avoid doubt, the repeal of the following (about waiving or refunding credit card surcharge or PayPal surcharge) made by this Part does not apply in relation to a credit card surcharge or PayPal surcharge relating to a payment if the payment was made before the commencement of this item:
 - (a) subregulations 5.41A(4) and (5) and 5.41B(4) and (5) of the *Migration Regulations 1994*;
 - (b) the *Migration Regulations 1994 - Specification of Circumstances in Which a PayPal Surcharge Must be Waived or Refunded 2016/084 - IMMI 16/084*.

Part 2—Other amendments

Administrative Decisions (Judicial Review) Act 1977

8 At the end of Schedule 2

Add:

; (ze) decisions under section 5 or 6 of the *Commonwealth Entities (Payment Surcharges) Act 2024*.

Australian Citizenship Regulation 2016

9 Section 5

Repeal the following definitions:

- (a) definition of *credit card surcharge*;
- (b) definition of *PayPal surcharge*;
- (c) definition of *Schedule 3 amount*.

10 Section 16

Repeal the section, substitute:

16 Fees to accompany applications

For the purposes of paragraph 46(1)(d) of the Act, the fee to accompany an application under a provision of the Act is the amount set out in Schedule 3 to this instrument for the application.

11 Subsections 17(5) and (7)

Repeal the subsections.

12 Application of amendments

- (1) The amendments of the *Australian Citizenship Regulation 2016* made by this Part apply in relation to an application made under a provision of the *Australian Citizenship Act 2007* on or after the commencement of this item.
- (2) To avoid doubt, despite those amendments, section 17 of the *Australian Citizenship Regulation 2016*, as in force immediately before the

commencement of this item, continues to apply, on and after that commencement, in relation to refunding the whole or part of a fee (including a credit card surcharge or PayPal surcharge) accompanying an application made under a provision of the *Australian Citizenship Act 2007* if the application was made before that commencement.

Customs Regulation 2015

13 Sections 150B and 150C

Repeal the sections.

14 Application of amendments

- (1) The amendments of the *Customs Regulation 2015* made by this Part apply in relation to a payment of all or some duty, tax, charge, fee, security, penalty or amount specified in an infringement notice if the payment is made on or after the commencement of this item.
- (2) To avoid doubt, the repeal of subsections 150B(4) and 150C(4) of the *Customs Regulation 2015* (about refunding credit card surcharge or PayPal surcharge) made by this Part does not apply in relation to a refund of an amount of a payment if the payment was made before the commencement of this item.

Schedule 2—Payment surcharges charged before commencement

Part 1—Definitions

1 Definitions

In this Schedule:

Commonwealth entities (payment surcharges) tax means tax imposed by the *Commonwealth Entities (Payment Surcharges) Tax (Imposition) Act 2024*.

Commonwealth entity has the same meaning as in the *Commonwealth Entities (Payment Surcharges) Act 2024*.

payment surcharge has the same meaning as in the *Commonwealth Entities (Payment Surcharges) Act 2024*.

surchargeable payment has the same meaning as in the *Commonwealth Entities (Payment Surcharges) Act 2024*.

Part 2—Payment surcharges charged and collected before commencement

2 Payment surcharges charged before commencement

- (1) This item applies if, at a time occurring on or after 1 January 2003 and before the commencement of this Act:
 - (a) a Commonwealth entity had, under a law of the Commonwealth, a State or a Territory, the power, function or duty of collecting a payment (the *base payment*); and
 - (b) apart from this item, the base payment was not a surchargeable payment; and
 - (c) the Commonwealth entity charged, or purported to charge, a payment surcharge in relation to the base payment.
- (2) The Commonwealth entity is taken, by force of this item, to have always been authorised to charge the payment surcharge.

3 Payment surcharges collected before commencement

- (1) This item applies if, at a time occurring on or after 1 January 2003 and before the commencement of this Act:
 - (a) a Commonwealth entity had, under a law of the Commonwealth, a State or a Territory, the power, function or duty of collecting a payment (the *base payment*); and
 - (b) apart from this item, the base payment was not a surchargeable payment; and
 - (c) the Commonwealth entity collected, or purported to collect, a payment surcharge in relation to the base payment.
- (2) The Commonwealth entity is taken, by force of this item, to have always been authorised to collect the payment surcharge.

4 Acquisition of property

- (1) Item 2 or 3 has no effect to the extent (if any) to which:
 - (a) its operation would result in an acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition of property would be invalid because of paragraph 51(xxxi) of the Constitution.

Schedule 2 Payment surcharges charged before commencement

Part 2 Payment surcharges charged and collected before commencement

(2) In this item:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

Part 3—Commonwealth entities (payment surcharges) tax

5 Commonwealth entities (payment surcharges) tax

- (1) A person is liable to pay Commonwealth entities (payment surcharges) tax if:
- (a) at a time occurring on or after 1 January 2003 and before the commencement of this Act:
 - (i) a Commonwealth entity had, under a law of the Commonwealth, a State or a Territory, the power, function or duty of collecting a payment (the **base payment**); and
 - (ii) the base payment was not a surchargeable payment; and
 - (iii) the Commonwealth entity charged, or purported to charge, a payment surcharge in relation to the base payment; and
 - (iv) the payment surcharge was paid, or purportedly paid; and
 - (b) the Commonwealth, or the Commonwealth entity, is liable to pay to the person an amount because of the matters mentioned in subparagraphs (a)(i) to (iv).

Note 1: The base payment was a surchargeable payment if Part 2 applies to it. Item 4 limits the application of Part 2.

Note 2: The amount of the tax is set out in the *Commonwealth Entities (Payment Surcharges) Tax (Imposition) Act 2024*.

- (2) The Commonwealth, or the Commonwealth entity, (whichever is relevant) must set off the amount of Commonwealth entities (payment surcharges) tax that the person is liable to pay against the liability mentioned in paragraph (1)(b).

Item does not limit Imposition Act

- (3) Nothing in this item limits section 6 of the *Commonwealth Entities (Payment Surcharges) Tax (Imposition) Act 2024*.

Note: Section 6 of the *Commonwealth Entities (Payment Surcharges) Tax (Imposition) Act 2024* provides that Commonwealth entities (payment surcharges) tax is not imposed in relation to a base payment if the imposition would exceed the legislative power of the Commonwealth.

Schedule 2 Payment surcharges charged before commencement
Part 3 Commonwealth entities (payment surcharges) tax

*[Minister's second reading speech made in—
House of Representatives on 25 November 2024
Senate on 27 November 2024]*

(159/24)

12

*Commonwealth Entities (Payment Surcharges) (Consequential
Provisions and Other Matters) Act 2024*

No. 103, 2024