



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: BLC:DHb1534376

30 May 2018

Gift Card Expiry Dates Consultation Paper
Consumer and Corporations Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: consumerlaw@treasury.gov.au

Dear Sir/Madam,

Gift card expiry dates

The Law Society of NSW appreciates the opportunity to comment on the Consultation Regulation Impact Statement ("RIS"). The Law Society's Business Law Committee has contributed to this submission.

The RIS examines options to reform gift card expiry dates to achieve a uniform national approach for all types of gift cards, regardless of their delivery mechanism. We note that introducing a minimum three-year expiry period is the preferred policy option at this time.

In September 2017, Law Society's representatives participated in a NSW stakeholder consultation that preceded the introduction of the *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017*. The NSW Act mandates a three-year minimum expiry date for most gift cards and gift card vouchers sold to a consumer in NSW, as well as a ban on post-purchase fees. It was passed by the NSW Parliament on 18 October 2017, with the new law commencing on 31 March 2018.

The Law Society supported the model on which the new law was based. The Law Society also suggested as part of its response to the NSW stakeholder consultation, that the NSW Department of Finance, Services and Innovation confer with Consumer Affairs Australia and New Zealand, the Australian Securities and Investments Commission, and other Federal regulators of gift cards, to recommend the introduction of uniform national legislation.

The Law Society supports option 3. Under this option consumers will enjoy the benefits of certainty and longer minimum expiry periods. A three year expiry period also allows businesses to write off gift card liability at a certain period of time. Implementing this option, as opposed to option 2, which provides for a prohibition on the use of expiry dates, also avoids the problem identified in the RIS of inconsistency between the Commonwealth and NSW legislation which would result in the Commonwealth legislation effectively overriding the NSW law.

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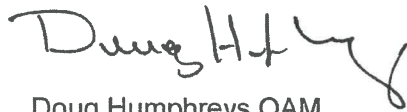


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We note that, unlike the NSW legislation, option 3 does not currently propose a ban on the use of post-purchase fees. These types of fees can include activation fees, account keeping fees, balance inquiry fees and inactivity fees. In our view, these fees effectively undercut the benefits of extending mandatory minimum expiry periods. We consider that a ban on the use of post-purchase fees should be a part of the final policy design for a three-year minimum expiry date.

If you have any questions in relation to this submission, please contact Liza Booth, Principal Policy Lawyer, on [redacted] or [redacted].

Yours faithfully,



Doug Humphreys OAM
President