

30 May 2018

Our ref: KB-C&C

Consumer Policy Unit
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 Dr Pound

Gift Card Expiry Dates Consultation Paper

Thank you for the opportunity to provide a response on the Gift Card Expiry Dates Consultation Regulation Impact Statement (RIS).

The Queensland Law Society (the QLS) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

The response has been drafted by our Competition and Consumer Law Committee and concentrates on the definition and preferred method of regulation.

Questions 1. How should the term gift card be defined? Is the existing NSW definition of 'gift card' suitable to be used in a national context?

Question 2. Are there any reasons to treat different types of gift cards in different ways, or is one definition suitable?

From our review of the RIS, we consider that any regulation surrounding gift cards warrants a carefully considered definition of that term. Such a definition should address the different types of "gift cards" and ways in which a store or service provider might make credit available to a customer, for example, in the circumstances outlined under the section, "promotional gift cards" and we note that there are a few exemptions under that scheme.

We submit that the definition of a "gift card", for the purposes of regulating gift card expiry dates, should be more limited / specific than the NSW definition. Ireland's definition is more detailed but still does not differentiate between purchased gift cards and a store's decision to offer credit.

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We consider that this latter scenario should be excluded from the definition of "gift cards" in so far as this definition will be used to determine what expiry dates will apply.

We consider that regulation of expiry dates is desirable for "gift cards" which are purchased by someone, with the intent to give the card/voucher to another person as a gift. In this case, the initial consumer is purchasing a right for someone else to obtain something of value from the store/provider. We consider that the exemptions listed on page 26, relating to promotional gift cards and gift cards/vouchers for a particular service, may be appropriate exemptions for a national scheme.

10. Is the expiry date necessary to the operation of the scheme? If yes, why?

As stated on pages 16 and 17 of the RIS, there are logical and understandable reasons why a business places an expiry date on gift cards they issue. On the basis of the information contained in the RIS, QLS does not object to appropriate expiry dates applying to gift cards, providing that sufficient information is provided to the purchaser (information that is able to be conveyed to the end recipient) and, that vendors act in accordance with their obligations under the *Australian Consumer Law (ACL)*.

Offering gift cards is a choice that some retailers make. There is no mandatory requirement for retailers to offer gift cards. Accordingly, an expiry date is not a necessary concomitant to a retailer's voluntary choice to offer gift cards.

17. What are your views on the current law governing gift card expiry dates? Is the current law effective in protecting consumers while balancing the interests of business?

The RIS contains information which suggests there may be some detriment caused to consumers, accordingly, QLS welcomes review and reform in this area to ensure that there is clarity and certainty around the sale and use of gift cards. However, such reform needs to also balance the interests of business, particularly as this option for purchase as this is a matter of choice.

24. If this option (prohibition on expiry periods) were adopted, do you consider there would be a need for exemptions from this requirement? If so, what exemptions are needed and for what purpose?

We refer to our answers to questions 1 and 2 above.

28. What would be an appropriate transitional period?

Advice ought to be sought from business on this question. There should be appropriate consultation and education before any new obligation becomes effective.

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31. Are there any negative or unintended consequences of mandating a minimum three year expiry dates?

As outlined in the RIS, there is still the possibility that consumers will be caught out by any expiry date imposed, regardless of its term.

There is also an impact on businesses, particularly small business in redesigning their cards and systems and, holding onto liability for longer than they may currently do at present. This must be balanced against the period of time within which these items sit in the bodies' financial statements as liabilities and must recognise the need for businesses to have some closure.

Even if regulating expiry dates (or requiring that gift cards do not expire) may have negative consequences and costs, gift cards will remain an option that retailers are free to offer, or not offer, at their own election.

32. What would be the costs associated with providing information on expiry dates to consumers? Would there be transition costs, from reprinting gift cards or replacing stock, if a minimum expiry period were introduced?

QLS does not comment on the costs to business in this regard. In our members' experience, it is already common to adjust the settlement of a Sale of Business to account for unused gift cards. Further, we note that several retailers already offer gift cards with expiry dates equal to or greater than 3 years, and at least one retailer offers gift cards without expiry dates. Accordingly, it seems clear that offering a redemption period of 3 years or more is sensible for at least some of the businesses that choose to offer gift cards.

We submit that Federal and State regulators should be resourced to assist the transition process, including providing appropriate information to businesses and consumers.

35. Should there be exemptions for particular types of gift cards from a minimum three year expiry period?

As stated above, we consider that the definition "gift card", for the purposes of the proposed regulation, should exclude promotional gift cards/offers and vouchers for a particular service. If these circumstances are excluded from the definition, then we do not consider that any other exemptions are necessary based on the available information.

38. Do you consider that three years is a reasonable period by in which to have used a gift card? If not, why is a longer period required?

For the reasons outlined above, and in the RIS, we consider that requiring a redemption period of at least 3 years for gift cards represents an appropriate level of protection for consumers, while balancing the interests of business (given that, as stated above, retailers have the option to offer gift cards)

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As to the requirements for disclosure and dissemination of any expiry date that applies to the gift card, consideration should be given to:

1. imposing prominence requirements on the expiry date that are similar to the 'single price' requirements under section 48 of the ACL. For example, requiring the expiry date to be at least as prominent as the most prominent other content on the card; and/or
2. requiring any expiry date to be printed on the front of the card (or, perhaps, on both sides of the card).

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Kate Brodnik by phone on [REDACTED] or by email to [REDACTED]

Yours faithfully


Ken Taylor
President