



Australian  
**Retailers**  
Association

Gift Card Expiry Dates Consultation Paper  
Consumer Policy Unit  
The Treasury

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## ***ARA Response to Competition and Consumer Amendment (Gift Cards) Bill 2018.***

**August 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:**

Gift cards are a significant product which enhance consumer experience; they are readily accessible, easy to redeem and offer choice and flexibility. Retailers continue to provide this service, which benefits consumers and the broader economy, through increased choice, competition and stronger local businesses.

The ARA has been involved in various consultation processes regarding gift card expiry date regulations during 2017 and 2018. This includes the following:


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- In mid-2017, the New South Wales (NSW) government passed the *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017*, which regulated minimum expiry dates for gift cards sold in that state.
  - The ARA represented the retail industry on this matter, including by written correspondence, face-to-face and at industry roundtables.
  - In mid-2018, the South Australian (SA) government also passed legislation to regulate gift card expiry dates. The ARA submitted to the consultation.
  - Retailers are continuing to face difficulties from these regulations, which created inconsistencies within the Australian consumer market.
  - In mid-2018, the ARA began engaging with the Federal Government following the proposal to amend the *Competition and Consumer Act 2010* to regulate gift cards nationally and remove the inconsistencies created by state-based regulations.

The ARA has continued to represent retailers throughout this process including through a [previous submission](#) to the Treasury's Regulatory Impact Statement on Gift Card Expiry Dates in May 2018. The ARA also recently attended an Industry Stakeholder Roundtable with the Treasury and a range of our members during August 2018.

We maintain that there continues to be no reliable evidence suggesting the necessity to regulate the sale of gift cards in Australia. ARA members are confident that their customers are familiar and comfortable with the current state of the gift card market, and in their own abilities to effectively manage customer relationships where issues arise.

However, should the Government choose to pursue the regulation of gift cards, this submission outlines a best-practice approach, with a focus on practical elements to maintain the viability of the gift card market in Australia.

The purpose of this submission is to respond to the *Gift Card Expiry Dates: Consultation paper on proposed regulations* (Consultation Paper) released in-kind with the exposure draft of the *Competition and Consumer Amendment (Gift Cards) Bill 2018 (Bill)*.





## 1: Consideration of Consultation Paper Matters:

With regard to the Consultation Paper, the ARA and our members provide comment on the following:

### 1.1: Discount coupons and vouchers:

With regard to the stated definition of gift cards, the ARA is supportive of extending the definition to explicitly exempt discount coupons and discount vouchers.

Consistent with the Consultation Paper, the ARA attests that discount coupons and discount vouchers are not the same as a gift card and, alone, cannot typically be exchanged for goods or services. However, some consumers may be unaware of this distinction and continue to refer to gift cards as 'gift vouchers' or merely 'vouchers.'

Thus, we believe that for clarity, it is necessary to extend the definition of gift cards to explicitly exempt discount coupons and discount vouchers from the regulations.


### 1.2: Reloadable and non-reloadable gift cards:


The ARA is supportive of the definitions of reloadable and non-reloadable gift cards.

### 1.3: Exemptions:

**Genuine discount:** The ARA and our members support the exemption of gift cards and vouchers that can be exchanged for a particular good or service and sold at a genuine discount. However, we believe clarification is needed regarding the principle of 'genuine discount.'

The ARA is not supportive of setting a 'benchmark' discount of 30% (as noted in the Consultation Paper) or otherwise. The significance of a discount is dependent on individual sectors and respective business models.

- For example, a 5% discount may be seen as significant in electrical goods retailing, but not in apparel retailing.
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We suggest consideration of the Australian Competition and Consumer Commission (ACCC) pricing guidelines as a reference point for definitions and appropriate discounting practices<sup>1</sup>.

**Gift cards for use in the same business:** Retailers offer bonus gift cards as promotional activities to encourage repeat custom. The ARA is supportive of this category of gift cards being exempted from the regulations.

However, we believe that this exemption should apply to bonus gift cards given to customers for use at *all* businesses. These gift cards are issued under the same principles as above, in that:

- The gift card is ultimately provided to the customer for free by the first business.
- No monies have been exchanged hands for the face value of the gift card itself – merely the product purchased.
- This is similar to a business offering ‘free steak knives’ with the purchase of a dinner set, for example.
- The secondary business would be liable for the validity and expiry period under the regulations, with no means of monitoring issuance dates, activation, information provision.


**No consideration:** The Consultation Paper refers to ‘no consideration’ as including “Gift cards offered to customers for free, or where the customer has not paid for a voucher directly or indirectly.”


The ARA supports in-part the definition of ‘no consideration’ as outlined in the Consultation Paper. Retailers often engage in creative promotional activities in order to encourage custom or increase sales. These marketing activities are crucial to the retail business model.

The NSW Government’s gift card regulations exempt “A gift card or voucher that is given by a business for free to a customer,” and “A *gift card or voucher exchanged for*

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<sup>1</sup> Australian Competition and Consumer Commission 2018, *Displaying Prices*, <https://www.accc.gov.au/business/pricing-surcharging/displaying-prices>.






*goods returned to the supplier of the goods.*"<sup>2</sup> We argue that this definition provides clearer guidance to exempted gift card categories, including in circumstances where 'no consideration' was given by the consumer.


The ARA believes that the definition of 'no consideration' in the Consultation Paper excludes categories of gift cards which are offered as part of standard and regular promotional activities carried out by retailers, including:

- Circumstances where a 'bonus gift card' is offered with the purchase of a regular gift card over a certain value threshold.
  - For example, a customer purchases a \$100 gift card and receives a bonus \$10 gift card.
  - In this circumstance, the definition does not appear to distinguish whether the \$10 bonus gift card was paid for 'indirectly.'
  - The ARA is of the view that the \$10 bonus gift card was offered as a promotional bonus by the retailer, with no monies paid for its face value.
  - This should constitute no-consideration and qualify for an exemption.
- Circumstances where gift cards or store credits are offered to customers as a good-will gesture to resolve a complaint or issue.
- Store credits offered to customers in exchange for goods returned to that store.
  - Store credits are often issued as a gift card or gift card-like item and are generally provided for change-of-mind returns or returns without proof of purchase, consistent with requirements under the Australian Consumer Law, and retail store policies.
  - The ARA attests that these gift cards should be specifically exempted from the regulations under the *Bill*, as they fall under 'no consideration.'
- Loyalty program vouchers, gift cards, or store credits offered to generate business, including:
  - Customer birthday bonuses

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<sup>2</sup> NSW Fair Trading 2018, *Changes to gift cards: Guide for businesses selling multiple gift card products*, NSW Fair Trading, [https://www.fairtrading.nsw.gov.au/\\_data/assets/pdf\\_file/0018/371700/Gift\\_cards\\_multiple\\_products\\_summary\\_for\\_businesses.pdf](https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0018/371700/Gift_cards_multiple_products_summary_for_businesses.pdf).



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- Gift cards, store credits or vouchers given to customers to encourage them to return to the store
  - Gift cards provided to customers in exchange for points earned via a loyalty scheme
    - ‘No consideration’ is relevant in this example as the majority of loyalty schemes are offered at no cost to the customer, and purely reward repeat business.
    - Gift cards earned under store loyalty schemes are provided free of charge to loyalty customers as a gesture of goodwill and a customer relationship exercise.
    - This category is specifically exempt from the NSW regulations,<sup>3</sup> and should be specifically excluded from the Federal regulations under the *Bill* to ensure consistency.

While retailers may offer promotional bonuses to customers through a variety of methods, including discount vouchers or codes, promotional flyers, QR codes and gift cards, we believe that it would be helpful to specifically exempt ‘no consideration’ categories of gift cards from the regulations to improve clarity.

**Extent of exemptions:** Consistent with matters raised in the Consultation Paper, the ARA agrees that a ban on post-purchase fees should continue to apply to all exempt gift card categories under the *Bill*.


With regard to expiry dates, the majority of ARA members include expiry or issue dates with gift cards offered under the above exemption categories as a matter of course to improve communication and customer relations.

Our members are comfortable with the inclusion of requirements to display *issue dates* as a minimum, with stated terms and conditions that the card expires after a certain time period. Stated *expiry dates* are cumbersome and inflexible, and do not

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<sup>3</sup> NSW Fair Trading 2018, *Changes to gift cards: Guide for businesses selling multiple gift card products*, NSW Fair Trading, [https://www.fairtrading.nsw.gov.au/\\_data/assets/pdf\\_file/0018/371700/Gift\\_cards\\_multiple\\_products\\_summary\\_for\\_businesses.pdf](https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0018/371700/Gift_cards_multiple_products_summary_for_businesses.pdf).





allow for retailers to extend or honour gift cards which have been presented by customers after the expiry period.

#### **1.4: Post-purchase fees:**

The ARA is supportive of the ban on post-purchase fees as outlined in the Consultation Paper. The majority of our members do not currently charge post-purchase fees to customers for their gift cards.

## **2: Matters not Raised in Consultation Paper:**

A number of matters not raised in the consultation paper are relevant when considering this *Bill*.

### **2.1: Transitional period:**


A transitional period of 12-months to 1 November 2019 was indicated during consultation (pending passage of the *Bill*). The ARA maintains that a 12-month transitional period is insufficient for retailers to adjust to the regulations and should be extended to 18-months.

### **2.2: Communication of expiry dates:**


The ARA is concerned about the practical application of the requirement to print expiry dates directly onto gift cards as outlined in the *Bill*.

Whilst it is possible for retailers to easily hand-write expiry dates on gift cards purchased in-store, a significant majority of gift cards are issued online, or pre-printed ahead of promotions, bulk orders, or corporate purchases. These methods involve pre-printing the expiry period on the back of the gift card as a standard practice. As the proposed regulations state that the expiry period begins from the *date of purchase*, not the date of manufacture, the above examples would not comply, notwithstanding the practicalities of production.

This poses significant cost and administration issues for retailers. The ARA suggests that in order to minimise inconsistencies and promote clarity, the *Bill* should require:





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- That *issue date* is used in place of *expiry date*, with an additional provision that the gift card is valid for a period of three years from purchase clearly noted in terms and conditions.
    - The use of *issue date* allows for the flexibility to extend or honour gift cards which would normally have expired as a customer service.
  - That the issue date (in place of expiry date) must be *communicated in writing* to the customer. This may include the following: written or printed on the back of the gift card, on the gift card carrier, on the receipt, on an attached letter, via email, available upon checking the balance, among others.
    - This definition will provide flexibility for businesses to account for differing circumstances, and cases where gift cards are pre-printed and not issued for some time.


We note that it is already common practice for some retailers to communicate gift card issue dates to customers. As such, the ARA is confident that our proposal will be well-understood by consumers.

### **Summary:**


The ARA continues to be highly engaged on the issue of regulations of gift cards. We broadly agree with the draft form of the Competition and Consumer Amendment (Gift Cards) *Bill* 2018. However, a range of amendments should be considered in order to ensure the new regulations are practical, flexible and easily applicable for businesses.

This is especially important for businesses which have recently adjusted their practices to comply with existing regulations in some states.

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](mailto:heath.michael@retail.org.au).







Kind regards,



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