



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: BLC:DH1b1570973

9 August 2018

Consumer Policy Unit
The Treasury
Langton Crescent
PARKES ACT 2600

By email: consumerlaw@treasury.gov.au

Dear Sir/Madam,

Competition and Consumer Amendment (Gift Cards) Bill 2018

The Law Society of NSW appreciates the opportunity to comment on the Exposure Draft of the Competition and Consumer Amendment (Gift Cards) Bill 2018. We also appreciated the opportunity to meet with your representatives to discuss the proposed reforms. The Law Society's Business Law Committee has contributed to this submission.

Support for key elements of the reforms

The Law Society supports the implementation of these reforms at Commonwealth level to provide national consistency for gift card regulation and certainty for businesses. We also support, in principle, the key elements of the reforms, namely:

- mandating minimum three year expiry dates for gift cards;
- requiring gift cards to display expiry dates; and
- banning post-purchase fees on gift cards (other than fees associated with settling individual purchases using gift cards).

Gift card expiry dates

The proposed options are to disclose 'the day' the gift card expires or to have no expiry date at all (proposed sections 99B(1)(b) & 191B(1)(b)). While the option of having no expiry date is attractive from the consumer advocate perspective, the commercial reality is that the issuer would need to carry over the liability of the unused balance for an indefinite period.

We understand the rationale for requiring gift card expiry dates to be prominently displayed on the card. We also understand this is largely consistent with industry practice and will not cause practical difficulties in the majority of cases. However the requirement to specify a 'day' will present significant operational difficulties for pre-printed, prepaid card stock.

THE LAW SOCIETY OF NEW SOUTH WALES

170 Phillip Street, Sydney NSW 2000, DX 362 Sydney
ACN 000 000 699 ABN 98 696 304 966

T +61 2 9926 0333 F +61 2 9231 5809
www.lawsociety.com.au

It is our understanding that prepaid cardstock (in particular prepaid cards issued via a card scheme such as Visa or Mastercard - i.e. not traditional gift cards) is manufactured and hardcoded five to eight years in advance. The cards have two different kinds of expiry dates: (1) a hard-coded expiry date (at which point the technology will not work anymore) between five to eight years and (2) the expiry date relevant to the consumer's use of the card (currently approximately one year).

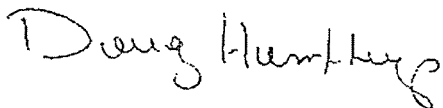
When purchased, the cards are activated in the issuer's ledger and the consumer's expiry date runs from the purchase date. It is possible to electronically adjust that expiry date to three years. We understand that it is not possible, however, to change the hardcoded expiry date or to physically print such a date on the card in advance (stock gets moved around distributors in the five to eight year period). That means that any expiry date on the physical card would need to be written on at checkout by a distribution agent. It is not currently considered feasible to ask such checkout staff to do so.

Unless these practical difficulties can be overcome, we suggest that the requirement to disclose "the day" may be too prescriptive. The legislation could permit the issuer to pre-print on the card words to the effect of "Card expiry 3 years from the date of purchase". The customer can then ascertain the expiry date by calling a customer service number listed on the card (i.e. on the card: "Check your expiry by calling us at XXX') or checking their receipt. We understand, however, that particularly given the nature of a "gift" card and the proposed mandated minimum period, this proposal might not achieve the objective of making the expiry date easily accessible for a consumer.

We understand that Treasury representatives are meeting with the major retailers and consider that this is the appropriate forum for you to consider these issues.

If you have any questions in relation to this submission, please contact Liza Booth, Principal Policy Lawyer, on 02 9926 0202 or liza.booth@lawsociety.com.au.

Yours faithfully,



Doug Humphreys OAM
President