CROWN SOLICITOR
NEW SOUTH WALES

Advice

Ability of Service NSW to impose a surcharge for card payments

Contents

Prepared for: SVC828 Service NSW
Date: 24 October 2016
Client ref: Ms Lilli Tzinberg, Privacy and Compliance Senior Advisor
CSO ref: 201603221 - T02 - Michael Khoury

1. Summary of advice

1.1 My advice is sought in relation to whether the *Service NSW (One-stop Access to Government Services) Act 2013* ("the *SNSW Act*") or another applicable State or Commonwealth Act or instrument allows Service NSW to charge its customers (citizens and businesses) a surcharge to recover the cost of providing card payments facilities, including merchant service fees. It is a long established principle of the common law that a public body or authority may not levy or otherwise impose a charge or fee on members of the public unless there is clear statutory authority for it to do so. Such a power must be expressly stated, or otherwise implied "as necessarily arising" from, the words of a statute.

1.2 A review of the *SNSW Act* leads me to conclude that it does not, expressly or impliedly, confer a power on Service NSW to charge its customers a surcharge for the cost of providing card payments facilities, including merchant service fees.

1.3 If another Act or statutory instrument (such as a regulation) which sets a fee for a customer service function empowers the relevant Government agency or person to recover a surcharge for card payments, then Service NSW could also do so by operation of s. 5 in reliance on the power of the Government agency or person on whose behalf Service NSW acts. In the time available, my researches have not disclosed the existence of such a provision. I am happy to look into this further, on receipt of such further instructions.

1.4 In relation to Treasury Circular NSW TC 12/13 dated 24 May 2012 titled "Agency recouping of merchant interchange fees" it is, in my view, characterisable as an expression of current Government policy. It is not a statutory instrument. It therefore cannot, expressly or impliedly, confer a general power on Service NSW to levy a surcharge for card payments which it otherwise does not have. In this regard, TC 13/12 must be interpreted to operate on the basis that the Government agency must independently have the power in the first place to levy a surcharge, not that TC 13/12 itself confers such a power.

1.5 There is nothing in the Commonwealth *Payment Systems (Regulation) Act 1998* ("the *PSRA*") itself that expressly or impliedly confers a power on Service NSW to levy a card payment surcharge. It is possible for a Commonwealth law to confer authority on a person or body to do certain things. That said, I do not think it can be said that the Standard, which has been determined by the Reserve Bank of Australia ("the RBA") under s. 18 of the *PSRA* operates to confer on Service NSW a statutory power to levy a fee or charge on a customer.

1.6 My above answers would be the same whether Service NSW remains a Public Service agency as it is currently, or if it were to be reconstituted as, or otherwise replaced by, a Service NSW statutory corporation. If legislation were to be enacted to constitute Service

NSW as a statutory corporation, that legislation could include provisions to expressly empower Service NSW to charge an amount equivalent to a card payment surcharge based on cost-recovery, and/or a customer service fee that included a component to recoup card payment costs.

1.7 Please note this is a summary of the central issues and conclusions in my advice. Other relevant or significant matters may be contained in the advice, which should be read in full.

2. Background

2.1 The *SNSW Act* seeks to facilitate the provision by Service NSW of one-stop access to government services, among other purposes (see the Long Title to the *SNSW Act*).

2.2 The *SNSW Act* currently provides for a "Government agency"[1] to be able to delegate to, or enter into an agreement with, the Chief Executive Officer of Service NSW ("the CEO of Service NSW") to undertake "customer service functions" for the Government agency; and also provides, among other things, for the required information transfers between Service NSW and the Government agency so this may occur.

2.3 "Customer service functions" is defined in s. 5 of the *SNSW Act* as follows:

> **"5 Customer service functions**
>
> The following functions are ***customer service functions***:
>
> (a) receipt of applications or fees for, or related to, authorities granted under an Act, or otherwise obtained from a Government agency,
>
> (b) issue of authorities and other functions relating to authorities granted under an Act, or otherwise obtained from a Government agency,
>
> (c) provision of information or advice about Government services or State legislation or any other matter,
>
> (d) receipt of payments or claims for payments, or making of payments,
>
> (e) any function of an agency of the Commonwealth Government, an agency of the Government of another State or Territory or an agency of the Government of another country, as referred to in section 9,
>
> (f) any function of a person (other than a Government agency or an agency referred to in paragraph (e)) as referred to in section 10,
>
> (g) any function that is ancillary to a customer service function."

[1] This is broadly defined in s. 3(1) of the *SNSW Act*.

2.4 "Authority" is defined in s. 3(1) of the *SNSW Act* as meaning "a licence, permit, approval or any other authorisation."

2.5 Pursuant to s. 7, a Government agency or any other person may, under a provision of an Act or an instrument that permits the delegation of a customer service function by the agency or person, delegate the customer service function to the CEO of Service NSW. Section 8 provides that the CEO may enter into agreements with a Government agency to exercise customer service functions.

My previous advice dated 3 February 2016

2.6 In my advice to your agency dated 3 February 2016 (CSO Ref: 201600227, Advice 1), I considered whether Service NSW may charge a customer a "service fee" in addition to a fee fixed by statute for the provision of a customer service function.[2] In short, I advised that it is a long established principle of the common law that a public body or authority, including a branch of the executive Government (such as Service NSW), may not levy or otherwise impose a charge or fee on members of the public unless there is statutory authority, express or arising by necessary implication, to do so. In this regard, I also advised that a review of the *SNSW Act* indicates that there is no express power conferred on Service NSW in that Act to charge a customer a service fee in addition to any scheduled fee provided for a particular service. Nor, in my opinion, could the power to charge a customer an additional service fee be necessarily implied from that Act.

2.7 I also noted that by virtue of the operation of ss. 7 and 8 of the *SNSW Act*, the CEO of Service NSW cannot exercise a power in relation to a customer service function that the Government agency that has conferred the function on the CEO itself does not have under another Act or instrument. In the time available (and the large amount of legislation involved) I did not review every Act or instrument to ascertain whether in a given instance, a Government agency and therefore Service NSW acting in reliance on that Government agency's customer service function, has a power to charge a service fee in addition to a scheduled fee. That said, I noted that as a general principle unless there is a power (expressly or necessarily implied) conferred on the Government agency to charge an additional service fee under the Act or instrument pursuant to which the Government agency obtains its customer service function, the Government agency and Service NSW acting on that agency's behalf would not have a power to charge a service fee. This is because Service NSW does not have any greater power than the Government agency on whose behalf it acts.

[2] In this regard, as noted in para. 2.7 of my advice dated 3 February 2016, such a "service fee would be in addition to the legislated transaction cost that the customer pays to the relevant agency via the Service NSW distribution network, and in addition to any fee charged by Service NSW to the relevant agency for providing the transaction service."

Instructions of 13 October 2016

2.8 By email of 13 October 2016 forwarded to Michael Khoury of my Office, you instruct me that Service NSW would like to pass on to customers (whether citizens or businesses) a surcharge to recover the cost of acceptance for providing card payment facilities where a credit card or a debit card payment option is used by a customer to pay for a customer service function transacted through Service NSW. In this regard, you refer me to Treasury Circular NSW TC 12/13 dated 24 May 2012 titled "Agency recouping of merchant interchange fees" issued by the then Secretary of The Treasury ("TC 12/13"). You also refer me to the Commonwealth *PSRA* and to the RBA "conclusions paper" dated May 2016 titled "Review of Card Payments Regulation: Conclusions Paper" ("the RBA Conclusions Paper").

2.9 You have forwarded to me, as attachments to your above-mentioned email, links to TC 12/13 and to the RBA Conclusions Paper.

Treasury Circular TC 12/13 dated 24 May 2012

2.10 TC 12/13, which took effect on 1 July 2012, relevantly provides that NSW Government agencies are, unless otherwise exempted, to recoup merchant interchange fees they incur when they accept credit card payments from the public or customers "through surcharging for payments accepted using debit or credit cards issued by card schemes such a Visa, MasterCard, American Express and Diners. This does not include payments accepted using ATM cards issued by banks and other deposit taking institutions." The rate of the surcharge is to be based on "cost-recovery only" and will be subject to periodic review.

2.11 TC 12/13 also provides that, with the implementation of such a surcharge, agencies must ensure that they have a system in place to make customers aware that the surcharge fee will apply and the amount of the surcharge before they enter into the transaction. In addition, agencies "must provide and communicate 'surcharge-free' alternative payment methods (e.g. BPAY, EFTPOS) prior to the imposition of a surcharge for card scheme payments."

Commonwealth *Payment Systems (Regulation) Act 1998*

2.12 The *PSRA* provides for the regulation of "payment systems" and purchased payment facilities (s. 6). Relevantly, a "payment system" is defined (in s. 7) to mean "a funds transfer system that facilitates the circulation of money, and includes any instruments and procedures that relate to the system."

2.13 Part 3 (ss. 10-21) of the *PSRA* specifically deals with the regulation of payment systems by the RBA. By operation of s. 11, the RBA may, by notice, designate a payment system if it considers that designating the system is in the public interest. Once designated, pursuant to s. 18 the RBA may, in writing, determine standards to be complied with by participants in such a system if it considers it would be in the public interest to do

so. A "participant" is defined in s. 7 as meaning a constitutional corporation that is either a participant in the system in accordance with the rules governing the operation of the system or is otherwise an administrator of the system.[3]

RBA Conclusions Paper and RBA Standard No. 3 of 2016

2.14 Following a recent review by the RBA into the Australian card payments market which is discussed in the RBA Conclusions Paper, the RBA has determined three standards under s. 18 of the *PSRA*, including, relevantly for current purposes, RBA Standard No. 3 of 2016 titled "Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions" ("the Standard").

2.15 All three standards are reproduced in Appendix A to the Conclusions Paper. The Standard is specifically relevant for the purposes of this advice as it regulates merchant surcharging where the merchant accepts card scheme payments. In this regard, it provides for scheme rules that require a participant to give merchants (such as Service NSW), "the freedom to make a charge for accepting payment of a particular kind that reflects the cost to the merchant of accepting that payment type" (see cl. 1). The Standard applies to the following schemes which are individually referred to as a "Scheme" in the standard, namely the MasterCard System; the Visa System; the American Express Companion Card Scheme; Visa Debit; Debit MasterCard; the EFTPOS System; EFTPOS Prepaid; MasterCard Prepaid; and Visa Prepaid all of which have been previously designated under s. 11 of the *PSRA* as payment systems (see cl. 2).

2.16 "Merchant" is defined in cl. 2.3 to mean, in relation to a Scheme, a merchant in Australia that accepts a credit, debit or prepaid card of a Scheme. I note that Service NSW takes the view that it is a "merchant" for the purposes of the Standard. I will assume, for the purposes of this advice, that Service NSW is a "merchant" on the basis that Service NSW is the provider of services, namely "customer service functions" and, in providing such services, it accepts a credit, debit or prepaid card of a Scheme.

2.17 "Surcharge" is defined in cl. 2.3 to mean, in respect of any Card Transaction:

(a) an amount charged, in addition to the price of goods or services, for the relevant Merchant accepting payment through a Card Transaction; or

(b) an amount charged for making payment through a Card Transaction.

2.18 Clause 4.1 of the Standard provides that the Permitted Surcharge for a Merchant and a Scheme is to be an amount not exceeding the Cost of Acceptance. Clause 5 provides how the "Cost of Acceptance" is to be calculated. It includes fees paid to the Merchant's

[3] A "constitutional corporation" is defined in s. 7 to mean a corporation to which paragraph 51(xx) of the Commonwealth *Constitution* applies (i.e., foreign corporations, and trading and financial corporations formed within the limits of the Commonwealth).

acquirer or payment facilitator plus certain other external fees paid to other service providers such as fraud-related chargeback fees. However, costs internal to the merchant are not included.

2.19 In brief, the Standard seeks to ensure that while Merchants are not obliged to impose a surcharge to cover their acceptance costs for card payments, they are to have a right to do so. How this is achieved, is to prevent a Scheme Participant (which must be a constitutional corporation) from making Scheme rules or taking other action that would prevent a Merchant from electing to impose a surcharge for Scheme card payments. However, the Permitted Surcharge that a Merchant may make is for certain quantifiable Costs of Acceptance. Enforcement action may be taken by the Australian Competition and Consumer Commission in relation to excessive surcharging.

3. Advice sought

3.1 By email of 13 October 2016 you seek my advice on the following:

1. Whether the *SNSW Act* allows Service NSW to charge its customers (citizens and businesses) a surcharge to recover the cost of providing card payments facilities, including merchant service fees?
2. Is there any other applicable legislation or relevant industry guidelines that Service NSW could rely on to support such a surcharge, including Commonwealth legislation and publications such as the RBA Conclusions Paper?

[redacted] Schedule 1, Clause 5 [redacted]

3.3 My advice is sought on an urgent basis and is requested by Monday, 24 October 2016. This advice accordingly represents my views in the limited time available and should be read in that context.

4. As to question 1: Whether card payments surcharge authorised by *SNSW Act*

4.1 In my earlier advice dated 3 February 2016, in noting that it is a long established principle of the common law that a public body or authority may not levy or otherwise impose a charge or fee on members of the public unless there is a statutory power for it to do so,

I cited, among other judicial authorities, *Attorney General v Wilts United Dairies Ltd* (1921) 37 TLR 884 ("*Wilts'* case") as well as the decision of the House of Lords in *McCarthy & Stone (Developments) Ltd v Richmond Upon Thames London Borough Council* (1992) 2 AC 48 ("*McCarthy & Stone's* case"). While in my earlier advice I quoted key passages from *Wilt's case*, for the purpose of this advice it is appropriate I now note further comments made in that case by Atkin LJ who also observed (at 884, 886):

> " … **if an officer of the executive seeks to justify a charge upon the subject made for the use of the Crown** (which includes all the purposes of the public revenue), **he must show, *in clear terms*, that Parliament has authorised the particular charge**. The intention of the legislature is to be inferred from the language used, and the grant of powers may, though not expressed, have to be implied as necessarily arising from the words of a statute; but in view of the historic struggle of the legislature to secure for itself the sole power to levy money upon the subject, its complete success in that struggle, the elaborate means adopted by the Representative House to control the amount, the conditions and the purposes of the levy, **the circumstances would be remarkable indeed which would induce the court to believe that the legislature had** sacrificed all the well known checks and precautions, and, **not in express words, but merely by implication,** had entrusted a minister of the Crown with undefined and unlimited powers of imposing charges upon the subject for purposes connected with his department" (my emphasis).

4.2 Atkin LJ further observed (at 887):

> "It makes no difference that the obligation to pay the money is expressed in the form of an agreement. It was illegal for the Food Controller to require such an agreement as a condition of any licence. It was illegal for him to enter into such an agreement. The agreement itself is not enforceable against the other contracting party; and if he had paid under it he could, having paid under protest, recover back the sums paid, as money had and received to his use."

4.3 With the above comments in mind, and also those made in my 3 February 2016 advice, it is accordingly necessary to examine the *SNSW Act* to determine whether there is either an express power or one that can be necessarily implied arising from the words of the *SNSW Act* that would authorise Service NSW to charge its customers a surcharge for the cost of providing card payments facilities, including merchant service fees. Unless such a power can be found, Service NSW may not legally impose such a surcharge.

4.4 A review of the *SNSW Act* indicates that there is no express power conferred on Service NSW in that Act to levy the surcharge. The question becomes, can such a power be necessarily implied from that Act. In considering this question, a closer analysis is required of s. 5(a), (d) and (g), namely the customer service functions of Service NSW that relate to:

> "a) **receipt of** applications or **fees for, or related to**, authorities granted under an Act, or otherwise obtained from a Government agency,
>
> …
>
> (d) **receipt of** payments or claims for payments, or making of payments,
>
> (g) any function that is **ancillary to a customer service function**" (my emphasis).

4.5 In *McCarthy & Stone's* case, the House of Lords held that a local authority had no power to charge for advice given in relation to proposed development applications because it could point to no function which gave rise to such a power, either expressly or by necessary implication. The authority sought to rely on a power to do anything calculated to facilitate, or which was conducive or incidental to, the discharge of any of its functions. The House of Lords rejected the authority's argument that such an incidental power could include the power to charge for the exercise of functions. It also rejected the authority's argument that the charge was incidental to its express function of determining planning applications because it was incidental to the giving of pre-application advice, since such advice was itself only an implied incident of the express function of determining planning applications. Lord Lowry, with whose judgment the other members of the court agreed, stressed the strictness of the test of necessary implication as follows (at 70-71):

> "The rule is that a charge cannot be made unless the power to charge is given by express words or *by necessary implication*. These last words impose a rigorous test going far beyond the proposition that it would be *reasonable* or even conducive or incidental to charge for the provision of a service."

4.6 His Honour also rejected the notion that a general power to do all things incidental to the performance of functions (in that case s.111(1) of the *Local Government Act 1972* (UK)) would of itself include a power to charge for those functions. In doing so, he stated (at 74):

> "My Lords, I come back to section 111(1), the relevant provision. The council admits that it cannot without express authority, charge for a 'duty function,' but it still has to say that the ability to charge for pre-application advice is based on the 'power to do anything' which is 'incidental' (I deliberately choose the most neutral qualification) 'to, the discharge of any of [the council's] functions.' To charge for performing a function (subject always to *Wednesbury* considerations … which do not arise here) must always be incidental to the provision of the service provided. Therefore the council's interpretation of section 111(1) would allow it to charge for the performance of every function, both obligatory and discretionary, which provided a service. … Such a construction of the subsection cannot possibly be justified, and I say this before even considering the point that, in the absence of express statutory authority, the power to charge can only be implied, in the words of Atkin LJ in

> *Attorney-General v Wilts United Dairies Ltd.*, 37 TLR 884, 886, 'as necessarily arising from the words of a statute.' "

4.7 In my view, a power to impose a surcharge to recover the cost of card payment fees cannot be implied "as necessarily arising from the words of" the *SNSW Act.* As noted in *McCarthy & Stone's* case, in the context of a public authority levying or charging a fee to the public, the words, by necessary implication, propose a rigorous test going far beyond the proposition that it would be reasonable or even conductive or incidental. That is, the implication must be strictly necessary as arising from the words of the statute. Further, as noted by Aitken LJ in *Wilt's case*, "the circumstances would be remarkable indeed which would induce the court to believe that the legislature … not in express words, but merely by implication" empowered a person or body to levy charges or fees on the public.

4.8 In your instructions you specifically refer me to s. 5 of the *SNSW Act*. In considering the effect of s. 5(a), (d) and (g), it is important to keep in mind that the Parliament has, as noted in *Wilt's case*, secured for itself the sole power to levy money upon the subject, and the power of the executive to do so without its authority has effectively been removed. That this is the case is not surprising, because it is the subject that pays the taxes to the Government for, among other things, services that the Government provides to the subject and, unless Parliament clearly authorises levying further charges, such services are to be provided without further charges being imposed. Indeed, as noted in my earlier advice dated 3 February 2016 (at para. 4.4), it has been said that the requirement for statutory authorisation authorising the executive branch of Government (including a public body or entity) to charge or raise money from the public has constitutional backing.[4]

4.9 A surcharge for a card payment is clearly a fee or charge additional to any scheduled fee applicable to a customer service function. While s. 5(a) provides that a customer service function of Service NSW includes "receipt … of fees for, or related to, authorities …" this does not extend to empowering Service NSW to charge or levy a surcharge in addition to the fee set for the authority by another statutory instrument. I reach this view for a number of reasons. First, s. 5(a) refers to "receipt" (as does s. 5(d)) and this word controls the meaning of what follows. The power given by Parliament to Service NSW to receive fees (namely the scheduled fees for an authority) cannot be the basis of a different power, namely a power to charge additional fees (i.e., a surcharge in addition to the scheduled fees). This reasoning also applies to s. 5(d)). The reference in s. 5(a) to "related to" is to be read in the context of a power to receive (scheduled) fees for authorities, not to impose additional fees.

4.10 Secondly, on a strict analysis (which is called for when considering whether a power to charge fees may be implied "as necessarily arising" from the words of a statute- see *Wilt's*

[4] Aronson, M. & Groves, M., *Judicial review of Administrative Action*, 5th. Ed., 2013, Lawbook Company at [6.300] p. 353; *Combet v The Commonwealth* (2005) 224 CLR 494 at 535.

case), a surcharge for card payments arguably is not a fee "for, or related to" an authority, but is a fee for, and related to the method of payment. That is, the surcharge arises because of the payment method used in relation to that authority. However, if in a particular instance, the relevant statutory provision authorising the charging of fees for an authority can be read to expressly or impliedly authorise a surcharge and therefore such fees can be said to be "related to" the authority, then in that instance Service NSW would also be empowered to receive a surcharge. Thirdly, as discussed in my answer to question 2 below, it need to be kept in mind that there is no legal obligation on Service NSW to levy the fee. Even under the Standard, the decision to levy a surcharge is left to the discretion of the merchant, and there is no legal requirement that the merchant must levy the fee. In relation to s. 5(g) which provides that a customer service function includes a function that is "ancillary to" a customer service function, as noted in *McCarthy & Stone's case*, this cannot confer a power to charge fees where that power otherwise does not exist. Finally, having regard to the *SNSW Act* as a whole, I think it is wrong to assume s. 5 can be interpreted to confer a power on Service NSW which the Government agencies it may act for, themselves do not have.

4.11 In short, the *SNSW Act* would not, seem to, expressly or impliedly, empower Service NSW to charge its customers a surcharge for the cost of providing card payments facilities, including merchant service fees. My answer is the same whether Service NSW remains a Public Service agency as it is currently, or if it were to be reconstituted as, or otherwise replaced by, a Service NSW statutory corporation. If legislation were to be enacted to constitute Service NSW as a statutory corporation, that legislation could include provisions to expressly empower Service NSW to charge an amount equivalent to a card payment surcharge based on cost-recovery, and/or a customer service fee that included a component to recoup card payment costs.

5. As to question 2: Whether card payments surcharge authorised by other legislation, policy or guidelines

5.1 If an Act or statutory instrument (such as a regulation) which sets a fee for a customer service function empowers the relevant Government agency or person to recover a surcharge for card payments, then Service NSW could also do so by operation of s. 5 in reliance on the power of the Government agency or person on whose behalf Service NSW acts. In the time available my researches have not disclosed the existence of such a provision. If you so instruct me, I am happy to conduct further research into whether such a provision currently exists. This would entail analysing each set of statutory provisions that empower the relevant Government agency to charge fees to its customers to ascertain whether the power allows the agency to also recover a card payment surcharge.

5.2 In relation to TC 13/12, in my view it is characterisable as an expression of current Government policy. It is not a statutory instrument. It therefore cannot, expressly or

impliedly, confer a general power on Service NSW to levy a surcharge for card payments which it otherwise does not have. In this regard, TC 13/12 must be interpreted to operate on the basis that the Government agency must independently have the power in the first place to levy a surcharge, not that TC 13/12 itself confers such a power.

5.3 There is nothing in the *PSRA* itself that expressly or impliedly confers a power on Service NSW to levy a card payment surcharge. In relation to the Standard, because it has been determined by the RBA under s. 18 of the *PSRA*, in my view it may be regarded as a law of the Commonwealth on the basis it has legal effect by operation of the *PSRA.* It is possible for a Commonwealth law to confer authority on a person or body to do certain things. That said, I do not think it can be said that the Standard operates to confer on Service NSW a statutory power to levy a fee or charge on a customer so as to overcome the long established principle of the common law that a public body or authority may not levy or otherwise impose a charge or fee on members of the public unless there is a clear statutory power for it to do so.

5.4 I reach this view for a number of reasons. First, the Standard, on close analysis, does not confer a power on a merchant to levy a surcharge if the merchant otherwise does not have that power. Rather, it operates to restrict a Participant in a scheme and the rules of a scheme from prohibiting or deterring a merchant from levying a surcharge. In this sense, it is not an enabling enactment, but a proscriptive one. Secondly, the Standard does not require a merchant to impose a surcharge, but merely operates to remove obstacles that a scheme participant or scheme rules may otherwise put in place to prevent this. Whether a merchant imposes a surcharge, or even more fundamentally, whether a merchant elects to provide card payment facilities at all, is left to the merchant's discretion. Thirdly, the Standard, being restrictive, rather than enabling, does not confer a power on a merchant to charge a surcharge where the merchant otherwise does not have the legal capacity to do so. That capacity would, in my view, need to be found elsewhere, especially in the case of a State body or authority.

5.5 In short, I am not aware of any relevant statutory or other instruments that Service NSW could currently rely on to give it a valid power to include a surcharge in addition to the scheduled fee for a payment made using a card payment. My answer is the same whether Service NSW remains a Public Service agency as it is currently, or if it were to be reconstituted as, or otherwise replaced by, a Service NSW statutory corporation. If legislation were to be enacted to constitute Service NSW as a statutory corporation, that legislation could include provisions to expressly empower Service NSW to charge an amount equivalent to a card payment surcharge based on cost-recovery, and/or a customer service fee that included a component to recoup card payment costs.

Signed:

Lea Armstrong
Crown Solicitor