Gift Card Expiry Dates Consultation Paper
Consumer and Corporations Policy Division
The Treasury

ARA response to Treasury Regulation Impact Statement: Gift card expiry dates

May 2018

About the ARA:

The Australian Retailers Association (ARA) is the retail industry's peak representative body representing Australia's $310 billion sector, which employs more than 1.2 million people. The ARA works to ensure retail success by informing, protecting, advocating, educating and saving money for its 7,500 independent and national retail members, which represent in excess of 50,000 shopfronts throughout Australia. The ARA ensures the long-term viability and position of the retail sector as a leading contributor to Australia's economy.

Members of the ARA include Australia's most trusted retailers, from the country's largest department stores and supermarkets, to specialty retail, electronics, food and convenience chains, to mum-and-dad operators.

Executive Summary:

ARA retailers issue gift cards in a manner that is professional, responsible and sensitive to the needs and feedback of their customers. They believe that their closed-loop gift cards are one of a number of important tools to develop their brand and customer loyalty. While they have differing terms and conditions, retailers already employ clear and simple means of communicating this information to both the purchaser and redeemer of the gift card.

Unlike many overseas markets, closed-loop gift cards are issued free of charge to consumers in Australia. This is only possible as administration, fraud, marketing and accounting costs are kept to a minimum. Increasing trends towards mass compliance regimes for consumer products pose the possibility of introducing purchase fees in order to cover associated cost increases. Australian consumers have clear preferences for gift cards which are issued free-of-charge, with the most-recent statistics showing that closed-loop gift cards account for 90% of the market.

Gift cards are a significant product which enhance consumer convenience; they are readily accessible, easy to redeem and offer choice and flexibility. This service is provided at cost to retailers, especially with the absence of fees and charges. Retailers often increase the convenience of these products by providing 'grace periods,' whereby a consumer can redeem their gift card even after it has expired.

Taken into account, the state of Australia's gift card market is geared heavily towards the consumer. Retailers continue to provide this service as a relationship-building and brand loyalty exercise. This ultimately benefits consumers and the broader economy, through increased choice, competition and stronger local businesses. Customers enjoy purchasing gift cards for their friends and family, taking advantage of a range of associated benefits.

1: Impacts on Retail Businesses:

The proposed regulations will impose significant additional administrative costs on businesses who provide economic and social benefits to communities across the country. Any changes to financial regulation require businesses to amend their accountancy and administrative practices. It is unreasonable to expect small and family businesses to do so, simply to respond to an unnecessary increase in red tape.

The retail industry contributes greatly to the Australian economy, as Australia's largest private industry employer, representing 6% of Australian businesses and over $310 billion in annual turnover. These regulations pose an unnecessary burden, whilst providing no discernible consumer benefit. Any proposal to place additional costs on businesses, especially small and family-run enterprises, displays a disregard for their contribution.

Increased compliance costs, driven by applying red tape, will hurt small and family businesses in local communities. Many retailers may decide to remove gift cards and vouchers from offer altogether, rather than incur the significant compliance costs which stem from the proposed regulations.

2: Responses to RIS Issues Raised:

Australian consumers understand gift cards very well and are comfortable and familiar with their usage. Our members have highlighted that the vast majority of gift cards are redeemed, either wholly or partly, at least once within 12 months of issue. This is regardless of the length of the expiry period, which appears to have a minimal impact upon the way in which the card is used by the consumer.

Various ARA members have indicated that they employ leeway policies (referred to as ‘grace periods’ in the RIS) for card redemption. These policies allow for discretion on expiry periods and timeframes depending on customer circumstances. The retail industry depends wholly on customer relationships and existing gift card policies have been effective in maintaining customer satisfaction. A survey conducted by the ARA in 2014 found that issues and complaints regarding closed-loop gift cards remained low, with the level of gift card transactions increasing.

The ARA conducted research with the Australian Merchant Payments Forum (AMPF) in response to the 2016 Senate Standing Committee on Economics Inquiry into *Causes and consequences of the collapse of listed retailers in Australia*. 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% of gift cards were used before their expiry periods, which is exceptionally high. The number of cards which expire without redemption is, therefore, minimal.

Closed-loop gift cards fall into two categories: the first category is for customers who receive a gift card for a store that they have an existing affinity towards; the second category is for consumers who rarely or never shop at the particular store. In both circumstances, the retailer recognises the opportunity to retain the individual's custom and as such, will aim to provide a positive gift card experience wherever possible. The RIS referred to the second category as representing 'constrained choice' for consumers, which may deter them from redeeming gift cards on-time. We would argue that the responsibility does not lie with the retailer in this circumstance, but the initial purchaser of the card. Extending the expiry of gift cards will do little to change consumer behaviour. In any event, ARA members are confident in the options and flexibility they provide to their consumers. Further, retailers and the ARA believe that the current consumer protection frameworks provide sufficient coverage to address any consumer concerns around gift cards.

It is common for gift cards to be sold mounted on a 'carrier,' which usually details terms and conditions, along with further information via a website or telephone number. Purchasers and redeemers can easily access full terms and conditions, check balances and expiry periods. Staff in retail stores are trained to assist customers with gift cards, including around terms and conditions, which is another key aspect of the healthy Australian gift card market.

The aforementioned factors suggest that levels of confusion over expiry dates on gift cards are minimal. We support our members, especially small and family retailers, in their ability to remove long-term liabilities from their accounts, which may affect equity for their respective businesses. In many cases, this allows the retailer to continue to offer gift cards as a popular and much-enjoyed consumer service.

The RIS referred to retailers 'banking profits from unredeemed cards.' The ARA seeks to clarify that wherever 'breakage' on gift cards does occur, these funds are commonly used by businesses to cover the administrative costs of gift cards. Retailers incur costs to provide gift cards to consumers, yet the majority do not pass this cost on to consumers. Breakage rates, therefore, ensure that consumer costs do not increase. These costs include accounting and administration, as well as card issuance and replacement, marketing, staff training and fraud management.

After engagement with our members, a consistent theme emerged regarding the necessity to remove liabilities from financials. This represents a significant issue for small and family retailers, who balance the necessity to increase customer loyalty by offering gift cards, against the necessity to keep liabilities and costs low.

Implementing mandatory 3-year expiry periods will disadvantage these businesses and would likely see them remove themselves entirely from the market, or pass on fees to consumers, due to the increased financial liability.

Major retailers will also be hit with increased red tape costs, impacting on their ability to invest, grow employment, and impacting on shareholders. While some major retailers may be able to justify extending or removing expiry periods altogether due to their economies of scale, this option is not available to the vast majority of retailers.

We believe a more pressing issue around gift cards is the increasing rate of fraud, due to the popularity of e-gift cards. The ARA sees Government as well-placed to commit to serious action regarding online payments fraud - including a sharper focus on addressing fraud in the online gift card market - is warranted before moving on expiry dates.

3: Policy Options and Progression:

The ARA prefers *Option 1*, which maintains the status quo and respects the operation of private enterprises and the relationships between retailers and their customers. *Option 2* is consistent with recently applied NSW legislation, which mandates a minimum expiry period of 3 years for gift cards sold in that state. The ARA opposed the introduction of these measures.

Any regulatory changes which affect an entire industry must be undertaken after meaningful stakeholder consultation. Given the size and contribution of retail to Australia's economy, any move to regulate the sale of gift cards should be fair and transparent. Extensive consultation with retailers on proposed timeframes and exemptions is necessary to ensure fair and reasonable application across the industry.

Option 2 must take into account the need for consistency across Australia, with a view to reducing conflicting compliance regimes between jurisdictions. It is necessary to provide certainty to both retailers and consumers alike, in order to minimise confusion and disruption.

Whilst we do not support option 2, should Government choose to proceed the ARA should be at the forefront of consultation. An extensive consultative period will be necessary to ensure a sufficient suite of exemptions to the proposed regulations to accommodate variants to regular gift cards. Outside of regular sale, retailers offer gift cards for a variety of reasons, including as bonus promotions, linked with loyalty programs, as prizes.

An extended transitional period will be necessary for retailers to run-down existing gift card stocks and deal with the associated administrative processes. Retailers have flagged the significant cost implications associated with withdrawing or destroying non-compliant stock, especially for those with large store networks. Given few gift card suppliers operate in the industry, retailers will also face substantial costs in sourcing and replacing non-compliant stock at short notice.

With these issues in mind, the ARA is advocating for an 18-month minimum transitional period, should the Treasury opt to proceed with the proposed measures. This will allow retailers sufficient time to plan and adapt to new regulations. This will also reduce any potential environmental impacts from retailers dumping non-compliant stock in landfill.

The ARA opposes option 3, which seeks to remove expiry periods for gift cards altogether. This option would force retailers to carry liabilities on their books indefinitely, imposing significant costs and administrative complexities, especially for small and family retailers. The ARA believes sees this option as harmful to the Australian gift card market, as many retailers may withdraw from the market altogether, reducing competition and consumer choice.

3.1: Alternatives to regulation:

The ARA sees a Code of Conduct as a more relevant and desirable approach to regulating gift card sales due to the high likelihood of industry buy-in. A collaborative approach will consider the expertise of retailers, their knowledge of internal processes and challenges as well as consumer needs. Retailers are well aware of their obligations under the Australian Consumer Law, and in most cases will seek to go beyond their legal obligations in order to maintain customer relationships.

Retailers want to treat their customers well and want their shopping and payment experience to be as positive as possible. For this reason, a national Code of Conduct, stewarded by the ARA stands a high likelihood of achieving national consistency, while addressing consumer expectations. 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.

Gift card breakage does not represent a serious liability or impact for the material well-being of a consumer; however, the opposite is true for businesses. In any sense, a retailer's business model depends on relationship management, and this is best left in the domain of individual businesses to determine. Retailers have an incentive to provide a positive experience, or risk losing business and incurring reputational damage. For this reason, the ARA maintains that mandatory expiry periods are unnecessary and counter-intuitive.

Ex-New South Wales, the existing gift card market respects free-market principles and the independence of private entities and businesses to conduct trade with their respective customers. This should be maintained with an industry-led code of conduct, facilitated by the ARA.

Summary:

The Australian gift card market is a prime example of the high value placed on consumer satisfaction by retailers and members of the ARA. Consumers enjoy purchasing gift cards for their families, friends and colleagues, and are comfortable with their use.

Retailers provide gift cards to consumers in a way which promotes flexibility, choice, and convenience. Over and above, gift cards are provided to consumers free of fees and charges, and many exercise flexibility around expiry periods to maximise the consumer experience.

Imposing mandatory 3 year, or even unlimited, expiry periods on gift cards in Australia will be detrimental to this principle. It is necessary for retailers to possess the ability to remove gift card liabilities from their books. This ensures that the administrative, accounting, issuance, replacement and staff training costs are covered, enabling retailers to continue to provide gift cards at no cost to the consumer.

The ARA is the best-placed advocate for the retail industry and is committed to the stewardship of a Code of Conduct as a practical approach to gift cards.

We are grateful for the opportunity to engage with the Treasury on this matter. We are happy to discuss our submission further at the earliest convenience. For more information, please contact ARA Director of Policy, Government and Corporate Relations, Heath Michael, at heath.michael@retail.org.au.

Kind regards,

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