

EXPOSURE DRAFT



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Treasury Laws Amendment (Gift Cards) Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Stuart Robert [**DRAFT ONLY—NOT FOR SIGNATURE**]
Assistant Treasurer

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1 Name

This instrument is the *Treasury Laws Amendment (Gift Cards) Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Competition and Consumer Regulations 2010

1 After regulation 89

Insert:

89A Gift cards

For the purposes of section 99A of the Australian Consumer Law, an article of any of the following kinds is not a gift card:

- (a) an article that:
 - (i) is redeemable for goods or services; and
 - (ii) can have its value increased after it is supplied other than because of a reversal of a payment made using the article or the correction of an error;
- (b) an article that is only redeemable in relation to one or more of the following:
 - (i) electricity;
 - (ii) gas;
 - (iii) a telecommunications service.

89B Gift cards—fees or charges that are not post-supply fees and charges

For the purposes of subsection 99D(2) of the Australian Consumer Law, the following kinds of fees and charges are specified:

- (a) fees or charges for making a booking;
- (b) fees or charges for disputing a transaction;
- (c) fees or charges for exchanging currencies;
- (d) fees or charges for the reissue of a gift card that has been lost, stolen or damaged;
- (e) fees or charges that are payment surcharges (within the meaning of section 55A of the Act).

89C Application of Division 3A of Part 3-2 of the Australian Consumer Law to gift cards

Application of Division 3A of Part 3-2 to certain kinds of gift cards

- (1) For the purposes of paragraph 99G(a) of the Australian Consumer Law, section 99B and paragraph 99F(1)(b) of the Australian Consumer Law do not apply to:
 - (a) a gift card of a kind that:
 - (i) is only redeemable for a particular good or service that is only available for a specified period; and
 - (ii) ceases to be redeemable at the end of that specified period; or
 - (b) a gift card of a kind that:
 - (i) is only redeemable for a particular good or service; and

- (ii) is supplied at a discount on the market value of the good or service that a reasonable person would consider to be a genuine discount on the market value of the good or service.

Application of Division 3A of Part 3-2 to gift cards supplied as second-hand goods

- (2) For the purposes of paragraph 99G(c) of the Australian Consumer Law, Subdivision B of Division 3A of Part 3-2 of the Australian Consumer Law does not apply in relation to gift cards supplied in these circumstances:
 - (a) a person supplies a gift card in trade or commerce; and
 - (b) the gift card being supplied has been the subject of an earlier supply in trade or commerce; and
 - (c) the gift card is being supplied by the person as a second-hand good; and
 - (d) the person cannot vary when the gift card ceases to be redeemable.

Application of Division 3A of Part 3-2 to gift cards supplied in certain circumstances

- (3) For the purposes of paragraph 99G(c) of the Australian Consumer Law, section 99B and paragraph 99F(1)(b) of the Australian Consumer Law do not apply in relation to gift cards supplied in any of the following circumstances:
 - (a) a gift card supplied as part of a temporary marketing promotion to the purchaser of goods or services in connection with the purchase of the goods or services;
 - (b) a gift card supplied to:
 - (i) an entity that is registered under the *Australian Charities and Not-for-Profits Commission Act 2012* as the subtype of entity mentioned in column 2 of item 3 of the table in subsection 25-5(5) of that Act (Entity with a purpose of advancing social or public welfare); or
 - (ii) a department of the Commonwealth, a State or a Territory; or
 - (iii) an agency or authority of the Commonwealth, a State or a Territory, except where the functions of the agency or authority are wholly or primarily commercial functions; or
 - (iv) a body established for the purposes of local government by or under a law of a State or Territory;
 - (c) a gift card supplied in relation to an employee reward scheme;
 - (d) a gift card donated for a promotional purpose.

2 At the end of Part 6

Add:

92A Application of Division 3A of Part 4-2 of the Australian Consumer Law to gift cards

Application of Division 3A of Part 4-2 to certain kinds of gift cards

- (1) For the purposes of paragraph 191E(a) of the Australian Consumer Law, section 191A of the Australian Consumer Law does not apply in relation to a gift card of a kind specified in subregulation 89C(1).

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Schedule 1 Amendments

Application of Division 3A of Part 4-2 to gift cards supplied as second-hand goods

- (2) For the purposes of paragraph 191E(c) of the Australian Consumer Law, sections 191A to 191D of the Australian Consumer Law do not apply in relation to a gift card supplied in the circumstances specified in subregulation 89C(2).

Application of Division 3A of Part 4-2 to gift cards supplied in certain circumstances

- (3) For the purposes of paragraph 191E(c) of the Australian Consumer Law, section 191A of the Australian Consumer Law does not apply in relation to a gift card supplied in any of the circumstances specified in subregulation 89C(3).