



Australian Government  
The Treasury

**TSY/AU**

CONSULTATION REGULATION IMPACT STATEMENT

# GIFT CARD EXPIRY DATES

May 2018

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# CONTENTS

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- GLOSSARY OF TERMS .....6
- EXECUTIVE SUMMARY.....7
  - Introduction.....7
- KEY FOCUS QUESTIONS .....8
  - The Problem.....8
- 1. THE PROBLEM .....11
  - The Australian Gift Card Market.....11
  - Consumers experience detriment when their gift card expires before it can be used.....16
- 2. POLICY OBJECTIVE .....21
- 3. POLICY OPTIONS AND IMPACT ANALYSIS .....22
  - Option 1: Status Quo .....22
  - Option 2: Prohibition on Expiry periods .....26
  - Option 3: Three year minimum expiry period with mandatory information disclosure.....31
- 4. CONSULTATION .....35

# CONSULTATION PROCESS

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## REQUEST FOR FEEDBACK AND COMMENTS

This consultation process is designed to allow interested parties to provide views on options to improve outcomes and protections for consumers who participate in the gift card market. The consultation process will run for a period of four weeks. If you would like to make a written submission, please provide it before Wednesday 30 May 2018.

The earlier that you provide a submission, the more time Treasury has to consider your views. Treasury is particularly interested in hearing from businesses and consumers who have had experiences with gift card expiry dates. Stakeholders can access details of the consultation process via the consultations page of the Treasury website - [www.treasury.gov.au/Consultation](http://www.treasury.gov.au/Consultation).

Treasury values your feedback and will facilitate this consultation process through a number of channels, as outlined below.

## SUBMISSIONS

Treasury welcomes formal written submissions on the content of this consultation RIS.

Throughout this paper there are questions for stakeholders to consider in their submission. There is no obligation to answer any or all of the questions, and there is no limit to the length of submissions.

Submissions should be uploaded using the consultations page of the Treasury website. For accessibility reasons, please upload responses in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website, unless it is indicated that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submissions to remain confidential should provide this information marked as such in a separate document.

A request made under the *Freedom of Information Act 1982* (Commonwealth) for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

**Closing date for submissions: Wednesday 30 May 2018**

## Please Upload Submissions via the Australian Treasury Website

Website	<a href="http://www.treasury.gov.au/consultation">www.treasury.gov.au/consultation</a>
Mail	Gift Card Expiry Dates Consultation Paper Consumer and Corporations Policy Division The Treasury Langton Crescent PARKES ACT 2600
Enquiries	Dr Alexander Pound, Consumer Policy Unit <a href="mailto:consumerlaw@treasury.gov.au">consumerlaw@treasury.gov.au</a>
Phone	02 6263 2874

The principles outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles might operate.

### BRIEF FEEDBACK AND INFORMAL COMMENTS

Brief feedback can be provided through the informal comment facility on Treasury's Consultation Hub, which can be accessed at [www.treasury.gov.au/consultation](http://www.treasury.gov.au/consultation).

### STAKEHOLDER MEETINGS

Treasury will conduct targeted meetings with key stakeholders to discuss the matters outlined in this paper. Key stakeholders will be contacted directly to arrange meeting times.

If you would like further information on stakeholder meetings, please contact Dr Alexander Pound on 02 6263 2874 or [alexander.pound@treasury.gov.au](mailto:alexander.pound@treasury.gov.au).

# GLOSSARY OF TERMS

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ACL	Australian Consumer Law
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
AMPF	Australian Merchant Payments Forum
ARA	Australian Retailers Association
CCAAC	Commonwealth Consumer Affairs Advisory Council
Corporations Act	<i>Corporations Act 2001</i>
RIS	Regulation Impact Statement

# EXECUTIVE SUMMARY

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## INTRODUCTION

In Australia 34 million gift cards are estimated to be sold each year with an estimated value of between \$2 and \$2.5 billion. Gift cards are sold across the economy by national retailers and small businesses. One of the commonly used terms and conditions of gift cards are expiry dates. Of the gift cards sold by these businesses a certain percentage are not redeemed before they expire.

Many consumers experience the disappointment of an expired gift card, the estimated losses from gift card expiry are considered to be in the order of \$70 million annually.<sup>1</sup> When a gift card expires before it can be used a consumer experiences the personal detriment from the loss of value on a gift card. Many recipients of gift cards are not aware of the expiry dates for gift cards they are given. In these circumstances those consumers expect their gift cards to last for a reasonable time.

There is currently no uniform national regulation for the minimum length of time a gift card should last. In late 2017, New South Wales (NSW) introduced laws requiring a minimum three year expiry period for gift cards sold in that state.

This Consultation Regulation Impact Statement (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). There are three options to reduce consumer detriment and improve outcomes for consumers in relation to gift card expiry dates:

- **Option 1** – the status quo
- **Option 2** – prohibition on gift card expiry dates
- **Option 3** – three year minimum expiry dates

Introducing a minimum three year expiry period (**option 3**) is the preferred policy option at this time. Such an approach would address the information asymmetry that may be faced by a recipient of a gift card who is unaware of its expiry date, and expects that it last for a certain period of time. This option would address the detriment from expired gift cards.

Further evidence on the likely impact of all options is required to conduct an informed evaluation of the options and to determine which approach should be pursued. The views of stakeholders will inform a final decision RIS.

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<sup>1</sup> Finder, Media Release: Aussies wasting \$70 million per year on unredeemed gift cards, 2017, <https://www.finder.com.au/press-release-aussies-wasting-70-million-per-year-on-unredeemed-gift-cards>

# KEY FOCUS QUESTIONS

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Throughout this consultation paper there are a number of detailed questions for stakeholders to consider to assist in better defining the problem and to analyse the costs and benefits of the different policy options.

Stakeholders lodging formal submissions are encouraged to refer to these detailed questions in their submissions. Where possible, Treasury encourages stakeholders to provide data and evidence to support their views.

For quick reference, the key questions are listed below. However throughout this consultation paper there are also a series of focus questions under each policy option.

## THE PROBLEM

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?
2. Are there any reasons to treat different types of gift cards in different ways, or is one definition suitable?
3. Are there any trends in the delivery mechanism for gift cards? For example, has there been growth in the sale of 'online' or 'digital' gift cards
4. In 2014, the gift card market was estimated to be in the order of \$2 to \$2.5 billion, has the industry grown? Is there a more up to date estimate and of the size of the industry?
5. Do you sell gift cards and typically how many gift cards do you sell annually?
6. How many gift card scheme operators are there in Australia? What proportion of gift cards in Australia are administered by a third party operator?
7. How many gift card resale services operate in Australia? What is the size of the resale market?
8. Do you offer gift cards that have a fixed financial value, or gift cards for a specific service or both?
9. If you offer gift cards, do you use an expiry date? How do you determine your expiry date?
10. Is the expiry date necessary to the operation of the scheme? If yes, why?
11. What proportion of retailers offer expiry dates of a duration less than 12 months?
12. Have you ever experienced a loss from gift card expiry?
13. How recently after purchase are gift cards typically redeemed?
14. Has the breakage rate for gift cards changed since the last reported figures in 2016?



15. What percentage of gift cards are not fully redeemed and what percentage are only partially redeemed?
16. What is the average loss be on an unredeemed gift card?

### Option 1 – Status Quo

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?
18. Do you allow consumers to use gift cards after they have expired ('grace periods') and for how long after would you typically accept an expired card?
19. Have market trends or changes to existing laws (such as in NSW) induced your business to voluntarily change the expiry period your business offers?
20. How many national retailers have implemented nationally consistent expiry dates?

### Option 2 – Prohibition on Expiry Dates

21. If this option were adopted, would you continue to offer gift cards to consumers?
22. If this option were adopted, what percentage of gift cards would never be redeemed?
23. If this option were adopted, would your business need to introduce any additional fees to consumers?
24. If this option 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?
25. How do you currently account for the liability associated with gift cards?
26. If expiry dates were removed, what costs would be associated with updating your accounting practices?
27. Would IT changes and staff training be required if expiry dates were removed from gift cards? If so, how much and what types of costs?
28. What would be an appropriate transitional period?
29. If gift cards did not expire, would this affect your thinking around redemption? To what extent would you be more likely to delay using a gift card?
30. If gift cards did not expire and businesses introduced new fees to administer gift cards, would you be less likely to purchase a gift card?

### Option 3 – Three Year Minimum Expiry Period With Mandatory Information Disclosure

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

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?
33. If a minimum three year expiry period was introduced, what costs would be associated with updating your accounting practices to cover the liability for this period?
34. Would IT changes and staff training be required if a minimum three year expiry period was introduced for gift cards? If so, how much and what types of costs would be incurred?
35. Should there be exemptions for particular types of gift cards from a minimum three year expiry period?
36. If a minimum three year expiry period were to be introduced, how likely would it be that your business would introduce new post-purchase fees?
37. What would be an appropriate transitional period?
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?

# 1. THE PROBLEM

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## SUMMARY

Consumers can experience disappointment and a financial loss when a gift card expires. Nationally, there are no uniform requirements for minimum expiry dates on gift cards.

Expiry dates are used on gift cards by companies to limit the ongoing liabilities from gift cards into the future. An expiry date is one of the commonly used terms and conditions that limit the use of a gift card compared to a cash equivalent. The length of an expiry date on a gift card may vary considerably depending on the preferences of the trader issuing the gift card. Some gift cards can expire in three months and others last several years or do not expire at all. These differences in expiry dates across the economy means that there are no reliable 'rules of thumb' for consumers in determining how long their gift cards may be valid for, leading to consumer complacency, confusion and ultimately, disappointment and financial loss when gift cards expire.

Purchasers of gift cards should gain a clear understanding from the retailer of the gift card what the expiry date will be at the time of purchase, as the length of the expiry period is at the preference of the trader. In 2012, the Commonwealth Consumer Affairs Advisory Council (CCAAC) found that relying on the purchaser of a gift card to adequately disclose the terms and conditions (including expiry dates) to the final recipient is unlikely to result in adequate disclosure. This means that the end consumer is often unaware of the expiry date of their gift card.

Where the purchaser of a gift card does not adequately inform the recipient of the gift card about its expiry date, the recipient would expect the gift card to operate for a reasonable period of time. Despite gift cards being commonly understood to have expiry dates, the wide range of expiry periods can create confusion around how long a gift card could, at a minimum, be expected last. Where a business only provides a short expiry period some consumers experience dissatisfaction and detriment from the loss of value on the gift card, if it expires before they would have reasonably expected it to. Nationally there may be, on average, around \$70 million lost through gift cards expiring before they can be used.

## THE AUSTRALIAN GIFT CARD MARKET

### Overview of the Australian Gift Card Market

A gift card is typically a card or voucher that is redeemable for goods or services. There are a range of different types of gift cards and gift card delivery mechanisms. Gift cards can be provided in physical or electronic formats; they can be as simple piece of paper or hard plastic card, or they can be as sophisticated as a mechanism built into a smart phone or a debit/credit card that uses the existing payments system network. Regardless of the delivery mechanism, gift cards are a common way of providing a gift when the giver is unable to identify an appropriate alternative, but does not wish to give cash. Providing a person with a gift card is a way to avoid the disappointment of an unwanted gift, which is considered wasteful.

Most gift cards operate by providing a facility where 'store credit' of a particular value is purchased by one consumer to be given to another for use at a specific store or a range of stores. Some gift cards, rather than providing a fixed value, are designed to be redeemed for the provision of a specific

service (such as a beauty treatment). Regardless of the type of card, delivery mechanism, or type of business, where the gift card expiry date has not been communicated sufficiently to the end consumer, there is the potential for consumer detriment.

## Types of Gift Cards

Regardless of the delivery mechanism, there are generally two main forms of gift cards – closed loop gift cards and open loop gift cards.

### Closed Loop Gift Cards

Closed loop gift cards, also known as ‘single store gift cards’ are accepted or honoured at a single retailer or group of affiliated merchants (such as a chain of book stores or clothing retailers) as payment for goods or services. They are typically provided either as a fixed dollar amount card or a card for a particular service. Closed loop gift cards do not typically attract administration fees.

Closed loop gift cards are the most common type of gift card on the market. In 2012, CCAAC noted that closed loop gift cards were the most popular schemes in the Australian retail market<sup>2</sup>. In 2012, an estimated 32 million closed loop gift cards were issued in Australia.<sup>3</sup>

### Open Loop Gift Cards

Open loop gift cards, also known as ‘multi store gift cards’ typically rely on the payment system (such as Visa or MasterCard) that can be widely used at a wide variety of retailers that accept or honour cards displaying that network. Another common example of this type of card includes gift cards offered by shopping centres, such as the Westfield card, that allows consumers to make purchases from participating stores inside a Westfield shopping complex.

Multiple use store cards, provide consumers with more variety in their purchasing decisions and allow them access to a wide range of stores. In 2011, an estimated 3.5 million open loop gift cards were issued in Australia.<sup>4</sup>

More recently digital providers have developed online platforms for consumers to purchase digital gift cards. These online platform gift cards include facilities such as iTunes or Google Play gift cards. These cards allow the final recipient of the gift card to load value into their account for that service. That value is then stored by the online platform for use by the gift card recipient. The recipient can then use that value into the future.

### Promotional Gift Cards

Some companies offer gift cards for promotional purposes. These promotional cards are typically given by the company for free (or at a significant discount) as a goodwill gesture or to honour a commitment under a loyalty program. Promotional gift cards often have an expiry period. While these promotional cards are gift cards in a general sense, they are different from closed and open loop gift cards in that they are not purchased by one consumer to give to another. Rather, they are a gift from a company to a recipient for other purposes. The short expiry period ensures that there is

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<sup>2</sup> Commonwealth Consumer Affairs Advisory Council, *Gift Cards in the Australian Market*, 2012, page 25.

<sup>3</sup> Australian Retail Association Submission to CCAAC Issues Paper, 2012, p. 5.

<sup>4</sup> Australian Retailers Association Submission to CCAAC Issues Paper, 2012, p. 5.

not a significant ongoing liability from a particular promotion, or may align with the need to clear out stock.

## Definition of a Gift Card

In order to apply expiry date laws in relation to gift cards a clear definition of what constitutes a gift card must be determined.

In 2018, NSW introduced laws to regulate gift card expiry dates and associated fees. The NSW legislation defines a gift card as 'a card or voucher (in hard copy or electronic form) that is redeemable for goods or services in New South Wales'.

Other examples of gift card definitions can be found in international laws.

- Ireland defines a 'gift voucher' as 'a voucher in any form (including a card, an electronic credit or a written certificate) supplied by a trader which the consumer is entitled to apply towards the purchase of goods, digital content or services covered by the voucher'.
- The Canadian province of Ontario defines a gift card as 'a voucher in any form, including an electronic credit or written certificate, that is issued by a supplier under a gift card agreement and that the holder is entitled to apply towards purchasing goods or services covered by the voucher', with a gift voucher agreement defined as, 'a future performance agreement under which the supplier issues a gift card to the consumer and in respect of which the consumer makes payment in full when entering into the agreement'.

### FOCUS QUESTIONS

#### *For Businesses*

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?
2. Are there any reasons to treat different types of gift cards in different ways, or is one definition suitable?
3. Are there any trends in the delivery mechanism for gift cards? For example, has there been growth in the sale of 'online' or 'digital' gift cards?

## Gift Card Purchasing

Most consumers in Australia have participated in the gift card market, either having purchased a gift card for another person or having received a gift card. The 2016 Australian Consumer Survey (conducted as part of the ACL Review) identified that in the last two years, 69 per cent of consumers reported purchasing a gift card.<sup>5</sup> This is consistent with a survey conducted by Retail Decisions Australia for the 2012 CCAAC report that identified that 69 per cent of consumers had purchased a gift card in the last year.<sup>6</sup> In their submission to the 2016 Senate Inquiry to the Causes and Consequences of the Collapse of Listed Retailers in Australia, the Australian Retailers Association

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<sup>5</sup> The Australian Treasury on behalf of Consumer Affairs Australia and New Zealand, Australian Consumer Survey 2016, May 2016 ('Australian Consumer Survey'), page 39.

<sup>6</sup> Commonwealth Consumer Affairs Advisory Council, Gift Cards in the Australian Market, 2012, page 27.

(ARA) identified research noting that 71 per cent of gift cards sold are bought as birthday gifts and 16 per cent are purchased as Christmas gifts.

## Size of the Market

There is reasonably limited information available on the size of the Australian gift card market. The market does not seem to have grown significantly since the 2012 CCAAC report which estimated that the total gift card market was likely to be valued between \$1.5 billion and \$2 billion.<sup>7</sup>

In 2016, the ARA and the Australian Merchant Payments Forum (AMPF) estimated the size of the gift card market in 2014 to be \$2 billion. The ARA is Australia's largest industry association, representing a \$310 billion retailer sector. In 2012, ARA estimated that its members represent approximately 68 per cent of the gift cards in the Australian market.<sup>8</sup> In 2016, CHOICE estimated that \$2.5 billion gift cards were sold in Australia.<sup>9</sup>

Similarly, there is no measure of the number of gift cards sold in Australia. The ARA and AMPF estimate that there are likely to be 34 million gift cards sold each year. Of these 34 million cards, 24 million would be issued by ARA and AMPF members.<sup>10</sup> Additionally for cards issued by ARA and AMPF members the average spend is \$56 and each card is used 1.4 times.<sup>11</sup>

In 2012, the CCAAC report was unable to identify the number of businesses that sold gift cards in Australia. The exact number of businesses that sell gift cards remains unclear. While the majority of gift cards are sold through ARA and AMPF members there are a significant number of businesses outside the ARA and AMPF who sell gift cards. CCAAC in 2012 also identified that the majority of gift cards were likely to have been sold by medium and larger businesses.<sup>12</sup> Small businesses and sole traders may sell gift cards and are not included in the statistics generated by the ARA and the AMPF. This RIS is seeking to develop an understanding of all market participants in the gift card market to evaluate the impacts of any reforms.

Many small businesses offer gift cards for a range of services outside of the retail sector. The breakdown of small and large businesses could include service stations, supermarkets, convenience stores, beauty, personal training and fashion retailers.

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<sup>7</sup> Conversely a submission to the CCAAC report from Blackhawk indicated that at that point in time the market had grown 25 per cent in the last five years. Blackhawk, Submission to CCAAC Inquiry into Gift Cards in the Australian Market, 2012, <https://static.treasury.gov.au/uploads/sites/1/2017/06/074BlackhawkNetwork.pdf>.

<sup>8</sup> Australian Retailers Association Submission to CCAAC Issues Paper, 2012, p. 3.

<sup>9</sup> CHOICE, Gift Card Buying Guide: The gift card that stops giving, 2016, <https://www.choice.com.au/shopping/shopping-for-special-occasions/christmas-birthdays-and-gifts/buying-guides/gift-cards>.

<sup>10</sup> Australia Retailers Association, Submission to the Senate Standing Committee on Economics inquiry into the Causes and consequences of the collapse of listed retailers in Australia (ARA Senate Submission, 2016), 2016, page 5.

<sup>11</sup> ARA Senate Submission, page 5.

<sup>12</sup> Commonwealth Consumer Affairs Advisory Council, Gift Cards in the Australian Market, 2012, page 35.

## FOCUS QUESTIONS

### *For Industry Associations*

4. In 2014, the gift card market was estimated to be in the order of \$2 to \$2.5 billion, has the industry grown? Is there a more up to date estimate and of the size of the industry?

### *For Small Businesses*

5. Do you sell gift cards and typically how many gift cards do you sell annually?

## Gift Card Schemes

The gift card market has multiple participants in addition to consumers purchasing gift cards or gift card recipients. There are five types of participant in the gift card market:

- Gift card recipients (the end consumer) are given and spend the value stored on the gift card. Gift card recipients experience the detriment of an expired gift card.
- Consumers who purchase gift cards are a participant in the market. Purchasers of gift cards are presented with terms and conditions of a gift card when they purchase a gift card and are responsible for providing this information to the end consumer.
- Gift card issuers are the store selling the gift cards and are responsible for honouring the redemption of issued gift cards. This may be the store, shopping centre or bank.
- Gift card program operators are third parties that build and develop the networks that are needed to facilitate the use of gift cards. The two biggest gift card program operators in Australia are Blackhawk Network and Wex Australia. Blackhawk Network administers programs for over 100 major brands in Australia<sup>13</sup>, while Wex Australia administers 220 programs across 120 major brands in Australia and New Zealand.<sup>14</sup>
- Secondary market participants are involved in the trading or distribution of gift cards. It is unclear the extent to which a secondary market for gift cards operates in Australia, though there are dedicated secondary markets such as CardHub.<sup>15</sup> In the United States,<sup>16</sup> there is a strong secondary market for gift card resale where consumers can recoup up to 90 per cent of the original value of an unwanted gift card.<sup>17</sup>

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<sup>13</sup> Blackhawk Network Website, <http://www.blackhawknetwork.com>

<sup>14</sup> Wex Australian Website, <http://www.wexaustralia.com>

<sup>15</sup> For example see, <https://cardhub.com.au/>

<sup>16</sup> Commonwealth Consumer Affairs Advisory Council, Gift Cards in the Australian Market, 2012, page 26.

<sup>17</sup> Gift Granny, Most Resold Cards, 2017, <https://www.giftcardgranny.com/blog/most-resold-gift-cards-2017/>

The below diagram seeks to represent the participants in the gift card market.



Table one: Gift Card market participants<sup>18</sup>

## FOCUS QUESTIONS

### *For Businesses*

6. How many gift card scheme operators are there in Australia? What proportion of gift cards in Australia are administered by a third party operator?
7. How many gift card resale services operate in Australia? What is the size of the resale market?

## CONSUMERS EXPERIENCE DETRIMENT WHEN THEIR GIFT CARD EXPIRES BEFORE IT CAN BE USED

### Gift Cards Typically Expire

Expiry dates are one of the common terms and conditions that consumers are likely to encounter on a gift card. An expiry date is a representation that a trader will not honour the gift card unless it has been redeemed by the recipient of the gift card before the stated date. Many businesses will continue to honour gift cards after the expiry date to ensure customer satisfaction and to build customer loyalty ('the grace period').

The most frequently noted reason for the application of expiry dates on gift cards is to avoid the build-up of undeclared liabilities. Business groups have noted that a card issuer is required to record an ongoing liability from gift cards. Maintaining this liability prevents businesses from claiming the balance of expired gift cards. In particular, if expiry dates are removed, businesses may be required to maintain this liability indefinitely in the event that the gift card would eventually be redeemed. Additionally, if a gift card issuer has their cards operated by a third party gift card scheme they may face fees from that operator for managing an ongoing liability.<sup>19</sup>

Many businesses use expiry periods, especially service businesses, to ensure that they are able to supply the services described. For service businesses a gift card often refers to a specific service and does not state a particular value figure that the gift card is worth. Many service business costs will

<sup>18</sup> Commonwealth Consumer Affairs Advisory Council, Gift Cards in the Australian Market, 2012, page 26.

<sup>19</sup> Commonwealth Consumer Affairs Advisory Council, Gift Cards in the Australian Market, 2012, page 33.



change over time, and consequently the value of offering a service would change over time.<sup>20</sup> Without an expiry date, a business may face the potential to make a loss on providing a specific service at a specific price. Businesses may also cease to offer particular services over time. Without using an expiry date it may create challenges for businesses to alter their service offerings into the future.

## FOCUS QUESTIONS

### *For Businesses*

8. Do you offer gift cards that have a fixed financial value, or gift cards for a specific service or both?
9. If you offer gift cards, do you use an expiry date? How do you determine your expiry date?
10. Is the expiry date necessary to the operation of the scheme? If yes, why?

## What expiry dates do businesses offer

Retail groups have noted that most gift cards in the Australian marketplace have expiry dates longer than 12 months. A study by NSW Fair Trading found that no cards they sampled had expiry dates of less than a year and that three cards did not have expiry dates.<sup>21</sup> The CCAAC report identified that several factors including size, reliance on recent patronage, whether the issuer is a third party and market power together influence the length of the expiry period the issuer is likely to adopt.

Larger businesses are more likely to adopt longer expiry periods. These businesses are more susceptible to word of mouth and repeat trade. Additionally, as the majority of gift cards are issued by medium to larger businesses competition is likely to drive businesses behaviour for repeat customers by developing products that align with consumer expectations. Consumers have expressed a preference for longer expiry dates and competition between businesses is likely to result in longer expiry periods. The below table summarises research undertaken by Treasury to identify a sample of expiry periods from national retailers.

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<sup>20</sup> Commonwealth Consumer Affairs Advisory Council, Gift Cards in the Australian Market, 2012, page 34.

<sup>21</sup> New South Wales Fair Trading, Operation Fair Trading Results, 2012,  
[http://www.fairtrading.nsw.gov.au/pdfs/About\\_us/Operation\\_gift\\_card\\_results.pdf](http://www.fairtrading.nsw.gov.au/pdfs/About_us/Operation_gift_card_results.pdf)

## BOX 1: NATIONAL RETAILERS GIFT CARD EXPIRY PERIODS

National retailers have typically adopted expiry periods based on what they have determined to be appropriate for their businesses. Some of the largest retailers have already, following the NSW law, begun to move to periods of three years or more.

Gift card schemes with or adopting three year expiry periods:

- David Jones gift cards have three year expiry dates.
- Coles gift cards sold from 31 March 2018 have four year expiry dates.
- Myer gift cards sold from 31 March 2018 have three year expiry dates.
- Westfield gift cards sold from 31 March 2018 have three year expiry dates.
- Google Play cards have a three year expiry period.

Gift card schemes with no expiry dates:

- iTunes vouchers do not expire.
- JB Hi-Fi gift cards have no expiry dates.
- Woolworths gift cards sold from 31 March 2018 have no expiry dates.

Gift card schemes with shorter expiry dates:

- Dreamworld gift cards have a 12 month expiry period.

## FOCUS QUESTIONS

*For Industry Associations*

11. What proportion of retailers offer expiry dates of a duration less than 12 months?

## Consumer Detriment

In 2012, CCAAC was able to identify that there were instances of consumer detriment from the application of expiry dates. CCAAC however, came to the conclusion that there was not any overwhelming evidence of systematic consumer detriment with respect to the application of expiry dates. In making this finding, CCAAC noted that there was merit in continuing to monitor if new evidence emerged.

The detriment encountered by consumers with respect to gift card expiry dates comes from an expired gift card. A Finder survey in 2017 of 2,005 people suggests that 2.6 million Australians in the 2016-2017 lost money from a gift card expiring with an average loss of \$54.<sup>22</sup> Many consumers also experience disappointment and embarrassment when they seek to redeem a gift card in a store that has expired. When a gift card expires the value stored on that card transfers from the holder of the gift card to the issuer of that card.

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<sup>22</sup> Finder, Media Release: Aussies wasting \$70 million per year on unredeemed gift cards, 2017, <https://www.finder.com.au/press-release-aussies-wasting-70-million-per-year-on-unredeemed-gift-cards>

CCAAC noted that there were issues with the disclosure of terms and conditions associated with gift cards. Gift cards are an unusual product in that the purchaser of the product is not usually the same as the final recipient of the gift card. Typically where there are terms and conditions these can be explained at the point of sale. The CCAAC report noted that it was unrealistic to assume that the transfer of this information (from the purchaser to the recipient) would always occur.<sup>23</sup> In most cases, however, important information is provided with the gift card itself. Final recipients, where terms and conditions are not disclosed, have an information asymmetry.

The length of an expiry date on a gift card may vary considerably depending on the preferences of the trader issuing the gift card. Some gift cards can expire in three months and others last several years or do not expire. The CCAAC report identified that the majority of gift cards in the Australian market have expiry dates longer than 12 months and that many consumers may come to expect that gift cards are valid for at least this period of time.<sup>24</sup> Further CHOICE research in 2014 indicated that 50 per cent of consumers considered that gift cards should not expire.<sup>25</sup>

These differences in expiry dates across the economy means that there are no reliable 'rules of thumb' for consumers in determining how long their gift cards may be valid for, leading to consumer complacency, confusion and ultimately, disappointment and financial loss when gift cards expire.

## FOCUS QUESTIONS

### *For Consumers*

12. Have you ever experienced a loss from gift card expiry?

## Possible Scale of Detriment

The term 'breakage' is often used to refer to gift card balances that go unredeemed. Breakage represents the transfer of welfare from the consumer to the gift card issuer. Estimates of breakage rates in the Australian gift card market differ considerably between consumer and industry groups and it is unclear which estimate is more reliable.

- In 2016, the ARA and AMPF estimated that breakage in Australia is 3 per cent (on historical figures from 2014). Three per cent of the total gift card market, if valued at \$2 billion, equates to \$60 million. The breakage rate from the ARA and the AMPF does not however indicate the percentage of consumers who experience problems with gift card redemption.
- CHOICE's 2016 research found that 35 per cent of CHOICE members reported having a gift card expire. CHOICE's sample for this study however may not be representative of Australia as a whole.
- The 2017 Finder market research survey found that of their sample 14 per cent of respondents had let funds expire in the last two years. The Finder study also determined that consumer losses from expired gift cards were valued at \$142 million in the last two years (or \$70 million per annum).

<sup>23</sup> Commonwealth Consumer Affairs Advisory Council, Gift Cards in the Australian Market, 2012, page 30.

<sup>24</sup> Commonwealth Consumer Affairs Advisory Council, Gift Cards in the Australian Market, 2012, page 37.

<sup>25</sup> CHOICE, Gift cards that stop giving, 2014, <https://www.choice.com.au/about-us/media-releases/2014/december/gift-cards-that-stop-giving>

In 2012, the CCAAC report noted information from retailers that the majority of gift cards are used within three months of purchase.<sup>26</sup> In submissions to the 2012 CCAAC report, retailers who offered an expiry period of 24 months or longer noted that it was rare for a gift card to be redeemed sometime between 12 and 24 months after being issued.<sup>27</sup> In 2016, the ARA noted that longer expiry periods may, in turn, result in lower redemption rates for gift cards that could be counter-productive for consumer welfare.

## FOCUS QUESTIONS

### *For Industry Associations*

13. How recently after purchase are gift cards typically redeemed?
14. Has the breakage rate for gift cards changed since the last reported figures in 2016?
15. What percentage of gift cards are not fully redeemed and what percentage are only partially redeemed?
16. What is the average loss on an unredeemed gift card?

## What Factors Influence Gift Card Redemption Rates

Where a consumer is unaware that a gift card has a short expiry period they may expect that they have a longer period to redeem the gift than they do. Several factors influence a final recipient's use of gift cards in a timely fashion, including procrastination and constrained choice. These factors may delay a consumer from using a gift card immediately, potentially leading to a consumer experiencing the disappointment of an expired gift card.

Behavioural research has shown that there is a bias towards procrastination that may lead to consumers taking longer to redeem gift cards. Research has shown that subjects display a predisposition to procrastinate enjoyable experiences. When offered a short expiry period for a free coffee and pastry 31 per cent of subjects redeemed the voucher in comparison to 6 per cent of those subjects offered a two month expiry period.<sup>28</sup> Industry research on gift cards redemption in Australia supports the presence of this behavioural bias. The ARA and AMPF have noted that their data shows that the longer the expiry period the lower the redemption rate becomes.

Compared to cash, gift cards offer the recipient of the gift a constrained choice. This constrained choice forces the final recipient to shop in particular locations. For single store cards, this limits consumers to a single store. For those in regional environments it is possible that accessing the single store (or chain where the gift card is accepted) may be difficult. The result of this constrained choice is that consumers may find it more difficult to spend gift cards and may require a longer period of time to take advantage of the benefits of a gift card.

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<sup>26</sup> Commonwealth Consumer Affairs Advisory Council, Gift Cards in the Australian Market, 2012, page 32.

<sup>27</sup> Commonwealth Consumer Affairs Advisory Council, Gift Cards in the Australian Market, 2012, page 77.

<sup>28</sup> Suzanne Shu and Ayelet Gneezy, Procrastination of Enjoyable Experiences, Journal of Marketing Research, 2010, Vol. XLVII, pages 933-944. Page, 940

## 2.POLICY OBJECTIVE

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The objective of this reform is to ensure that where a consumer purchases a gift card they can have confidence that the gift card will be able to be used for a reasonable period of time.

The options seek to address the problem of consumer detriment caused by expired gift cards while balancing the impact of any reform on businesses issuing gift cards.

## 3. POLICY OPTIONS AND IMPACT ANALYSIS

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### SUMMARY

There are three options to reduce consumer detriment and improve outcomes for consumers in relation to gift card expiry dates.

To address the problem defined, this RIS explores three options:

- **OPTION 1** – the status quo
- **OPTION 2** – prohibition on gift card expiry dates
- **OPTION 3** – three year minimum expiry dates

### OPTION 1: STATUS QUO

Under this option the status quo is maintained for the regulation of gift card expiry dates. Businesses would continue to determine the periods that they consider to be appropriate for gift card expiry periods. Given consumers have expressed a preference for longer expiry periods, businesses may choose to compete for consumer spending by providing longer expiry periods or removing expiry periods from their gift cards. Businesses may also continue to allow 'grace periods' for consumers who have gift cards that have expired. The existing law does not however nationally regulate minimum expiry periods for gift cards.

#### Current and Existing Law

There is no a single national regulatory framework governing gift card expiry dates. Rather, gift cards are regulated by a range of different pieces of legislation.

#### Commonwealth Legislation

##### *Australian Consumer Law and Australian Securities and Investments Commission Act 2001*

Like all goods and services in the economy, gift cards are regulated by the Australian Consumer Law (ACL) contained within the *Competition and Consumer Act 2010* and the mirror consumer protection provisions of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

These Acts provide generic consumer protections including the prohibitions against:

- misleading or deceptive conduct;
- unconscionable conduct; and
- unfair contract terms.

These pieces of legislation do not include standards for product design and do not provide specific regulations in relation to expiry dates. However, these laws ensure that businesses are not misleading consumers in their terms and conditions.

## Corporations Act 2001

The *Corporations Act 2001* (Corporations Act) provides some regulatory coverage to certain types of gift cards.

Division 3 of the *Corporations Act* outlines the meaning of 'financial product'. Subdivision B, Section 763D describes financial products that are, and are not, 'non-cash payments'. Section 763D(2)(a)(i) exempts payment facilities where there is only one person to whom payments can be made by the means of the facility from being defined as a 'non-cash payment'. This means that gift cards that can be used only in a single store are not classed as financial products for the purposes of the Act. Multi-store gift cards, such as 'Westfield' gift cards, are considered to be financial products for the purposes of the Act.

The *ASIC Corporations (Non-Cash Payment Facilities) Instrument 2016/211* sets out ASIC's approach to regulating non-cash payment facilities under the *Corporations Act*, including its approach to specific products that constitute non-cash payment facilities such as open loop multi-store gift cards. The instrument provides some relief from the licencing and disclosure requirements of the *Corporations Act* for businesses that offer these types of cards. For multi-store gift cards, one of the requirements for relief is that, where the card is subject to an expiry date, appropriate arrangements are in place to prominently disclose the expiry date. That is, there are no restrictions on expiry dates, but they must be disclosed.

## ePayments Code

The ePayments Code is a voluntary code that regulates consumer electronic payment transactions, including ATM, EFTPOS and credit card transactions, online payments, internet and mobile banking and BPAY.

The Code was formerly known as the Electronic Funds Transfer Code of Conduct (EFT Code) which has existed since 1986. While the Code is a voluntary code of practice, virtually all banks, credit unions and building societies currently subscribe to the EFT Code along with a number of non-banking subscribers.

The Code is relevant to open loop gift cards. Under the Code, a gift card is considered to be a type of prepaid card. The Code contains rules specifying minimum expiry periods for gift cards of at least 12 months.

ASIC is responsible for the administration of the ePaymentsCode, including compliance monitoring and reviewing it regularly. As a voluntary code of conduct, any changes to the Code would also be subject to industry consensus.

## State Legislation

### New South Wales

The *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017* was passed by the NSW Parliament on 18 October 2017, with the new law commencing on 31 March 2018. The new law introduced a mandatory three year minimum expiry date for gift cards and gift card vouchers sold to a consumer in NSW, as well as a ban on post-purchase fees. In NSW upfront fees are permitted but post-purchase fees are not.

Under the law, the three year expiry period begins from the date a gift card is sold to a consumer. Businesses can choose to apply an expiry period longer than the three years or no maximum expiry

period. All gift cards sold in store or online are subject to the new law. However, there are some exclusions to the law, including:

- open loop systems (where a card can be spent at any store, examples of this include VISA prepaid credit cards);
- online gift cards; and
- gift cards sold for a particular product at a particular price.

The NSW regulation affects around 32 per cent of retail businesses in Australia. In response to the law many national retailers have implemented consistent national minimum expiry dates.

**All Other States and Territories**

All other state and territory jurisdictions in Australia do not have specific gift card laws.

**Voluntary ‘grace periods’**

Expiry dates on gift cards indicate that a business is only guaranteeing that they will honour the commitment on a gift card for a specific period of time. However, many businesses offer ‘grace periods’ that allow a business to still honour the gift card after it expires. ‘Grace periods’ can provide flexibility for businesses in accordance with their customer service policies. These policies can reduce the risk of customer dissatisfaction and can be used to reduce the risk of losing repeat customers or receiving negative customer feedback in relation to a business’s gift card policy.

**Preliminary impact analysis for option 1**

**Impact on Businesses**

If the status quo is maintained current laws would continue to operate. The status quo will not impose additional compliance costs on businesses. Businesses will be able to continue to determine their own expiry periods for gift cards and use their customer service policies to determine grace periods in the event of expired gift cards.

**Impact on Consumers**

Under this option a small percentage of consumers will continue to experience losses from gift cards expiring. While businesses may offer grace periods, there will not be a minimum period that a consumer would reasonably expect a gift card to last.

BENEFITS	COSTS
<ul style="list-style-type: none"> <li>• Businesses will be able to continue to set expiry periods that align with their business needs.</li> </ul>	<ul style="list-style-type: none"> <li>• Some consumers will continue to experience losses from expired gift cards.</li> </ul>
<ul style="list-style-type: none"> <li>• Businesses continue to compete through offering longer expiry periods in line with consumer preference.</li> </ul>	<ul style="list-style-type: none"> <li>• Consumers may continue to be unaware of ‘grace periods’ offered by businesses.</li> </ul>



## FOCUS QUESTIONS

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

### *For Businesses*

18. Do you allow consumers to use gift cards after they have expired ('grace periods') and for how long after would you typically accept an expired card?

19. Have market trends or changes to existing laws (such as in NSW) induced your business to voluntarily change the expiry period your business offers?

20. How many national retailers have implemented nationally consistent expiry dates?

## Compliance Costs

Maintaining the status quo would represent no change to the current regulatory environment. Therefore, there are no additional compliance costs associated with maintain the status quo.

## OPTION 2: PROHIBITION ON EXPIRY PERIODS

Expiry dates on gift cards limit the ability of consumers to access the full value stored on a gift card. While many gift cards may never be fully redeemed, the value on that gift card has been purchased and the supplier of that gift card has agreed to supply it. Some consumers may continue to lose or forget to use a gift card. In these circumstances, the value would remain stored on those misplaced or forgotten cards.

### Prohibiting the Use of Expiry Dates

Under this option, the use of expiry dates would be prohibited, giving consumers the ability to use their gift cards well into the future. A prohibition on the use of minimum expiry periods would overcome the problem of consumers encountering the detriment from an expired gift card because the gift card would always be valid. By removing expiry dates, consumers would no longer lose the value stored on a gift card from that card expiring.

If implemented, this option may override and create an inconsistency between Commonwealth legislation and NSW legislation, with the Commonwealth legislation effectively overriding the NSW law.

### Exemptions

The 2012 CCAAC report noted that some businesses used expiry dates for operational reasons. It is possible that operational reasons may persist and exemptions from a prohibition on the use of expiry dates are warranted.

Promotional gift cards are gift cards that are provided by businesses for free or as part of a marketing campaign. These are typically given by the issuer as a gesture of goodwill. Where a business chooses to provide a gift card for promotional purposes it may reflect a temporary surplus of goods that a business is seeking to dispose of. CCAAC considered that given the time limited nature of a promotion the use of a clearly identified expiry date may be reasonable to limit the ongoing liability for such a campaign.

Where a gift card is supplied for a particular good or service an expiry date may also be valid. Many gift cards, especially from small businesses, are offered for a specific service in a specific time window, for services such as massage or beauty treatments. The prices of specific services can change over time and limiting liability from the provision of specific services may be justifiable. Additionally, specific goods or services may be sold through a gift card at a genuine discount, maintaining this discount into the future may also present a significant cost to businesses. If a gift card is issued without an expiry period for a specific service, consumers may encounter difficulties if those businesses no longer offer that service into the future.

This RIS is interested to know if these exemptions should be considered or if there are additional exemptions that should be considered if gift card expiry dates were to be prohibited.

### Accounting for Liability

In the 2012 CCAAC report, the issue of managing liability was one of the major factors highlighted as to why businesses use expiry dates. Blackhawk (a major gift card scheme operator) noted “a contingent liability needs to be maintained for gift cards indefinitely as the gift card could be

redeemed at any point in the future. This ties up significant funds, audit and compliance costs as well as making these funds unavailable to the economy as a whole as the card issuer cannot reuse the funds on expired cards<sup>29</sup>. Changes to Australian Accounting Standard Board standards may mean that entities are no longer required to maintain contingent liabilities if the possibility of gift card redemption becomes remote.<sup>30</sup>

In addition, carrying liabilities for longer means that there could potentially be a greater pool of liabilities owed by a company in the event of insolvency or bankruptcy. External administrators who deal with insolvent companies treat gift card holders as unsecured creditors. The *Corporations Act 2001* determines the order in which the external administrator has to repay money owed by a company to certain creditors. Typically, gift card holders and other unsecured creditors will only be paid after monies owing to other classes of creditors, such as employees and shareholders, have been repaid.

This RIS is seeking information on how businesses account for gift card liabilities. In particular, this RIS is interested to know what costs are associated with maintaining gift card liability and how long businesses carry gift card liabilities.

## International Approaches

Internationally some jurisdictions have moved to introduce regulation of gift card expiry dates. Canada and the United States are two prominent examples of jurisdictions that have moved to have regulate of expiry dates.

### Canada - Ontario

On 1 October 2007, Ontario introduced laws to ban the use of expiry dates and most fees on gift cards bought after that date, to make sure that consumers receive their full value regardless of when they use them. Laws were also introduced to require all terms and conditions to be stated in clear and visible writing for consumers. There are some exceptions to the law, gift cards for one specific service (for example, a gift certificate for a massage at a spa may come with an expiry date and lose value if not used) and gift cards for charitable purposes are permitted to use expiry dates.

### United States

In 2010, the US introduced new rules for gift cards that require:

- Money on a gift card cannot expire for at least five years from the date the card was purchased, or from the last date any additional money was loaded onto the card. If the expiration date listed on the card is earlier than these dates, the money can be transferred to a replacement card at no cost.

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<sup>29</sup> Blackhawk, Submission to Gift Cards in the Australian Market Inquiry, <https://static.treasury.gov.au/uploads/sites/1/2017/06/074BlackhawkNetwork.pdf>, 2012, page 6.

<sup>30</sup> CPA Australia, IAS 37 Provisions, Contingent Liabilities and Contingent Assets Fact Sheet, 2015, page 4  
Accessible at: [https://www.cpaaustralia.com.au/~/\\_/media/corporate/allfiles/document/professional-resources/reporting/reporting-ifrsfactsheet-provisions-contingent-liabilities-and-contingent-assets.pdf?la=en](https://www.cpaaustralia.com.au/~/_/media/corporate/allfiles/document/professional-resources/reporting/reporting-ifrsfactsheet-provisions-contingent-liabilities-and-contingent-assets.pdf?la=en).

- Inactivity fees can be charged only after a card has not been used for at least one year, and you can be charged only once per month. But you may be charged a fee to buy the card or to replace a lost or stolen card.
- The expiration date of a card must be clearly disclosed on the card, and fees must be clearly disclosed on the card or its packaging.<sup>31</sup>

Following the US reforms, the amount of money left on gift cards decreased from US\$7 per US\$100 in 2008 to less than US\$0.75 per US\$100 in 2015.<sup>32</sup>

## Grandfathering Arrangements

Under this option, gift cards that are currently in circulation (already sold) would not be covered by any new laws. Gift cards in circulation would continue to operate according to their existing expiry date arrangements.

## Preliminary impact analysis for option 2

### Impact on Businesses

Businesses will need to determine if they will be required to change their systems to remove expiry dates from gift cards. For retailers that rely on physical gift cards or certificates, their physical stocks of gift cards may need to be updated to remove expiry dates, or the business may provide an additional notification that notifies consumers that the expiry date on their pre-printed gift card can be ignored. As such, there may be a one off cost to businesses in replacing their stock of gift cards and designing new cards. For retailers that rely on electronic systems to deliver their gift card program, IT systems may need to be updated to allow for the removal of expiry dates.

For all businesses, staff will require training regarding gift card expiry and accounting systems will also need to be investigated so that businesses can determine how they will handle gift card liability if expiry dates are removed.

As prohibiting the use of expiry dates will have the effect of preventing gift card breakage, retailers and gift card scheme operators would no longer be able to bank profits from unredeemed gift cards. In the US, dormancy fees and card issuing fees are common practices, card operators in Australia may seek to introduce these fees to cover the costs of operating a gift card scheme.<sup>33</sup> In NSW, post-purchase fees are prohibited. Businesses will either have to absorb these fees or pass these fees on to consumers.

### Impact on Consumers

Consumers will no longer need to be aware of gift card expiry dates. Removing minimum expiry periods will ensure that consumers will be able to use a gift card without it expiring. However, there may be an increase in consumers forgetting to redeem gift cards as there is no prompt or deadline for them to use cards by.

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<sup>31</sup> Federal Trade Commission, Gift Cards, 2011, <https://www.consumer.ftc.gov/articles/0182-gift-cards>

<sup>32</sup> CEB, Gift Cards State of the Union, 2015, <https://www.cebglobal.com/financial-services/tower-group/gift-cards.html>.

<sup>33</sup> ARA Senate Submission, 2016, page 10.

Depending on the effect on scheme profitability, gift card scheme operators may introduce new fees that will be passed through to consumers. In the US, in addition to card issuing fees there are a range of fees such as dormancy fees. Card scheme operators may seek to introduce fees into the Australian market that consumers are currently unaware of. These changes may lead to consumer confusion with a transition from simple free gift cards to more complex gift card schemes.

BENEFITS	COSTS
<ul style="list-style-type: none"> <li>Consumers will no longer experience breakage from failing to redeem a gift card.</li> </ul>	<ul style="list-style-type: none"> <li>IT systems changes to allow for longer expiry periods.</li> </ul>
	<ul style="list-style-type: none"> <li>Gift card operators may introduce fees for operating gift card schemes.</li> <li>Consumers may be dissatisfied if fees are introduced for gift cards.</li> </ul>
	<ul style="list-style-type: none"> <li>Possible costs to accounting systems to allow for liability from gift cards to be carried for a longer period of time.</li> <li>Redesign of gift cards and replacement of gift card stock.</li> </ul>
	<ul style="list-style-type: none"> <li>Consumers may experience confusion if gift cards come with additional terms and conditions such as rules around dormancy.</li> <li>Businesses will need to be made aware of the exemptions framework and its application to their business.</li> </ul>

### Compliance Costs

A prohibition on the use of gift card expiry dates is estimated to result in a one-off compliance cost of approximately \$138 million. These costs are transitional costs associated with IT system changes, accounting system changes, reprinting and redesign costs and staff training costs.

## FOCUS QUESTIONS

### *For Businesses*

21. If this option were adopted, would you continue to offer gift cards to consumers?
22. If this option were adopted, what percentage of gift cards would never be redeemed?
23. If this option were adopted, would your business need to introduce any additional fees to consumers?
24. If this option 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?
25. How do you currently account for the liability associated with gift cards?
26. If expiry dates were removed, what costs would be associated with updating your accounting practices?
27. Would IT changes and staff training be required if expiry dates were removed from gift cards? If so, how much and what types of costs?
28. What would be an appropriate transitional period?

### *For Consumers*

29. If gift cards did not expire, would this affect your thinking around redemption? To what extent would you be more likely to delay using a gift card?
30. If gift cards did not expire and businesses introduced new fees to administer gift cards, would you be less likely to purchase a gift card?

## OPTION 3: THREE YEAR MINIMUM EXPIRY PERIOD WITH MANDATORY INFORMATION DISCLOSURE

### Three Year Minimum Expiry

Under this option, businesses who offer gift cards will be required to provide, at a minimum, a three year expiry period for gift cards they sell. However, it would not prevent businesses from offering longer or no expiry period if they choose to do so. This will mean that where a gift card is sold a consumer will have confidence that they will be able to use that card for a reasonable period of time.

While many consumers consider that gift cards should not expire, expiry dates serve an important purpose for some businesses in managing the ongoing liability from gift cards. A three year expiry period provides businesses the ability to confidently write off gift card liability at a certain period in time. Industry research has shown that at the three year timeframe it is unlikely that a gift card would be redeemed.<sup>34</sup>

### Mandatory Information Disclosure

While a minimum three year expiry period would give consumers confidence that their gift cards will last for sufficient time to enable them to use them, providing consumers with information regarding expiry remains important. Some gift cards, such as open loop gift cards, are already subject to regulations requiring the disclosure of their expiry date.

Under this option, businesses would also be required to provide expiry date information when they supply gift cards. Ideally the expiry date information should be provided with any information about how to redeem the card, to ensure that the end user, and not just the purchaser, is aware of the expiry date. The provision of this information would be subject to certain requirements such as that the disclosure is made in a way that is prominent and legible. This disclosure will reduce information asymmetries that exist in the gift card market, where the end user of the gift card is not provided with all the relevant information about the card.

This provision of information will also allow consumers who discover an unredeemed gift card the information they need to identify if the card is still valid.

### Post Purchase Fees

In some international jurisdictions, post purchase fees on gift cards are common business practice. These types of fees can include activation fees, account keeping fees, balance inquiry fees and inactivity fees. In NSW, new legislation to introduce a mandatory minimum three year expiry date period for gift cards also included a ban on post-purchase fees.

This option does not currently propose a ban on the use of post-purchase fees. However, stakeholder views on this issue are sought to determine whether this element should be part of the final policy design of a minimum three year expiry date.

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<sup>34</sup> Australian Retailers Association, Submission to Gift Cards in the Australian Market Inquiry, 2012 <https://static.treasury.gov.au/uploads/sites/1/2017/06/066AustralianRetailersAssociation.pdf>, page 6.

## Exemptions

As with option 2, there may be valid reasons for exemptions from the introduction of reforms to gift card expiry. This RIS also seeks stakeholder views on considering if these exemptions are valid when introducing a minimum expiry period.

## Grandfathering Arrangements

Under this option, gift cards that are currently in circulation (already sold) would not be covered by any new laws. Gift cards in circulation would continue to operate according to their existing expiry date arrangements.

## Preliminary impact analysis for option 3

As previously noted, NSW recently introduced a mandatory minimum expiry period of three years for gift cards and gift vouchers sold to a consumer in NSW. These new requirements came into force on 31 March 2018. Preliminary consultation indicates that the transition has gone smoothly for big businesses, but that small businesses are still coming to terms with the new laws. The major costs identified with transition have been redesign and reprinting costs.

### Impact on Businesses

Most large national retailers are already offering expiry dates of three years or more. Further, there is a trend among larger retailers to move towards longer expiry dates. It is likely that the impacts of a minimum three year expiry date may be felt more heavily by small businesses, who typically use shorter expiry dates.

Businesses who currently only provide short expiry periods may need to replace their gift card stock in order to adjust to longer mandatory expiry periods. Some types of gift cards may have information pre-filled, while other gift cards may simply have a blank space for an expiry date to be filled in. Depending on how the expiry date information is currently presented, this will effect whether or not a business needs to redesign and replace its existing gift card stock.

Businesses may have to change systems to account for longer expiry periods. If gift cards are controlled through an electronic system there may need to be IT changes to accommodate longer expiry systems. Businesses accounting systems may need to be altered to ensure that they are able to carry gift card liability for longer periods of time than at present. Additionally there may be staff training costs if they need to be made aware of the longer expiry periods.

There may be costs associated with the provision of gift card expiry date information. Not all gift cards are currently required to provide gift card expiry information. While NSW Fair Trading has found that the majority of gift cards are supplied with expiry date information, not all currently do<sup>35</sup>. Providing this information in a prominent and legible manner for all gift cards may require businesses to develop systems to provide this information to consumers in a consistent fashion.

With more awareness around gift card expiry, it is also likely that more consumers will redeem gift cards. This would result in reduced gift card breakage to gift card issuers and gift card scheme

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<sup>35</sup> New South Wales Fair Trading, Operation Fair Trading Results, 2012, [http://www.fairtrading.nsw.gov.au/pdfs/About\\_us/Operation\\_gift\\_card\\_results.pdf](http://www.fairtrading.nsw.gov.au/pdfs/About_us/Operation_gift_card_results.pdf)



operators. If this breakage can no longer be banked as a result of being unredeemed, gift card scheme operators may decide to apply fees for issuing gift cards, thereby raising the cost of gift card schemes to businesses. This may also result in a transfer of the costs for gift card schemes from gift card recipients to gift card purchasers.

As with Option 2, setting minimum expiry dates will have the effect on gift card breakage. Retailers and gift card scheme operators may have to wait longer before they can bank undeclared liabilities from unredeemed gift cards. Businesses may seek to introduce these fees to cover the costs of operating a gift card scheme and may pass these onto consumers.

**Impact on Consumers**

Consumers will experience the benefit of longer minimum expiry periods. This reduces the likelihood that consumers will face disappointment from expired gift cards in a short period of time.

Currently in the Australian market gift cards are provided for free, unlike in the US. If gift card scheme operators moved to introduce fees for issuing gift cards, to account for a loss in revenue from lower breakage, purchasing gift cards may increase in price. This would increase a cost to consumers purchasing gift cards.

BENEFITS	COSTS
<ul style="list-style-type: none"> <li>Consumers may have lower breakage rates as longer minimum expiry periods provide consumers with more time to use gift cards.</li> </ul>	<ul style="list-style-type: none"> <li>Increased costs to provide information to consumers on expiry periods.</li> </ul>
	<ul style="list-style-type: none"> <li>Possible IT changes to allow for longer expiry periods.</li> <li>Redesign of gift cards and replacement of gift card stock.</li> <li>Possible costs to accounting systems to allow for liability from gift cards to be carried for a longer period of time.</li> </ul>
	<ul style="list-style-type: none"> <li>Gift card scheme operators may introduce fees for schemes as breakage rates lower.</li> <li>Possible price increases to purchasing gift cards as businesses pass on fees.</li> </ul>

**Compliance Costs**

A minimum three year expiry period is estimated to result in initial compliance costs of approximately \$94 million. These costs are associated with IT system changes, reprinting and redesign costs, accounting system changes and staff training costs. This policy option is also expected to attract ongoing disclosure costs of \$25 million per year. These ongoing disclosure costs are derived from the time taken by an employee to meet disclosure arrangements at the time of sale.

## FOCUS QUESTIONS

### *For Businesses*

31. Are there any negative or unintended consequence of mandating a minimum three year expiry dates?
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?
33. If a minimum three year expiry period was introduced, what costs would be associated with updating your accounting practices to cover the liability for this period?
34. Would IT changes and staff training be required if a minimum three year expiry period was introduced for gift cards? If so, how much and what types of costs would be incurred?
35. Should there be exemptions for particular types of gift cards from a minimum three year expiry period?
36. If a minimum three year expiry period were to be introduced, how likely would it be that your business would introduce new post-purchase fees?
37. What would be an appropriate transitional period?

### *For Consumers*

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?

## 4. CONSULTATION

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### SUMMARY

Treasury aims to use the public consultation process to seek feedback on the policy options presented in this paper.

Treasury will accept formal written submissions, conduct face-to-face meetings with key stakeholders and provide the opportunity for consumers to share their experiences with gift cards through a comment facility on our website.

Treasury will undertake targeted public consultation process in relation to the issues explored in this consultation RIS. The objective of the consultation process is to gather additional evidence and data on the extent of the problem and to seek views on the benefits and costs of the five proposed policy options.

The consultation process will consist of:

- a formal written submission process;
- an industry roundtable;
- targeted face-to-face and telephone meetings with key stakeholders; and
- a comment facility for consumers to share their experiences.

Treasury intends to reach a broad cross-section of stakeholders. It will be important to assess the views of consumers, gift card scheme operators and businesses retailing gift cards.

Once the initial consultation process has concluded, a final or decision-making RIS will be produced to assess the results of the consultation process, the evidence that has been gathered and the preferred policy option. All submissions to the consultation process will be published on the Treasury website, unless authors have indicated that they would like all or part of their submission to remain in confidence.

Specific questions are likely to arise from this consultation paper which may have not been considered at the time of drafting and Treasury may undertake further targeted consultation with key stakeholders if necessary.

Both this consultation RIS and the decision-making RIS will be published on the Office of Best Practice Regulation (OBPR) website.