

REPLACING CARDS

Gift card scheme operators may, at their discretion, provide replacement cards for lost or stolen cards, and in 'grace periods' following card expiry.

In the context of the existing regulation of gift cards in NSW, Fair Trading has provided advice that the NSW laws do not apply to the replacement of lost or stolen cards which were sold/purchased both before and after the commencement date in NSW (31 March 2018) "...because the replacement transaction is not a sale of a new card. The terms and conditions remain the same as at the time the card was bought" (available at <https://www.fairtrading.nsw.gov.au/buying-products-and-services/ways-to-pay/gift-cards-and-vouchers>).

The SCCA seeks clarification that an equivalent principle applies in the context of the federal regulation, specifically in the context of the 'supply' of gift cards (as opposed to 'sale', as in NSW). The principle should apply with regard to cards which were originally supplied both pre and post 1 November 2019.

The principle should also extend to the provision of a replacement card in a 'grace period' following expiry. In this instance, the 'new' period of expiry should be at the discretion of the gift card issuer.

If this matter is not clarified (either via FAQs or via an exemption under the regulations), there is a possibility that the issuing of a replacement card may take the expiry period of a card to close to 72 months (e.g. if the original card is lost/stolen in month 35 of the expiry period and then replaced with a card with an additional 36 month expiry period).

EXEMPT FEES AND CHARGES

As we understand the drafting of the *Treasury Laws Amendment (Gift Cards) Bill 2018*, the proposed ban on post-supply fees is broader than that which applies in NSW.

By way of explanation, it is understood that, in NSW, the ban on post-purchase fees is relevant to "any administrative charge or fee that reduces the redeemable value of the gift card after the sale of the gift card" (s 58N(2) NSW Fair Trading Act).

It is our understanding that the definition of *post-supply fee* in the national regime (99D(2) *Treasury Laws Amendment (Gift Cards) Bill*) is not specific to a reduction in the redeemable value of a gift card and is more broadly defined.

There may be benefit in clarifying in the explanatory material or associated FAQs that the ban on post-supply fees in the national regime applies to fees and charges which deduct value from the card, and also fees and charges which would not erode the value of the card but would otherwise require a customer to make payment associated with some activity associated with the gift card. If this interpretation is correct, this will assist gift card issuers understand the scope of the ban.

This distinction may also assist the identification of what 'types' of fees and charges may be appropriately exempt under the regulations, particularly those which do not reduce value and are associated with/ancillary to the administration of certain activities (e.g. postage fees in the context of mailing out replacement gift cards).

SCOPE OF EXEMPTIONS

We respectfully request that the omission of an exemption under the regulations for a gift card supplied as part of a customer loyalty program. Facilitating this omission would ensure a greater degree of consistency between the current NSW regime (which provides for this exemption) and the future national regime.

It is also our understanding that the scope of the proposed exemptions proposed under the draft regulations are limited relative to those which currently apply in NSW.

For example, it is our understanding that, in NSW, exempt gift cards are exempt from all the relevant requirements under the *Fair Trading Act*, specifically the requirement for a minimum three year expiry and the ban on post-purchase fees. However, under the national regime, the exemption would (with the exception of pre-owned gift cards supplied through a second-hand market) only extend to the requirement for a minimum three year expiry period.

This distinction will require specific attention in a future education campaign to ensure that there is wide awareness of the variability between the existing and future schemes.

ENFORCEMENT

The SCCA anticipates further advice regarding the future interaction between the national regime and the existing/pending regimes in NSW and South Australia.

Noting the nuances between the regimes, particularly with regard to some definitions and the exemption frameworks, clarity on the approach of the jurisdictions, in particular, will be critical to ensuring that gift card schemes are fully aware of their obligations and associated compliance and enforcement frameworks.