

**From:** Shane Allen

**Sent:** Tuesday, December 20, 2011 11:27 AM

**To:** [CCAAC@treasury.gov.au](mailto:CCAAC@treasury.gov.au)

**Subject:** Concern about gift cards that expire after a certain period and the business keeps the money without providing any goods or services

CCAAC Gift Card Review

C/- of Manager

Consumer Policy Framework Unit

Infrastructure, Competition and Consumer Division

The Treasury

Langton Crescent

PARKES ACT 2600

Submission expressing concern about gift cards that expire after a certain period and the business keeps the money without providing any goods or services

1) Firstly, I do not understand why the gift card rort is not caught by existing legislation e.g. Unclaimed Moneys Act or otherwise. For instance, if a bank is holding money and cannot locate the account holder, the money does not become the property of the bank – but is to be transferred to the government.

2) Secondly, I do not understand the ability of the gift card business to simply state 'it is in our terms and conditions' and get away with it. In many other areas of law, you cannot contract outside the legislation and if you do, the legislation overrides. So the fact that it is in the supplier's terms and conditions should not be the overriding factor. Another analogy might be that I could have a lease agreement with a tenant that states that if the tenant leaves, I can do what I want with their belongings. The fact that I have put that in my terms and conditions of the lease agreement holds no water as there is a process to follow under the Residential Tenancies Act.

3) Thirdly, I understand that this concern is the subject of discussion papers (or other process) and has been looked at by the government and they are inviting submissions from the public and other parties. My thoughts are that once I have a government to represent me, I would have thought that they do not need my submission to know that businesses retaining funds from gift cards expiring after say one year is in the nature of a 'rort' whereby they have received funds for which no goods or service has been provided to the community. Does this really need my submission for my elected representatives to know that this is not a fair and equitable system?

4) Possibly, the businesses offering gift cards should have to account for it in a form of 'Trust Account' type pool of funds rather than taking into their own funds so that they appreciate that it is not their money until they have earned it.

5) I have no problem with a reasonable admin fee being applied to the card where it is not used within a reasonable time. But if it is not used, send it to the government where it is in the nature of 'unclaimed moneys' and is used for the benefit of the people - rather than going to the business for something that the business has not earned – and by its nature becomes a rort in my opinion.

Regards,  
Shane Allen

**From:** Shane Allen

**Sent:** Tuesday, 20 December 2011 1:03 PM

**To:** CCAAC

**Subject:** Addendum to original email - Concern about gift cards that expire after a certain period and the business keeps the money without providing any goods or services

I had earlier sent the below email but wanted to make one further point. If the expired and unused funds were required to be sent by the retailer to the government, you would be surprised at the manner in which the retailers will strive to ensure that the gift cards are used by the consumer – whether it be replacement of lost or stolen cards, ability for the gift recipient to go online and attach an email or contact address to allow the retailer to follow up unused cards approaching their expiry date, providing leeway to consumers who have presented the card beyond the expiry date, the payment to the consumer of small balance of unused component as it would be paid to the government, etc.

Such a system would make many of the concerns fall into place to protect the consumer because there is an incentive to the retailer to provide value for the goods or services.

My own personal situation was trying to gain value for a cinema card which was 3 days beyond the expiry date. Too bad for me, they simply stated 'check the terms and conditions' – they weren't interested in the damage to their brand or PR ramifications for me as a past loyal customer – just too bad for me. What a rort – \$75 for doing nothing. Imagine a business where you get paid but deliver nothing – and without regard to it being unethical, immoral or a poor business practice. Please put an end to this corporate ripoff.

Shane Allen CPA, B.Com.