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*The voice of Australia's leading retailers*

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# Gift Card Inquiry



**Australian National  
Retailers Association**

*The voice of Australia's leading retailers*

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The voice of Australia's leading retailers

## About ANRA

The Australian National Retailers' Association ("ANRA") was established in 2006 to represent the interests of Australia's leading national retailers.

Members of ANRA are:

Best & Less	Harvey Norman
Bunnings	Just Group Portmans   Peter Alexander   Dotti   Smiggle   Just Jeans   Jay Jays
Coles	Luxottica OPSM   Laubman & Pank   Budget Eyewear   Bright Eyes   Sunglass Hut
Costco	Oroton Group
David Jones	Reece Plumbing
Dymocks	Super Retail Group Super Cheap Auto   Rays Outdoors   BCF   Goldcross Cycles   REBEL
Forty Winks	Woolworths Supermarkets   Big W   Dick Smith

The turnover of these major Australian companies exceeds \$100 billion of the \$248 billion turnover across the retail industry, equivalent to around seven percent of Gross Domestic Product.<sup>1</sup>

The members of ANRA employ over 450,000 Australians – almost 40% of the retail workforce and over 4% of the Australian workforce. Approximately 100,000 of these employees are located in regional and rural Australia. Over 750,000 Australians hold shares in members of ANRA.

Members lead the Australian retail industry across all types of retail, goods and services. The spectrum of their businesses, their scale and their contribution to Australian communities means that the development of robust policies that do not impede this sector, and protect the interests of retail businesses and consumers is critical.

A key objective of ANRA is to ensure that governments and the community understand the vast contribution the retail industry makes to the national economy. ANRA develops and endorses public policies which enhance the capacity of the sector to meet consumer needs.

ANRA recognises that retailers rely on all Australians, and must competitively deliver to consumer needs. The industry and members of ANRA in particular, are leading employers, contribute to the community and regional development, and strongly interrelate with other Australian industries, not the least of which is the agricultural industry. ANRA's food and grocery retailers overwhelmingly supply Australian produce.

ANRA appreciates the opportunity to make a submission to the Commonwealth Consumer Affairs Advisory Council's (CCAAC) current inquiry into gift cards in Australia.

<sup>1</sup> Australian Bureau of Statistics (2012), *Retail Trade by Industry Group*, Table 850101 and *Australian National Accounts*, Table 520601



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## 1. Australian Gift Card Market

### Nature of service

- 1.1. ANRA members operate a wide variety of 'closed loop' gift card systems and have done for quite some time.<sup>2</sup> Some retailers offer gift cards that are intended for use in specific stores, while others offer gift cards that can be used across a range of outlets within the retail group, or even across a range of affiliated retailers.
- 1.2. While treated in most instances as a direct substitute for cash payment, gift cards are provided by retailers as a service to customers. The design, administration and manufacture of gift cards is far from costless. Indeed, for a number of ANRA members gift cards are one of the highest cost forms of payment.

### Use and characteristics

- 1.3. Gift cards have become an increasingly popular choice for Australians. The issues paper for this inquiry suggests the market is already worth around \$1.5 billion per year<sup>3</sup>. This equates to around 0.6% of the total \$248 billion in spending at Australian retailers in 2011.<sup>4</sup>
- 1.4. Member data suggests that the vast majority of gift card balances are redeemed within three months of being issued, with any remaining balance exhausted over the following nine months. Members that offer two year expiry dates on gift cards report that it is quite rare for a gift card to be redeemed sometime between 12 and 24 months after being issued.
- 1.5. Each year ANRA surveys over 1000 consumers in the weeks before Christmas to find out which gifts they are planning to give that year. In the Christmas 2007 survey, 14% of respondents said the gift they were spending the most money on was gift cards. This had risen to 20% by Christmas 2011 – making it the most popular gift choice by four percentage points.<sup>5</sup>
- 1.6. This rising popularity is not surprising. Gift cards allow customers to purchase a gift that they know the recipient is likely to enjoy, and they are easy and affordable to mail. The recipient does not only get the gift itself, but also the retail experience attached to making a purchase.
- 1.7. Gift cards also provide the giver a degree of control over what is purchased – making the possibility of an undesirable purchase, from the giver's perspective, much lower – and may be more appropriate than cash for the circumstances in which it is given (as part of a promotion or compensation over and above a full cash refund).

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<sup>2</sup> Only Costco, Forty Winks and Reece Plumbing do not provide gift cards.

<sup>3</sup> CCAAC (2011) *Gift cards in the Australian market: Issues paper* p.2

<sup>4</sup> Australian Bureau of Statistics (2012), Retail Turnover by Industry Group – Table 850101.

<sup>5</sup> ANRA quarterly surveys in November 2007 and November 2011.

### **Future Developments**

- 1.8. Some retailers already offer virtual gift cards on electronic media for mobile applications and as email. These gift cards can typically only be used as payment over online sales platforms.
- 1.9. ANRA acknowledges this is currently an exception rather than the rule. However, ANRA anticipates that the usage restrictions on gift cards (in-store or online only) will become increasingly relaxed as retailers continue to integrate online and 'bricks and mortar' sales channels.
- 1.10. Looking ahead, continuing advancements in technology suggest the appeal of gift cards is likely to grow further as new functionality is developed. Possible future advancements include the ability to use a greater number of gift cards at online stores, the ability to 'top-up' value onto a card remotely and the ability to link gift cards to loyalty programs.
- 1.11. One thing that will remain constant is that ANRA members will continue to make the terms and conditions attached to any gift card quite clear to the purchaser and provide various means of accessing the terms and conditions (via a website and included in gift card packaging, for example) to gift card holders.

### **Customer complaints and consumer detriment**

- 1.12. ANRA remains unconvinced there is substantive evidence of significant consumer detriment arising from the purchase and use of gift cards within Australia.
- 1.13. ANRA acknowledges that members have received complaints from gift card holders, primarily concerning the expiry date of a card or restrictions on use. However, the total number of complaints is extremely small (much less than one percent) in comparison to the total number of gift cards issued.

## **2. Current ANRA member practices**

- 2.1. ANRA's members operate some of Australia's more sophisticated gift card programs. This section provides an overview of the key characteristics of their gift card programs.

### **Expiry dates**

- 2.2. ANRA members typically offer gift cards that expire after either 12 or 24 months, with some promotional gift cards offered with shorter durations – but these are not purchased; they are generally given to reward customer loyalty or to encourage customers into a store.
- 2.3. ANRA members report various reasons for imposing a gift card expiry date.
- 2.4. Nominating a gift card expiry date provides the recipient with a greater incentive to redeem the card; in comparison to an open-ended duration. This lowers the likelihood a card will be inadvertently misplaced or forgotten about. In some respects the retailer is placed in a position where they must provide an appropriate window of time for the card to be redeemed, but also to provide an incentive for the card to be redeemed.
- 2.5. Expiry dates are also imposed to place a reasonable limit on the cost of providing supporting information technology and administration. Maintaining records on card issue and balances is far from costless; and quite redundant in the clear majority of cases.
- 2.6. Imposing an expiry date also creates a degree of certainty for the issuing retailer, and may have been chosen to reflect the accounting practices within the business – such as needing to know the likely window of time for when that liability will arise.

### **Low value transactions and providing change**

- 2.7. Minimum purchase thresholds are in many instances a relic of past gift card systems; where gift cards were single use only, or the remaining balance on a gift card was not as easily amended or recorded. A similar rationale exists for imposing a limit on providing change.
- 2.8. A minimum purchase requirement (in conjunction for a maximum threshold for providing change) helped to make sure the recipient of a single-use gift card did not attempt to redeem the majority value of a gift card for cash. It offered gift card purchasers a way of ensuring a reasonable proportion (if not all) of a gift is spent on the desired type of good or at a particular business.
- 2.9. Importantly, ANRA members do not impose minimum purchase values on gift card holders because they either operate gift cards that can store value for use in multiple transactions – this removes the need to specify a minimum transaction value or to provide change – or they provide change if a fixed-value gift card system is in place.

- 2.10. Indeed, the balance on gift cards is typically treated in the same manner as cash (for payment purposes) and can be used in conjunction with other forms of payment if the balance on the gift card is less than the value of the item being purchased.

### **Restrictions on use**

- 2.11. ANRA recognises that some of its members sell gift cards that cannot be used at every channel or service point within the issuing retailer. These restrictions are made clear to the gift card purchaser on card packaging, in-store information leaflets and in most instances on retailers' websites.
- 2.12. The state of technology may determine where and how a gift card may be used. For example, a number of ANRA members do not currently accept gift cards as a means of payment for online purchases. This may be because the current gift card administration system is not integrated with their online capability.
- 2.13. In many instances members are looking to develop this capability. However, the significant costs associated with implementing online compatibility for gift cards typically means that members are looking to address this over time and as part of periodic upgrades to gift card or online transaction systems.
- 2.14. Some ANRA members also have small outlets or concessionaires located within larger third party retailers and make use of the in-house payments system. For this reason, it may not be feasible to integrate the issuing retailer's gift card system with the larger third-party system and therefore gift cards cannot be accepted in this instance.
- 2.15. Restrictions on use may also reflect commercial considerations, such as agreements between the issuing business and its franchisees. That is, franchisees may provide certain services outside of the issuing business's core activities and prefer other forms of payment.

### **Replacement of lost, stolen or damaged cards**

- 2.16. Some retailers will replace lost, stolen or damaged cards under certain circumstances. This generally requires documentation that will allow the retailer to determine the residual balance on the card – including proof of gift card purchase, the gift card identification number and details of the last transaction made (if any) with the gift card.
- 2.17. For this reason most ANRA members advise gift card purchasers (and holders via their terms and conditions) that gift cards should generally be treated like cash and cannot be replaced if lost or stolen.

### **Communicating terms and conditions to customers**

- 2.18. The gift card purchase is unusual in that the final user is not the initial purchaser of the gift card. This makes it difficult for the retailer to be sure that the final user is aware of the terms and conditions attached to the card.

- 2.19. In essence, they rely on this information to be communicated to the final user by the person who made the gift card purchase. This results in some instances where the user of the gift card is not aware of key features such as expiry dates and use restrictions.
  
- 2.20. ANRA members employ a number of methods to overcome this; including using their websites and 'packaging' gift cards with a copy of key terms and conditions (such as putting the gift card inside another card or envelope that has the key terms and conditions printed on it). In some instances the range of cards available means that the list of all terms and conditions are quite lengthy and detailed. These are provided on the retailer's website or in documentation that is provided on request.
  
- 2.21. There is also an opportunity for increased government-funded consumer education about gift cards. Consumers could be provided information about any voluntary codes of practice (see chapter five), where to find out about the terms and conditions attached to a gift card and what to do in the event of not being satisfied with how a retailer dealt with a gift card. Such a campaign would be particularly useful in the weeks before Christmas.



### 3. Current legislation

- 3.1. In ANRA's view, gift card holders rights are currently adequately protected under the *Competition and Consumer Act 2010* and the *Corporations Act 2001*.
- 3.2. In addition to these legal protections, all ANRA members operate designated customer complaints management using a variety of channels, including in store or via phone or email.
- 3.3. If additional regulation is considered for the gift card market, ANRA submits this decision must consider the evidence base to determine whether regulatory intervention is warranted. This view is consistent with the Office of Best Practice Regulation's *Best Practice Regulation Handbook*:

*'A RIS is mandatory for all decisions made by the Australian Government and its agencies that are likely to have a regulatory impact on business or the not-for-profit sector, unless that impact is of a minor or machinery nature and does not substantially alter existing arrangements.'*<sup>6</sup>

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<sup>6</sup> See Section 2.1.

## 4. Gift Card Administration

### Interest payment on gift card balances

- 4.1. The Issues Paper<sup>7</sup> raises the prospect of forcing retailers to pay interest on gift card balances. ANRA does not support this proposal, for a number of reasons.
- 4.2. Firstly, providing gift cards is not costless. There are production and administration costs associated with running a gift card program that are not recovered by fees levied by ANRA members. If interest had to be paid on gift card balances, then this would make the introduction of usage fees much more likely and threatens the provision of this service on a fee-free basis to customers.
- 4.3. Secondly, paying interest on gift cards would transform these products from being a 'promise to redeem for a purchase' into a financial product, which would result in the need for significantly more regulatory oversight and compliance costs for retailers.
- 4.4. Finally, forcing retailers to pay interest on gift card balances will likely create argument over what the appropriate interest rate is to apply.
- 4.5. (On a side note, the payment of interest on these balances also has implications for personal taxation. That is, would interest accrued have to be declared as personal income for taxation purposes?)

### Gift cards in lieu of refunds

- 4.6. ANRA members typically do not issue gift cards in lieu of refunds to customers who have returned a product with proof of purchase. ANRA would be surprised to find this is a widespread practice.
- 4.7. It is far more common for ANRA members to issue gift cards to customers as a way of thanking them for their loyalty, or as recourse for a complaint – but this is generally in addition to a full cash (or equivalent) refund.
- 4.8. The very limited circumstances that ANRA members might issue gift cards in lieu of a full cash refund remain in the interests of acting in good faith. For example, members may issue gift cards in return for a product that has been returned without proof of purchase, or because a customer 'no longer wants it', or after considerable use with no specific warranty claim.

### Rights in the event of insolvency

- 4.9. The retail sector is indeed in the 'slow lane' of Australia's multi-speed economy and prolonged weakness in consumer spending has culminated in some high-profile failures over the past few years – notably Colorado Group and RED Group Retail (owners of Angus & Robertson and Borders in Australia) in 2011.

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<sup>7</sup> CCAAC (2011) *Gift cards in the Australian market: Issues paper* pg.10

- 4.10. This has had an impact on those customers holding gift cards for these stores. Most gift card holders are likely unaware that under Australian law they are classed as unsecured creditors once the retailer enters administration.
- 4.11. One option suggested in the Issues Paper<sup>8</sup> is to lift the default standing of gift card holders above other unsecured creditors.
- 4.12. The merits of this are not evident to ANRA and as such we would not support such a move. In ANRA's view, there is not a clear case that gift card holders should be treated with greater priority than employees or creditor suppliers – particularly given the low-value nature of the loss to gift card holders.
- 4.13. Indeed, the loss of accrued entitlements for employees or forgone payment for goods supplied to the failed retailer are likely to have a far greater impact on the welfare of employees and suppliers than the loss experienced by gift card holders.
- 4.14. A better approach would be to focus on consumer education about their position in the event of insolvency and therefore consumer understanding of the risks involved in not redeeming gift cards in a timely manner – rather than changing the creditor priority of gift card holders in Australia.

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<sup>8</sup> CCAAC (2011) *Gift cards in the Australian market: Issues paper* pg.10

## 5. Preferred Option: Voluntary Code of Practice

- 5.1. ANRA does not believe more regulation is needed to manage the Australian gift card market – particularly in light of scant evidence of consumer widespread detriment.
- 5.2. ANRA's preferred approach to improve the consistency and consumer understanding of terms and conditions for gift cards would be to introduce a voluntary Code of Practice (the Code).
- 5.3. This would increase consumer confidence in the gift card programs run by the Code's signatories.
- 5.4. By making the Code a minimum standard, rather than one-size-fits-all, retailers would still be able to respond to competitive forces by having a gift card program that exceeded this standard.
- 5.5. As a starting point, ANRA makes the following suggestions for inclusion in the Code. At a minimum:
  - Duration to expiry must be at least 12 months and either an expiry date or issue date (with length of validity) be printed clearly on the gift card or accompanying terms and conditions.
  - The gift card system should allow multiple purchases to be made, with stored value cards recording the decline in value either on the gift card or separately by the retailer.
  - The gift card should be accepted until the balance is zero (i.e. no low value purchases are excluded)
  - Customers should be able to check the remaining balance on their card after a transaction, or via a request in-person or online.
  - A copy of the key terms and conditions around the gift card use should be provided with the gift card at the time of sale (e.g. on packaging of the gift card), with full terms and conditions on the retailer's website and provided by the retailer directly on request. These key terms and conditions should clearly list any restrictions on use (e.g. not for use online, lost or stolen cards policy).
  - An internal dispute process should be in place to deal with situations where a consumer thinks the retailer is not honouring the terms and conditions of the gift card.
- 5.6. These suggestions are similar to the suggestions made by the Queensland Office of Fair Trading ([www.fairtrading.qld.gov.au/business-gift-cards.htm](http://www.fairtrading.qld.gov.au/business-gift-cards.htm)).
- 5.7. ANRA would welcome the opportunity to work closely with the CCAAC and other stakeholders in the gift card market, to develop the Code for gift cards issued in Australia.