

## CONSULTATION REGULATION IMPACT STATEMENT

### GIFT CARD EXPIRY DATES

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#### SHOPPING CENTRE COUNCIL OF AUSTRALIA

The Shopping Centre Council of Australia (SCCA) represents Australia's major owners, managers and developers of shopping centres. A list of the SCCA's membership is available [here](#).

The SCCA was actively involved in the recent gift card reforms in NSW, provided a submission to the since lapsed Senate inquiry into retailer Dick Smith, and participated in the 2012 Commonwealth Consumer Affairs Advisory Council inquiry into gift cards.

Gift card products are extremely popular. Those of our members which operate gift card schemes invest in and manage these schemes to ensure that their customers, and their participating retailers, have a positive and seamless experience when using a gift card.

#### PREFERRED OPTION

The recent tabling of the *Fair Trading (Gift Cards) Amendment Bill 2018* in South Australia demonstrates that, in the absence of a national approach, there is still likely to be a quasi-national rollout of gift card regulation, but on a jurisdiction-by-jurisdiction basis.

As such, **Option 1** presents the risk that scheme operators will, over time, be left with multiple, and potentially different, gift card compliance and enforcement regimes across the country. This could include differences in the regulated minimum-expiration periods. This is not a desirable outcome for scheme operators or customers.

**Option 2** is not preferred. Advice has been received from some SCCA members that, were expiration dates to be banned, they would have to reconsider the ongoing viability of their schemes. In the assessment of **Option 2**, consideration would also need to be given to the costs already sunk into NSW by scheme operators to achieve regulatory compliance with the NSW *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017*, and, where relevant, the voluntary national rollout of a three-year minimum expiry date.

The SCCA prefers **Option 3**, with associated recommendations:

- Gift cards in NSW (and SA) are regulated via the national framework;
- The exemption framework currently applicable in NSW be the basis of the national exemption framework such that a single, consistent framework applies across jurisdictions;
- Further consultation be undertaken with regard to the timing of implementation in currently unregulated jurisdictions following the passage of any enabling legislation (with at least a 12-month window for implementation); and
- Responsibility for any future consideration of, and decisions regarding, gift card regulation to be vested with the Consumer Affairs Form.

#### SHOPPING CENTRE GIFT CARD SCHEMES

The fundamental purpose of shopping centre gift card schemes is to attract customer visitation and secure spending in a shopping centre. This is to the ultimate benefit of a shopping centre's retailers, to which gift card funds are remitted upon the purchase of goods and services.

An additional advantage of shopping centre gift card schemes is that they enable retailers, particularly small retailers, to participate in a scheme when they otherwise might not have the scale to operate such a scheme themselves.

Since a shopping centre gift card scheme operates as an aggregator of retailers, the costs of administering and maintaining the gift card scheme are likely to be higher than a single retailer issuer of gift cards as the retail company is more likely to be able to absorb/cover costs through the direct sale of its goods and services (i.e. shopping centre gift card schemes do not benefit from the margin on any retail sale, with shopping centre schemes 'passing through' the gift card funds to the participating retailer).

In this regard, the business model which underpins a shopping centre scheme differs from other schemes and run on relatively low margins.

There is also no single or preferred approach to the operation of a shopping centre gift card scheme. Scheme development is influenced by a range of factors, including the approach to shopping centre/corporate branding.

For example, Westfield Gift Cards align with, and leverage, the strong brand recognition of Westfield Shopping Centres nationally. Where branding is less prominent across a shopping centre portfolio, schemes may be targeted at a 'flagship' centre, or group of centres.

Although post purchase fees are not a typical component of shopping centre gift card schemes in Australia, it is understood that, in some international jurisdictions, some schemes do apply post-purchase fees.

## **RESPONSE TO NSW REFORMS**

SCCA members have been required to comply with the NSW legislation imposing a minimum three-year expiry date on most gift cards sold in NSW as of 31 March 2018.

Noting that there is no single or preferred approach to the operation of a shopping centre gift card scheme, there have been a range of responses to the treatment by scheme operators of gift cards sold in jurisdictions ex. NSW post 31 March.

While some scheme operators have rolled out a minimum three-year expiry nationally, others have limited this change to gift cards covered by the NSW legislation.

## **NSW - COSTS INCURRED**

Shopping centre gift card scheme operators were exposed to a range of costs to ensure compliance with the NSW legislation. These included 1) the opportunity cost of staff time dedicated to ensuring compliance with the new legislative regime, including staff retraining, preparation of in-centre and online collateral, and any necessary liaison with participating retailers 2) cost of external legal advice and other services, and 3) (where relevant) destruction and re-printing of cards.

In some instances, these costs were beyond those necessary for regulatory compliance in NSW so as to roll out a minimum three-year expiry nationally. A decision to rollout nationally would have been informed by the prevailing design of the scheme.

## **CONTACT**

**Kristin Pryce**, Deputy Director, SCCA, '