



Australian  
**Retailers**  
Association

Department of Finance, Services and Innovation

Regulatory Policy Branch

Better Regulation Division

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## **Australian Retailers Association Response to Fair Trading Amendment (Gift Cards) Bill 2017: Consultation by NSW Fair Trading on exclusions to gift card regulations**

The Australian Retailers Association (ARA) welcomes the opportunity to engage with NSW Fair Trading on the proposed amendments to recently passed legislation affecting the sale of Gift Cards in NSW. Of note, the ARA is not supportive of *any* moves to regulate the sale of Gift Cards, with a lack of needs-based evidence and the associated administrative and trade restrictions making regulation excessive.


The ARA represents in excess of 7,500 retail businesses across the nation, with 2,219 of these businesses based in NSW covering nearly 20,000 shop fronts. After engaging with key retail industry stakeholders, including some of Australia's largest retailers, the ARA submits the following recommendations to Fair Trading for consideration:

### **Determination of NSW residents:**

The most pressing issue for retailers lies in compliance with the legislation's prescribed three-year expiry when selling a gift card to a 'NSW resident.' Retailers and businesses are anxious about the difficulties in determining a consumer's state of residence when purchasing a gift card, and the appropriate mechanisms for carrying out such a measure.

The ARA is concerned about the onus placed on retailers for asking for and checking identification of consumers purely for the sale of a gift card or voucher, particularly when issued from interstate. While retailers regularly check identification for a limited range of activities (such as selling restricted goods or for customer orders), these practices are understood and accepted by the community as a necessary practice for these types of goods and services.

Extending this practice to the sale of gift cards will confuse consumers, unnecessarily expend limited staffing and administrative resources for retailers.



This also raises the possibility of increased customer angst, and disruptions during busy trading periods such as Christmas and Mothers' Day, which correlate with the peak sales periods for gift cards and vouchers.

### **Cross Jurisdictional Competition:**

Secondly, the new regulations create significant cross-jurisdictional trade issues for retailers and businesses who sell gift cards. Placing regulations on the sale of gift cards within NSW creates conflicting compliance regimes and mechanisms for businesses who operate across multiple jurisdictions.


The ARA and its members is concerned about moving forward with an approach which restricts interstate businesses who sell gift cards in NSW. Businesses based and issuing within NSW will also face challenges with navigating first-and second-hand exchanges of gift cards. Many ARA members based in other jurisdictions also operate in NSW, and have raised these concerns on multiple occasions.

Trade restrictions, compliance mechanisms and penalties cannot be issued to businesses outside NSW who do not comply with the regulations. For example:

- *Who is liable for a gift card purchased from a store in Queensland with a two-year expiry, which is then gifted to a NSW resident to be used in a NSW store?*
- *Does this result in the NSW store receiving a penalty for non-compliance, even when they were not the direct issuer of the card?*
- *What situation occurs when a gift card is purchased in NSW and is gifted to a Victorian resident?*
- *Will the store in NSW be obliged to apply a three-year expiry period to the gift card, even when the card will be used in a store in Victoria?*

The ARA suggests, that based on the complexities arising from applying compliance regimes on businesses which operate both in and out of NSW, the best practice solution is to exempt interstate businesses from the legislation. If not, this raises the possibility of jurisdictional issues and constitutional challenges based on restricting trade and commerce between states. There has been some suggestion that if an attempt was made to fine an issuing business in another state, particularly one that was not aware there would be an attempt to use the card in NSW, there would be a basis to legally challenge the legislation.

We would therefore suggest the obligation be removed for businesses issuing from interstate, an obligation which could already be inoperable.





### **Transition Period:**

After consulting with members, the ARA advises Fair Trading that the proposed six-month transitional period from 31 March 2018 is not sufficient and should be extended to 12 months.

Retailers have advised the ARA that they will not be able to meet the proposed six-month transition period without incurring significant cost. Given the proposed transitional period would end on 30 September 2018, these costs represent a significant hit to retailers leading into the busy Christmas trading period. Many retailers retain bulk supply of gift cards, and selling through non-compliant stock will not be achievable in such a short timeframe.

The proposed six-month transitional period covers the quietest trading period of the year for many retailers, hospitality and restaurant outlets, and as such, sell-through of gift cards will be low. Retailers have also flagged the significant cost implications associated with withdrawing or destroying non-compliant stock once the transitional period comes to an end. This is especially true for some retailers whose stores number in the hundreds across NSW.

Given few gift card suppliers operate in the industry, retailers will also face substantial cost in sourcing and replacing non-compliant stock once the transitional period comes to an end.


With these issues in mind, the ARA advocates NSW Fair Trading extend the transition period to 12 months, which will allow retailers sufficient time to adopt and implement the regulations.


### **Code of Conduct:**

The ARA remains of the view overall, that best practice for regulating gift card sales in NSW is to abandon this complex and unnecessary legislation and to implement an industry-backed Code of Conduct. The ARA sees regulation as a serious impediment and additional cost to small and medium retailers issuing gift cards with major retailers, potentially incurring significant red tape costs and having no choice but to pass these on to the consumer.

Additionally, a Code of Conduct is arguably a more apt and desirable approach to regulating gift card sales due to buy-in from industry. This stems from a more collaborative approach, considering the expertise of retailers, who operate in a consumer-facing industry, and who understand more readily their own challenges, as well as the needs of consumers. The ARA notes that a Code of Conduct was successful in regulating bag-searching in retail premises in NSW without the need for legislation, and has resulted in an effective, consistent approach.

The ARA conducted research with the Australian Merchant Payments Forum in response to the 2016 Senate Standing Committee on Economics Inquiry into Gift Cards. This research found that the longer the expiry period was on gift cards, the lower the redemption rate fell; vice-versa, shorter expiry periods were associated with higher redemption rates. The research





found that 97 per cent of gift cards were used before their expiry periods, which is exceptionally high. For this reason, the ARA maintains that mandatory expiry periods are unnecessary and counter-intuitive, and should be removed in favour of a Code of Conduct.

If not, the ARA agrees broadly to the suggested changes and exemptions flagged by NSW Fair Trading. If you wish to discuss our submission and any other related matters, please contact Heath Michael, ARA Director of Policy, Government and Corporate Relations, at [heath.michael@retail.org.au](mailto:heath.michael@retail.org.au).

Kind regards,



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