



Thursday 9 August 2018

Consumer Policy Unit

The Treasury

Via email: consumerlaw@treasury.gov.au

Dear Treasury

RE: *Competition and Consumer Amendment (Gift Cards) Bill 2018* and consultation paper on proposed regulations

I write regarding the consultation for the *Competition and Consumer Amendment (Gift Cards) Bill 2018* (the Bill) and regulations. The Bill seeks to accomplish three key goals:

1. Mandate minimum three year expiry dates for gift cards;
2. Require gift cards to display expiry dates; and
3. Ban post-purchase fees on gift cards.

CHOICE is very supportive of these goals, as they will address key problems for consumers who purchase or use gift cards. There is currently consumer detriment apparent in the gift card market. This market has a very high level of breakage - that is, gift cards that remain unspent, resulting in substantial financial loss for consumers.

Consumers should have confidence that when they purchase a gift card, it will be able to be used for a reasonable time after that purchase, but unfortunately this is not always the case. The Bill is intended to correct this problem and CHOICE welcomes the move to roll out nationally consistent rules to mandate minimum three year expiry dates for gift cards.

As CHOICE noted in its submission to Treasury's Gift Card Expiry Dates Consultation Paper, we support the introduction of a ban on expiry dates. Stores are paid up-front for gift cards; imposing expiry dates is unreasonable and places consumers at significant disadvantage. However, CHOICE has been supportive of the NSW gift card reforms as they are a substantial improvement on the status quo,

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providing clarity for consumers in that state and a reasonable minimum expiry period of three years. We are also supportive of Treasury's approach in proposing similar, nationally consistent rules that also ban post-purchase fees.

CHOICE engaged with the NSW Government regarding the introduction of that state's gift card reforms. Our view regarding exclusions or exemptions to the legislation remains consistent - exemptions should be as limited as possible to ensure any gift card expiry reforms achieve their aim of simplifying the consumer experience of purchasing and redeeming gift cards, and eliminating unreasonably short expiry dates.

The NSW reforms included a list of ten exclusions, found in s23A of the Fair Trading Regulations 2012 (NSW). CHOICE considers some of these to be necessary - Part 4B, s58M of the NSW law 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'. This definition appears to capture items such as debit and credit cards, discount coupons and bus tickets - things that ordinary consumers would not view as gift cards, and would not expect to be covered by the law. The different definition proposed in the Bill appears likely to avoid the need for such an exhaustive list of exclusions, stating that a gift card is 'an article (whether in physical or electronic form) that is of a kind commonly known as a gift card or gift voucher and is redeemable for goods or services'.

Any list of exemptions should be as short as possible. Of the proposed exemptions outlined in the consultation paper, we support including an exemption for one off, time-bound events or limited edition goods that are not available at any other time because consumers would reasonably expect this type of gift card to have a specific expiry date linked to the particular event or goods. We also do not object to cards redeemable for electricity, gas and telecommunications being exempted as we do not believe consumers would expect these products to be covered by the law, although on that basis we question whether these cards are 'commonly known as a gift card or gift voucher' and need a specific exemption.

Of the remaining proposed exemptions, it seems likely that the existence of these will result in increased confusion for consumers and undermine the intention of the reforms. For instance, if a business runs a 'spend \$100, get a \$10 gift card for this store' promotion, and a consumer receives one of those gift cards, it seems likely that they will assume the new gift card laws apply. If it looks like a gift card, people will expect it to behave like a gift card. These exemptions undermine the overall intention of the legislation, which is to ensure that consumers are not caught out by gift cards with unreasonably short expiry dates. If any of these exemptions are incorporated into the regulations, it will be important to ensure that they are not blanket exemptions. That is, if certain types of gift cards are exempted from the minimum three year expiry date requirement, they should not be exempt from the rest of the requirements included in the Bill. Given part of the aim of the Bill is to provide a nationally consistent framework for gift card expiry dates, it will be particularly important that any exempted gift cards still be required to prominently display an expiry date. While our preferred option is still to avoid exemptions,

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this will go some way towards reducing the confusion that will be caused by having some products on the market that are 'commonly known as gift cards' but do not have to have a minimum three year expiry date.

We also note that we are strongly supportive of the proposal to label gift cards with their specific expiry dates, rather than labelling them with the date sold and requiring consumers to work out when the card expires according to the law. This is particularly important if the proposed exemptions are introduced. For instance, the proposed exemption for cards and vouchers issued for temporary marketing purposes could result in a situation where a consumer has two gift cards from the same business, identical in appearance, but with different periods until expiry (three years from supply for one, an unknown period for the other). Displaying the date the card was supplied to the consumer will not be useful in any way, as in the absence of other disclosure or information the consumer will have no way of determining what the expiry date is if it is not the standard three years.

For further information please contact CHOICE on

Yours sincerely,



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