Australian Government
The Treasury

TSY/AU

DECISION REGULATION IMPACT STATEMENT

# GIFT CARD EXPIRY DATES

2018

# CONTENTS

# GLOSSARY OF TERMS

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|---|---|
| ACL | Australian Consumer Law |
| ASIC Act | *Australian Securities and Investments Commission Act 2001* |
| AMPF | Australian Merchant Payments Forum |
| ARA | Australian Retailers Association |
| CCAAC | Commonwealth Consumer Affairs Advisory Council |
| Corporations Act | *Corporations Act 2001* |
| RIS | Regulation Impact Statement |

# EXECUTIVE SUMMARY

## INTRODUCTION

In Australia 34 million gift cards are estimated to be sold each year with an estimated value of $2.5 billion. Gift cards are sold across the economy by national retailers and small businesses. One of the commonly used terms and conditions of gift cards are expiry dates. Of the gift cards sold by these businesses a certain percentage are not redeemed before they expire.

Many consumers experience the disappointment of an expired gift card, the most recent estimated losses from gift card expiry are considered to be in the order of $70 million annually.[1] When a gift card expires before it can be used a consumer experiences the personal detriment from the loss of value on a gift card. Many recipients of gift cards are not aware of the expiry dates for gift cards they are given. In these circumstances those consumers expect their gift cards to last for a reasonable time.

There is currently no uniform national regulation for the minimum length of time a gift card should last. In late 2017, New South Wales (NSW) introduced laws requiring a minimum three year expiry period for gift cards sold in that state. South Australia is also in the process of enacting its own requirements.[2]

This Decision Regulation Impact Statement (RIS) examines options to reform gift card expiry dates to achieve a uniform national approach for all types of gift cards (regardless of their delivery mechanism). There are three options to reduce consumer detriment and improve outcomes for consumers in relation to gift card expiry dates:

- **Option 1** – the status quo
- **Option 2** – prohibition on gift card expiry dates
- **Option 3** – three year minimum expiry dates

Introducing a minimum three year expiry period (Option 3) is the preferred policy option as it has the highest net benefit of the options identified in this Regulation Impact Statement. Such an approach would address the information asymmetry that may be faced by a gift card recipient who is unaware of its expiry date— addressing the key consumer harm caused by expired gift cards.

Businesses and industry advocates expressed strong concerns with Option 2, noting that it was inconsistent with existing standards used in card and point of sale technology; provided for the accumulation of large liabilities; and imposed associated record keeping/legacy system management difficulties. Option 1 is not preferred given overwhelming feedback that a nationally consistent

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[1] Finder, Media Release: Aussies wasting $70 million per year on unredeemed gift cards, 2017, https://www.finder.com.au/press-release-aussies-wasting-70-million-per-year-on-unredeemed-gift-cards

[2] The Fair Trading (Gift Cards) Amendment Bill 2018 was introduced into the South Australian Parliament in May 2018 and is similar to the NSW legislation.

approach to gift card expiry dates is required. With regulation in place in one state, and being progressed in one other, the status quo does not provide a nationally consistent approach.

# 1. THE PROBLEM


**SUMMARY**

Consumers can experience disappointment and a financial loss when a gift card expires. Nationally, there are no uniform requirements for minimum expiry dates on gift cards.

Expiry dates are used on gift cards by companies to limit the ongoing liabilities from gift cards into the future. An expiry date is one of the commonly used terms and conditions that limit the use of a gift card compared to a cash equivalent.

The length of an expiry date on a gift card may vary considerably depending on the preferences of the trader issuing the gift card. Some gift cards can expire in three months and others last several years or do not expire at all. These differences in expiry dates across the economy means that there are no reliable 'rules of thumb' for consumers in determining how long their gift cards may be valid for, leading to consumer complacency, confusion and ultimately, disappointment and financial loss when gift cards expire.

Purchasers of gift cards should gain a clear understanding from the retailer of the gift card what the expiry date will be at the time of purchase, as the length of the expiry period is at the preference of the trader. In 2012, the Commonwealth Consumer Affairs Advisory Council (CCAAC) found that relying on the purchaser of a gift card to adequately disclose the terms and conditions (including expiry dates) to the final recipient is unlikely to result in adequate disclosure. This means that the end consumer if often unaware of the expiry date of their gift card.

Where the purchaser of a gift card does not adequately inform the recipient of the gift card about its expiry date, the recipient would expect the gift card to operate for a reasonable period of time.

Despite gift cards being commonly understood to have expiry dates, the wide range of expiry periods can create confusion around how long a gift card could, at a minimum, be expected to last. Where a business only provides a short expiry period some consumers experience dissatisfaction and detriment from the loss of value on the gift card, if it expires before they would have reasonably expected it to. Nationally there may be, on average, around $70 million lost through gift cards expiring before they can be used.


## THE AUSTRALIAN GIFT CARD MARKET

### What is a Gift Card?

A gift card is a card or voucher that can be exchanged for goods and services. Gift cards can be redeemable at a single business (e.g. an independent beauty salon) or at multiple stores/locations (e.g. a retail chain or a shopping centre). They can be for a fixed price or a particular good or service. They are typically purchased to be given as a gift but may also be retained by the purchaser for their own use.

Over the last year, two state jurisdictions have developed their own gift card definitions. The NSW *Fair Trading Act 1987* currently defines a gift card as 'a card or voucher (in hard copy or electronic form) that is redeemable for goods or services in New South Wales'. A similar definition has been included in the South Australian Fair Trading (Gift Cards) Amendment Bill 2018, which defines a gift card as 'a card or voucher (however described and whether in physical or electronic form) that is redeemable for goods or services in South Australia'.

During consultation, various stakeholders supported a gift card definition similar to that used in NSW or noted that they had already made adjustments to bring themselves into compliance. Stakeholder feedback did not propose that the different types of gift cards included under the arrangements be regulated differently. Consumer groups also supported a gift card definition similar to NSW. A nationally consistent approach to Commonwealth and state/territory legislation is therefore favoured.

## Overview of the Australian Gift Card Market

A gift card is typically a card or voucher that is redeemable for goods or services. There are a range of different types of gift cards and gift card delivery mechanisms. Gift cards can be provided in physical or electronic formats; they can be a simple piece of paper or hard plastic card, or they can be as sophisticated as a mechanism built into a smart phone or a debit/credit card that uses the existing payments system network.

Most gift cards operate by providing a facility where 'store credit' of a particular value is purchased by one consumer to be given to another for use at a specific store or a range of stores. Some gift cards, rather than providing a fixed value, are designed to be redeemed for the provision of a specific service (such as a beauty treatment). Regardless of the type of card, delivery mechanism, or type of business, where the gift card expiry date has not been communicated sufficiently to the end consumer, there is the potential for consumer detriment.

### Types of Gift Cards

There are generally two main forms of gift cards – closed loop gift cards and open loop gift cards.

#### Closed Loop Gift Cards

Closed loop gift cards, also known as 'single store gift cards' are accepted or honoured at a single retailer or group of affiliated merchants (such as a chain of book stores or clothing retailers) as payment for goods or services. They are typically provided either as a fixed dollar amount card or a card for a particular service. Closed loop gift cards do not typically attract administration fees.

Closed loop gift cards are the most common type of gift card in the market.[3] The most up to date data following consultation remains the Australia Retailers Association's (ARA) 2016 estimate of 32 million closed loop gift cards being issued in Australia.[4]

#### Open Loop Gift Cards

Open loop gift cards, also known as 'multi store gift cards' typically rely on the payment system (e.g. use Visa, Eftpos or MasterCard systems) and can be used at a wide variety of retailers that accept or honour cards displaying that network.

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[3] Commonwealth Consumer Affairs Advisory Council, *Gift Cards in the Australian Market*, 2012, page 25.

[4] Australia Retailers Association, Submission to the Senate Standing Committee on Economics inquiry into the Causes and consequences of the collapse of listed retailers in Australia (ARA Senate Submission, 2016), 2016, page 5.

Multiple use store cards provide consumers with more variety in their purchasing decisions and allow them access to a wide range of stores. In 2016, the ARA estimated that 2 million open loop gift cards were issued in Australia, which remains the most up to date estimate following consultation.[5]

More recently, digital providers have developed online platforms for consumers to purchase digital gift cards. These online platform gift cards include facilities such as iTunes or Google Play gift cards. These cards allow the final recipient of the gift card to load value into their account for that service. That value is then stored by the online platform for use by the gift card recipient.

### Temporary Marketing Promotion Gift Cards

Some companies offer gift cards for promotional purposes. These can be closed or open loop cards. Promotional cards are typically given by the company for free (or at a significant discount) as a goodwill gesture or to honour a commitment under a loyalty program. They may also be offered by businesses during low demand periods to increase short-term demand for goods and services. For example, a confidential submission provided the example of promotional gift cards given out for free at a shopping centre, to be spent on that day at the shopping centre.

Promotional gift cards often have an expiry period. While these promotional cards are gift cards in a general sense, they are different from standard closed and open loop gift cards in that they are not purchased by one consumer to give to another. Rather, they are a gift from a company to a recipient for other purposes. The short expiry period ensures that there is not a significant ongoing liability from a particular promotion and may align with the need to clear out stock.

## Gift Card Purchasing

Most consumers in Australia have participated in the gift card market, either having purchased a gift card for another person or having received a gift card. The 2016 Australian Consumer Survey (conducted as part of the ACL Review) identified that in the preceding two years, 69 per cent of consumers reported purchasing a gift card.[6] This is consistent with a survey conducted by Retail Decisions Australia for the 2012 CCAAC report that identified that 69 per cent of consumers had purchased a gift card in the last year.[7]

In their submission to the 2016 Senate Inquiry to the Causes and Consequences of the Collapse of Listed Retailers in Australia, the Australian Retailers Association (ARA) cited research noting that 71 per cent of gift cards sold are bought as birthday gifts and 16 per cent are purchased as Christmas gifts. Feedback from stakeholder consultation confirmed that businesses typically order most of their gift cards several months in advance of the Christmas period to ensure that they have sufficient cards on hand to meet demand at that time.

## Size of the Market

There is limited information available on the size of the Australian gift card market. In 2016, the ARA and the Australian Merchant Payments Forum (AMPF) estimated the size of the gift card market in

[5] Ibid.

[6] The Australian Treasury on behalf of Consumer Affairs Australia and New Zealand, Australian Consumer Survey 2016, May 2016 ('Australian Consumer Survey'), page 39.

[7] Commonwealth Consumer Affairs Advisory Council, Gift Cards in the Australian Market, 2012, page 27.

2014 to be over $2 billion.[8] The ARA is Australia's largest industry association, representing a $310 billion retailer sector. In 2012, ARA estimated its members represent approximately 68 per cent of the gift cards in the Australian market.[9] In 2016, CHOICE estimated that Australians spend up to $2.5 billion gift cards on gift cards each year.[10] Anecdotal evidence provided during industry consultation suggested that the market was now above $2.5 billion, but specific data was not available.

Similarly, there is no measure of the number of gift cards sold in Australia. In 2016, the ARA and AMPF estimated that there were likely to be 34 million gift cards sold each year. Of these 34 million cards, 24 million would be issued by ARA and AMPF members.[11] Additionally for cards issued by ARA and AMPF members the average spend is $56 and each card is used 1.4 times.[12]

In 2012, the CCAAC report was unable to identify the number of businesses that sold gift cards in Australia. The exact number of businesses that sell gift cards remains unclear. Feedback from business stakeholders confirmed that gift cards are commonly used by all types of business from small business to large corporate entities. While the majority of gift cards are sold through ARA and AMPF members there are a significant number of businesses outside the ARA and AMPF who sell gift cards. CCAAC in 2012 also identified that the majority of gift cards were likely to have been sold by medium and larger businesses.[13] While exact figures are unavailable, stakeholder feedback indicates that this remains the case.

In terms of trends in the growth of gift cards, one confidential submission commented that digital gift cards are growing at a faster rate than physical gift cards due to the convenience to consumers and lower distribution costs, benefiting businesses directly and potentially reducing the need for fees for consumers. Other confidential feedback suggested that gift card growth in the online retail sector was in the order of 14 per cent per annum.

From consultation, another potential growth area has been in third party gift card operators that manage gift card programs for client businesses. For example, the Anystore Gift Card Submission notes that it provides: customised gift cards for a range of businesses, a consumer hotline printed on the card, a website for transaction history and card balance checks. This segment of the market has a mix of businesses offering a range of services.

## Gift Card Schemes

The gift card market has multiple participants in addition to consumers purchasing gift cards or gift card recipients. There are a number of participants in the gift card market:

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[8] ARA, Submission to the Senate Standing Committee on Economics inquiry into the Causes and consequences of the collapse of listed retailers in Australia (ARA Senate Submission, 2016), 2016, page 5.

[9] Australian Retailers Association Submission to CCAAC Issues Paper, 2012, p. 3.

[10] CHOICE, Gift Card Buying Guide: The gift card that stops giving, 2016, https://www.choice.com.au/shopping/shopping-for-special-occasions/christmas-birthdays-and-gifts/buying-guides/gift-cards.

[11]ARA, Submission to the Senate Standing Committee on Economics inquiry into the Causes and consequences of the collapse of listed retailers in Australia (ARA Senate Submission, 2016), 2016, page 5.

[12] ARA Senate Submission, page 5.

[13] CCAAC, Gift Cards in the Australian Market, 2012, page 35.

- Gift card recipients (the end consumer) are given and spend the value stored on the gift card. Gift card recipients experience the detriment of an expired gift card.

- Consumers who purchase gift cards are a participant in the market. Purchasers of gift cards are presented with terms and conditions of a gift card when they purchase a gift card and are responsible for providing this information to the end consumer.

- Gift card issuers are the store selling the gift cards and are responsible for honouring the redemption of issued gift cards. This may be the store, shopping centre or bank.

- Gift card program operators are third parties that build and develop the networks needed to facilitate the use of gift cards. The two biggest gift card program operators in Australia are Blackhawk Network and Wex Australia. Blackhawk Network administers programs for over 100 major brands in Australia,[14] while Wex Australia administers 220 programs across 120 major brands in Australia and New Zealand.[15]

- Consultation identified that a number of businesses facilitate the operation of gift card schemes including: payment clearing service providers (e.g. VISA, MasterCard and Eftpos); authorised deposit taking institution involved in managing companies' gift card liabilities; a limited number of gift card manufacturers; and program operators that manage the 'day-to-day' aspects of gift card programs on behalf of client businesses.

- Secondary market participants are involved in the trading or distribution of gift cards. No data was available from consultation, so it is unclear the extent to which a secondary market for gift cards operates in Australia, though there are dedicated secondary markets such as CardHub.[16] In the Unites States,[17] there is a strong secondary market for gift card resale where consumers can recoup up to 90 per cent of the original value of an unwanted gift card.[18]

During consultation, a range of the participants identified above were either involved in discussions or provided submissions, however, data on the number of gift card scheme operators in Australia and the proportion of gift cards in Australia administered by third parties was not available.

[14] Blackhawk Network Website, http://www.blackhawknetwork.com
[15] Wex Australian Website, http://www.wexaustralia.com
[16] For example see, https://cardhub.com.au/
[17] CCAAC, Gift Cards in the Australian Market, 2012, page 26.
[18] Gift Granny, Most Resold Cards, 2017, https://www.giftcardgranny.com/blog/most-resold-gift-cards-2017/

# CONSUMERS EXPERIENCE DETRIMENT WHEN THEIR GIFT CARD EXPIRES BEFORE IT CAN BE USED

## Gift Cards Typically Expire

Expiry dates are one of the common terms and conditions that consumers are likely to encounter on a gift card. An expiry date is a representation that a trader will not honour the gift card unless it has been redeemed by the recipient of the gift card before the stated date. Many businesses will continue to honour gift cards after the expiry date to ensure customer satisfaction and build customer loyalty ('the grace period').

### Expiry's role in managing liabilities

Businesses use expiry dates on gift cards to avoid the build-up of undeclared liabilities, as card issuers are required to record an ongoing liability from gift cards. Maintaining this liability prevents businesses from claiming the balance of expired gift cards. For example, the Village Roadshow Submission noted that for open loop gift cards the cash associated with this liability is held in escrow by an Authorised Deposit Taking Institution (ADI) and is only remitted when the cards expire. If expiry dates are removed, businesses may be required to maintain this liability indefinitely in the event that the gift card would eventually be redeemed. Further, a confidential submission noted that an ADI did not usually pay interest to clients on these deposited funds making them unavailable for investment for an indefinite period.

In managing their liability, businesses may be able to estimate the portion of the liability not likely to redeemed by customers (breakage) and write it off. However, one retailer consulted noted that if the estimate was inaccurate, such that a higher portion of value was redeemed by consumers, the difference may subsequently appear as a financial loss.

### Expiry's role in funding schemes

A related issue raised during consultation was how expiry dates relate to the cost of funding gift card schemes. For example, the Australian Retailers Association submission notes that where breakage occurs those funds are commonly used by businesses to cover administrative costs such as accounting and administration, card issuance and replacement, marketing, staff training and fraud management.

If a gift card issuer has their cards operated by a third party gift card scheme they may face fees from that operator for managing an ongoing liability.[19] Breakage is one of the ways open loop scheme operators said they funded schemes:

> *The cost of manufacture, encoding and processing open loop cards also far outweighs the cost of a straight forward retail gift card. Hence, the small element of breakage is important in helping to fund these programs. Moreover, there is not the incremental value to the retailer of up spend in-store upon redemption of a closed loop gift card. Inclusion of open loop gift cards within a mandatory expiry date scheme may price these cards out of the incentive market.* (Village Roadshow Submission)

[19] Commonwealth Consumer Affairs Advisory Council, Gift Cards in the Australian Market, 2012, page 33.

While such an approach provides a niche opportunity for businesses, a gift card is usually given with the intention that the end recipient will use the value of the gift card. In this context, reliance on breakage to fund schemes may not be a fair or efficient approach.

## How expiry dates are a requirement of open loop schemes

Many open loop gift card schemes run through the Visa, MasterCard and Eftpos payment clearing systems. These systems have rules that require cards to have an expiry date, emboss it on the card and encode it on the magnetic stripe. In this regard, a confidential submission commented that:

> *… it is a technical requirement that cards using the Australian POS [Point of Sale] network must have an expiry date, as terminals will reject cards that have no expiry date. This expiry date is encoded onto the magnetic stripe, which is read by the merchant's terminal. If the expiry date has passed, the terminal will decline the transaction. It is not possible to make "back office" changes to allow use past the expiry date, as the date is encoded onto the physical card itself.*

For some businesses this creates a maximum expiry period of five years. Visa's Submission noted that this requirement supports card validation and ongoing compliance with network security standards. In addition, the technology in the card may degrade after the five year period rendering a card unusable.

Consultation with payment system operators identified that if no expiry was adopted they would no longer be able to offer these products to the market. This would significantly reduce the number of cards operating in the system.

## Expiry dates and legacy systems

One confidential submission noted the potential for additional record keeping, data management and data integrity costs if gift cards did not expire. An example provided was a small number of old paper vouchers with no expiry date that were being redeemed in small numbers each year and that required manual processing. The submission noted the potential for the form of card offerings to change over time in response to changes in technology and consumer behaviour, which may result in existing systems and procedures for the management of historical card data and multiple legacy systems having to be maintained into the future.

Another confidential submission noted that it would be difficult for gift card issuers to wind up defunct programs, as gift cards are typically purchased anonymously (and by their nature, often gifted to a recipient other than the purchaser), and therefore there will be no way for the gift card issuer to contact gift card recipients and terminate the gift card (e.g. by refunding the balance of funds on the card).

## Expiry dates and specific services

Many businesses use expiry periods, especially service businesses, to ensure that they are able to supply the services described. For service businesses a gift card often refers to a specific service and does not state a particular value figure that the gift card is worth. Some examples provided during consultation included: vouchers issued for specific experience events (such as a jet boat ride), a specific live performance event or show (e.g. a concert, musical season or festival) or a season (a time limited theatre or festival season), and accommodation.

In relation to small businesses, advocates also noted that vouchers with expiry dates are often used as a short term means of managing stock levels.

Many service business costs will change over time, potentially increasing or decreasing, and consequently the value of offering a service would change over time.[20] Without an expiry date, a business may suffer a loss if the cost of providing the service has increased significantly since the gift card was first issued. Consultation identified that this continues to be a reason why service businesses offer shorter expiry periods. For example, the Caravan Parks Association of Queensland submission commented on costs changing over time and noted that *wage costs could easily increase 15 per cent in a 3 year period, which could effectively swallow all profit margin.*

## What expiry dates businesses offer

Retail groups have previously noted that most gift cards in the Australian marketplace have expiry dates of 12 months or longer.[21] A study by NSW Fair Trading found that no cards they sampled had expiry dates of less than a year and that 11 per cent of cards did not have expiry dates.[22] The CCAAC report identified that several factors including size, reliance on recent patronage, whether the issuer is a third party and market power together influence the length of the expiry period the issuer is likely to adopt.

Feedback received during consultation suggested that the majority of gift cards on the market offer 12 months or longer expiry dates, but that practices vary. For example, a survey conducted by the Caravan Parks Association of Queensland identified that: 6 percent of members use expiry dates of less than 12 months; 65 per cent use expiry dates of 12 months; 12 per cent use expiry dates of 3 years; and 17 per cent do not apply an expiry date. Shorter periods were also identified where gift cards related to specific services, such as in the live performance industry.

Larger businesses are more likely to adopt longer expiry periods. These businesses are better placed to manage the risks associated with having longer expiry periods and are more susceptible to word of mouth and repeat trade.

Consumers have expressed a preference for longer expiry dates and competition between businesses is likely to result in longer expiry periods. Anecdotal feedback obtained during consultation suggested that following the NSW changes, national businesses have tended to move to a three year minimum expiry period or longer. The below table summarises analysis undertaken by Treasury to identify a sample of expiry periods from national businesses.

[20] CCAAC, Gift Cards in the Australian Market, 2012, page 34.

[21] See for example page 9 of the ARA and Australian Merchant Payments Forum submission to Gift Cards in the Australian Market Inquiry, 2012: https://static.treasury.gov.au/uploads/sites/1/2017/06/066AustralianRetailersAssociation.pdf.

[22] New South Wales Fair Trading, Operation Fair Trading Results, 2012, http://www.fairtrading.nsw.gov.au/pdfs/About_us/Operation_gift_card_results.pdf

### BOX 1: NATIONAL BUSINESSES GIFT CARD EXPIRY PERIODS

National businesses have typically adopted expiry periods based on what they have determined to be appropriate for their particular circumstances. A range of businesses with a national presence have already, following the NSW law, begun to move to periods of three years or more.

Gift card schemes that have adopted or are adopting three year expiry periods:

- David Jones gift cards.
- Myer gift cards sold from 31 March 2018.
- Westfield gift cards sold from 31 March 2018.
- Google Play cards.
- Coles gift cards sold from 31 March 2018 have four year expiry dates.
- Rebel Sport gift cards.
- Priceline gift cards sold from 26 March 2018.
- Qantas gift cards sold from 31 March 2018.
- Virgin Australia gift cards sold from 31 March 2018.
- OPSM gift cards.
- Dymocks gift cards sold from 31 March 2018.
- Harvey Norman gift cards.

Gift card schemes with no expiry dates:

- iTunes vouchers.
- JB Hi-Fi gift cards.
- Woolworths gift cards sold from 31 March 2018.
- Bunnings gift cards.
- The Good Guys gift cards.
- Lowes gift cards sold from 31 March 2018.

Gift card schemes with shorter expiry dates:

- A range of theme and entertainment parks have a 12 month expiry period.

## Consumer Detriment

In 2012, CCAAC was able to identify that there were instances of consumer detriment from the application of expiry dates. CCAAC however, came to the conclusion that there was not any overwhelming evidence of systematic consumer detriment with respect to the application of expiry dates. In making this finding, CCAAC noted that there was merit in continuing to monitor if new evidence emerged.

The detriment encountered by consumers comes from an expired gift card. A 2017 Finder survey of 2,005 people estimated that 2.6 million Australians lost money from a gift card expiring in the previous two years, with an average loss of $54.[23]

Many consumers also experience disappointment and embarrassment when they seek to redeem a gift card in a store that has expired. When a gift card expires the value stored on that card transfers from the holder of the gift card to the issuer of that card.

CCAAC noted that there were issues with the disclosure of terms and conditions associated with gift cards. Gift cards are an unusual product in that the purchaser of the product is not usually the same as the final recipient of the gift card. Typically where there are terms and conditions these can be explained at the point of sale. The CCAAC report noted that it was unrealistic to assume that the transfer of this information (from the purchaser to the recipient) would always occur.[24]

Where terms and conditions are not disclosed or passed on to final recipients, they have an information asymmetry. Consultation feedback suggested that there are typically good disclosure practices on gift cards that reduce the information asymmetry related to the provision of information to consumers, but not consistently applied. This is supported by a NSW Fair Trading study, which found that 26 per cent of gift cards did not have the expiry date on the card (or the combination of the issue date and expiry date period).[25]

These differences in expiry dates across the economy means that there are no reliable 'rules of thumb' for consumers in determining how long their gift cards may be valid for, leading to consumer complacency, confusion and ultimately, disappointment and financial loss when gift cards expire.

While there is evidence to suggest that the revenue received by businesses from expired gift cards partly funds the costs of operating gift card schemes, it is not necessarily fair that consumers who are unable to use their cards prior to expiry cover the costs associated with running gift card schemes. In effect those who do not benefit from the use of a gift card cover the costs of those that do benefit.

## Possible Scale of Detriment

The term 'breakage' is often used to refer to gift card balances that go unredeemed. Breakage represents the transfer of welfare from the consumer to the gift card issuer. Estimates of breakage rates in the Australian gift card market differ considerably between consumer and industry groups and it is unclear which estimate is more reliable.

- In 2016, the ARA and AMPF estimated that breakage in Australia is 3 per cent (on historical figures from 2014). Three per cent of the total gift card market, if valued at $2 billion, equates to $60 million. The breakage rate from the ARA and the AMPF does not however indicate the percentage of consumers who experience problems with gift card redemption.

- CHOICE's 2016 research found that 35 per cent of CHOICE members reported having a gift card expire. CHOICE's sample for this study however may not be representative of Australia as a whole.

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[23] Finder, Media Release: Aussies wasting $70 million per year on unredeemed gift cards, 2017, https://www.finder.com.au/press-release-aussies-wasting-70-million-per-year-on-unredeemed-gift-cards

[24] CCAAC, Gift Cards in the Australian Market, 2012, page 30.

[25] http://www.fairtrading.nsw.gov.au/pdfs/About_us/Operation_gift_card_results.pdf.

- The 2017 Finder market research survey estimated that of their sample 14 per cent of respondents had let funds expire in the last two years. The Finder study also found that consumer losses from expired gift cards were valued at $142 million in the last two years (or $70 million per annum).

The total quantum of losses from expired gift cards described above remains the most up to date data following consultation. Similar to previous inquiries, industry groups have stated that there are low levels of losses across the economy. Meetings with individual industry stakeholders identified that breakage is very low for some schemes (around three per cent on average), but that there can be a large range. At the higher end of the range, one stakeholder cited a figure of between 15 and 20 per cent. The 3 per cent figure that was estimated in the Consultation RIS may have been conservative and linkages to the existing expiry term may be important.

In 2012, the CCAAC report noted information from retailers that the majority of gift cards are used within three months of purchase.[26] In 2016, the ARA noted that longer expiry periods may, in turn, result in lower redemption rates for gift cards that could be counter-productive for consumer welfare. In submissions to the 2012 CCAAC report, retailers who offered an expiry period of 24 months or longer noted that it was rare for a gift card to be redeemed sometime between 12 and 24 months after being issued.[27] Submissions received from two individual businesses during the consultation process for this review suggest that redemption does occur between 12 and 24 months, but at a slower rate than the first 12 months.

[26] CCAAC, Gift Cards in the Australian Market, 2012, page 32.

[27] CCAAC, Gift Cards in the Australian Market, 2012, page 77.

# 2.POLICY OBJECTIVE

The objective of this reform is to:

- ensure that consumers that purchase and receive gift cards have a reasonable period of time to use the gift card before it expires, leading to a reduction in breakage;
- provide businesses with certainty through a nationally consistent approach to gift card expiry regulation; and
- continue to ensure that there is a viable gift card market that meets the needs of consumers.

The options seek to address the problem of consumer detriment caused by expired gift cards while balancing the impact of any reform on businesses issuing gift cards.

# 3. POLICY OPTIONS AND IMPACT ANALYSIS

**SUMMARY**

There are three options to reduce consumer detriment and improve outcomes for consumers in relation to gift card expiry dates.

To address the problem defined, this RIS explores three options:

- **OPTION 1** – the status quo
- **OPTION 2** – prohibition on gift card expiry dates
- **OPTION 3** – three year minimum expiry dates

## OPTION 1: STATUS QUO

Under this option the status quo is maintained for the regulation of gift card expiry dates. Businesses would continue to determine the periods that they consider to be appropriate for gift card expiry.

Consumer advocates such as CHOICE submitted that the current system outside of NSW is leading to consumer detriment, citing its 2014 research that one in three gift cards expire before being fully used. Given consumers have expressed a preference for longer expiry periods, businesses may choose to compete for consumer spending by providing longer expiry periods or removing expiry periods from their gift cards. Businesses may also continue to allow 'grace periods' for consumers who have gift cards that have expired. The existing law does not, however, nationally regulate minimum expiry periods for gift cards and any conflicts between current and future laws in individual states and territories may result in an additional regulatory burden.

This option is supported by industry advocates such as ARA and the Restaurant and Catering Industry Association, who favour an industry-led voluntary code of conduct. However, the ARA's submission also highlights the need for consistency across Australia, with a view to reducing conflicting compliance regimes between jurisdictions and providing certainty to both retailers and consumers.

The need for national consistency was also raised in the Law Council of Australia Submission, which noted:

> *Option 1 - The preservation of the status quo does not appear to be the most desirable option, as the NSW Government's recent legislative enactment of minimum gift card expiry dates has created inconsistencies between various States and Territories of Australia, an outcome which poses challenges to national businesses and which undermines the national consumer protection framework enshrined in the Australian Consumer Law (ACL).*

### Current and Existing Law

There is no a single national regulatory framework governing gift card expiry dates. Rather, gift cards are regulated by a range of different pieces of legislation.

## Commonwealth Legislation

### Australian Consumer Law and *Australian Securities and Investments Commission Act 2001*

Like all goods and services in the economy, gift cards are regulated by the Australian Consumer Law (ACL) contained within the *Competition and Consumer Act 2010* and the mirror consumer protection provisions of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

These Acts provide generic consumer protections including the prohibitions against:

- misleading or deceptive conduct;
- unconscionable conduct; and
- unfair contract terms.

These pieces of legislation do not include standards for product design and do not provide specific regulations in relation to expiry dates. However, these laws ensure that businesses are not misleading consumers in their terms and conditions.

### *Corporations Act 2001*

The *Corporations Act 2001* (Corporations Act) provides some regulatory coverage to certain types of gift cards.

Part 7.1, Division 3 of the Corporations Act outlines the meaning of 'financial product'. Subdivision B, sets out a general definition that refers to facilities that have a specified 'financial product purpose', which includes 'making non-cash payments'. Section 763D describes what does, and does not, involve 'making non-cash payments'. Section 763D(2)(a)(i) excludes payments made through a facility where there is only one person to whom payments can be made. This means that gift cards that can be used only in a single store are not classed as financial products for the purposes of the Act. Multi-store gift cards, such as 'Westfield' gift cards, are considered to be financial products for the purposes of the Act.

ASIC has given relief from the licencing and disclosure requirements of the Corporations Act for various kinds of non-cash payment facilities, including open loop multi-store gift cards. This relief is contained in *ASIC Corporations (Non-Cash Payment Facilities) Instrument 2016/211*. For gift cards, one of the requirements for relief is that, where the card is subject to an expiry date, appropriate arrangements are in place to prominently disclose the expiry date. That is, there are no restrictions on expiry dates, but they must be disclosed.

### ePayments Code

The ePayments Code is a voluntary code that applies to consumer electronic payment transactions, including ATM, EFTPOS and credit card transactions, online payments, internet and mobile banking and BPAY.

The Code was formerly known as the Electronic Funds Transfer Code of Conduct (EFT Code) which has existed since 1986. While the Code is a voluntary code of practice, most banks, credit unions and building societies currently subscribe to the ePayments Code along with a number of non-banking subscribers.

The Code is relevant to transactions made using gift cards issued by subscribers (as well as to payment transactions made through other facilities, such as debit and credit facilities, online and telephone payment facilities, and reloadable prepaid cards).

For facilities that are not reloadable (which includes gift cards), the Code contains rules specifying a minimum expiry period of 12 months from the date it is activated (unless the holder is entitled to a refund of the unused value on expiry).

ASIC is responsible for the administration of the ePayments Code, including compliance monitoring and reviewing it regularly. As a voluntary code of conduct, any changes to the Code would also be subject to industry consensus.

### State Legislation

#### New South Wales

The *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017* was passed by the NSW Parliament on 18 October 2017, with the new law commencing on 31 March 2018. The new law introduced a mandatory three year minimum expiry date for gift cards and gift card vouchers sold to a consumer in NSW, as well as a ban on post-purchase fees. In NSW, upfront fees are permitted but post-purchase fees are not.

Under the law, the three year expiry period begins from the date a gift card is sold to a consumer. Businesses can choose to apply an expiry period longer than the three years or no maximum expiry period. All gift cards sold in store or online are subject to the new law. However, there are some exclusions to the law, such as:

- some open loop systems (reloadable prepaid gift cards that can be spent at any store, examples of this include VISA prepaid credit cards);[28]
- online gift cards (to the extent that they are not sold to a NSW consumer); and
- some gift cards sold for particular goods and services.[29]

In response to the law many national retailers have implemented consistent national minimum expiry dates.

#### All Other States and Territories

All other state and territory jurisdictions in Australia do not currently have specific gift card laws. South Australia, however, is in the process of enacting its own legislation through the *Fair Trading (Gift Cards) Amendment Bill 2018*. The Bill takes a similar approach to the NSW legislation, in seeking to legislate three year minimum expiry periods and a ban on post purchase fees. Regulations exempting certain types of cards will also form part of the arrangements if the Bill is passed into law.

## Voluntary 'grace periods'

Expiry dates on gift cards indicate that a business is only guaranteeing that they will honour the commitment on a gift card for a specific period of time. However, many businesses offer 'grace

[28] Non-reloadable prepaid gift cards are to be included in the NSW scheme form 1 October 2018.

[29] The full list of NSW exceptions are set out in Regulation 23A of the *Fair Trading Regulation 2012*.

periods' that allow a business to still honour the gift card after it expires. 'Grace periods' can provide flexibility for businesses in accordance with their customer service policies. These policies can reduce the risk of customer dissatisfaction and can be used to reduce the risk of losing repeat customers or receiving negative customer feedback in relation to a business's gift card policy. Any grace period is at the discretion of the business issuing the card, with some businesses consulted advising that they offer grace periods as short as one month.

## Impact analysis for Option 1

### Impact on Businesses

If the status quo is maintained, the current laws would continue to operate. This approach is not, however, cost-free. With State governments already taking action on gift cards, maintaining the status quo would involve costs of multiple overlapping regulatory frameworks at a state and territory level. Businesses that operate in multiple jurisdictions would also have costs associated with maintaining multiple systems for managing gift cards with different expiry dates to comply with the different regulatory frameworks. Many national businesses are already incurring the costs of transitioning to longer expiry terms to avoid this issue.

Since the introduction of the NSW reforms, South Australia has introduced legislation in similar terms. Stakeholders noted the similarity between these regimes, but were concerned that other states and territories may move to introduce conflicting regulation. For example, the Law Society of Australia submitted that:

> *The NSW Act has extraterritorial application such that all businesses suppling to consumers in New South Wales, irrespective of their location, are bound by the NSW Gift Card Laws. … If other States or Territories were to introduce similar laws without guidance at a federal level, even a minor difference to the NSW Gift Card Laws might cause compliance difficulties for businesses operating in different jurisdictions or online*.

### Impact on Consumers

Under this option a small percentage of consumers will continue to experience losses from gift cards expiring. While businesses may offer grace periods, there will not be a minimum period that a consumer would reasonably expect a gift card to last. Consumers advocates indicated that under the status quo, confusion would grow with the introduction of state based regimes for regulation of gift card expiry dates.

### Net impact

Maintaining the status quo will result in different States and Territories having different minimum expiry dates for gift cards. This will create confusion for businesses that operate in more than one State or Territory and also for consumers, who may be unaware that the gift cards have different minimum expiry dates across Australia. Given that Option 1 does not address the consumer harm associated with gift card expiry and creates confusion for business as a result of a lack of national consistency, it is not the preferred option.

| BENEFITS | COSTS |
|---|---|
| • Businesses will be able to continue to set expiry periods that align with their business needs. | • Some consumers will continue to experience losses from expired gift cards. |
| • Businesses continue to compete through offering longer expiry periods in line with consumer preference. | • Consumers may continue to be unaware of ‘grace periods’ offered by businesses. |
| | • There is no nationally consistent approach to gift card expiry, with businesses having to comply with different regulatory frameworks depending on the state or territory in which the gift card is issued or (for online transactions) where the purchaser resides. |

## Compliance Costs

Maintaining the status quo would represent no change to the current regulatory environment. However, many national businesses are choosing to adopt longer expiry periods for their gift cards in response to the NSW gift card law. Any differing requirements that develop at the state and territory level (such as between existing NSW law and forthcoming South Australian regulation) may have a cost to businesses operating across those borders (to understand the laws applicable to individual transactions and to ensure that those transactions comply with laws in relevant jurisdictions).

Therefore, at present there are no additional compliance costs associated with maintaining the status quo, but there may be in the near future. The increase in consumer confusion and business uncertainty will have an unquantifiable negative impact for consumers and businesses.

# OPTION 2: PROHIBITION ON EXPIRY PERIODS

Under this option, the use of expiry dates would be prohibited, giving consumers the ability to use their gift cards well into the future.

A prohibition on the use of minimum expiry periods would overcome the problem of consumers encountering the detriment from an expired gift card because the gift card would always be valid. By removing expiry dates, consumers would no longer lose the value stored on a gift card from that card expiring. If implemented, this option would create an inconsistency between Commonwealth legislation and existing NSW legislation. However, if agreed to by Consumer Affair Ministers, Option 2 could be adopted nationally.

## Practical difficulties

Submissions received through the consultation process have highlighted some practical difficulties with prohibiting the use of gift card expiry dates. For example, the Law Council of Australia noted the potential for difficulties in processing very old and damaged gift cards. Other submissions noted the limited life span of plastic cards, such as magnetic stripes that last three to four years. In this regard, one confidential submission noted:

> *The removal of expiry periods will pose a number of operational challenges for businesses in the event consumers seek to redeem these cards after this time period as cards may no longer function as intended. This will require businesses to replace the Gift Card at the businesses expense. There is also a possibility this cost may be passed on to consumers.*

Similarly, many open loop gift card schemes run through the Visa, MasterCard and Eftpos payment clearing systems and these systems have rules that require cards to have an expiry date. Further, Australian Point of Sale terminals are designed to reject cards that have no expiry date. Visa's Submission noted that this requirement supports card validation and ongoing compliance with network security standards.

Some advocates suggest that the costs for small businesses of complying with multiple overlapping regulatory frameworks that evolve over time may act as a deterrent to issuing gift cards. For example, the submission from the Australian Small Business and Family Enterprise Ombudsman noted that:

> *Small businesses will not be able to compete with large national businesses who have the depth of resources to issue gift cards with no expiry therefore circumventing the need to monitor legislative requirements across jurisdictions.*

One confidential submission noted the potential for the form of card offerings to change over time in response to changes in technology and consumer behaviour, which may result in existing systems and procedures for the management of historical card data and multiple legacy systems having to be maintained into the future.

Another confidential submission noted that it would be difficult for gift card issuers to wind up defunct programs, as gift cards are typically purchased anonymously (and by their nature, often gifted to a recipient other than the purchaser), and therefore there will be no way in which the gift card issuer could contact gift card recipients and terminate the gift card (e.g. by refunding the balance of funds on the card).

A further confidential submission suggested that a prohibition on expiry dates would require businesses to effectively contract with cardholders for an indefinite period. The submission also noted that third party gift card scheme operators may impose fees and other contractual obligations on gift card issuers for maintaining an ongoing program and that maintaining indefinite contracts between those parties (scheme operators and card issuers) was not commercially feasible.

Feedback during consultation also reflected that costs had already been incurred by businesses in adopting three year minimum expiry periods to comply with the regulatory arrangements in NSW. For example, the Shopping Centre Council of Australia's submission cited staffing costs (such as costs associated with staff ensuring compliance, changes to online material, liaison with participating retailers, external legal advice costs, and destruction and reprinting of cards).

## Accounting for Liability

In the 2012 CCAAC report, the issue of managing liability was one of the major factors highlighted as to why businesses use expiry dates. Blackhawk (a major gift card scheme operator) noted "a contingent liability needs to be maintained for gift cards indefinitely as the gift card could be redeemed at any point in the future. This ties up significant funds, audit and compliance costs as well as making these funds unavailable to the economy as a whole as the card issuer cannot reuse the funds on expired cards".[30] Changes to Australian Accounting Standard Board standards may mean that entities are no longer required to maintain contingent liabilities if the possibility of gift card redemption becomes remote.[31]

In consultation businesses of all sizes noted that managing liability is a significant issue. This may have the most significant impact on smaller gift card scheme operators. For example, the Anystore Gift Cards submission notes that no transitional period would be appropriate if expiry dates were prohibited as it could not continue the business under this model. Similarly, Live Performance Australia's submission notes that many of its constituents are dependent on recurrent and project funding from governments, sponsorships and philanthropic donors who scrutinise financial results before making funding decisions.

In addition, carrying liabilities for longer means that there could potentially be a greater pool of liabilities owed by a company in the event of insolvency or bankruptcy. External administrators who deal with insolvent companies treat gift card holders as unsecured creditors. The *Corporations Act 2001* determines the order in which the external administrator has to repay money owed by a company to certain creditors.

## International Approaches

Internationally some jurisdictions have moved to introduce regulation of gift card expiry dates. Canada and the United States are two prominent examples of jurisdictions that have moved to regulate expiry dates.

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[30] Blackhawk, Submission to Gift Cards in the Australian Market Inquiry, https://static.treasury.gov.au/uploads/sites/1/2017/06/074BlackhawkNetwork.pdf, 2012, page 6.

[31] CPA Australia, IAS 37 Provisions, Contingent Liabilities and Contingent Assets Fact Sheet, 2015, page 4 Accessible at: https://www.cpaaustralia.com.au/~/media/corporate/allfiles/document/professional-resources/reporting/reporting-ifrsfactsheet-provisions-contingent-liabilities-and-contingent-assets.pdf?la=en.

### Canada - Ontario

On 1 October 2007, Ontario introduced laws to ban the use of expiry dates and most fees on gift cards bought after that date, to make sure that consumers receive their full value regardless of when they use them. Laws were also introduced to require all terms and conditions to be stated in clear and visible writing for consumers. There are some exceptions to the law, including gift cards for one specific service (for example, a gift certificate for a massage at a spa may come with an expiry date and lose value if not used) and gift cards for charitable purposes are permitted to use expiry dates.

### United States

In 2010, the United States introduced new rules for gift cards that require:

- Money on a gift card cannot expire for at least five years from the date the card was purchased, or from the last date any additional money was loaded onto the card. If the expiration date listed on the card is earlier than these dates, the money can be transferred to a replacement card at no cost.

- Inactivity fees can be charged only after a card has not been used for at least one year, and you can be charged only once per month. But fees may be charged to buy the card or to replace a lost or stolen card.

- The expiration date of a card must be clearly disclosed on the card, and fees must be clearly disclosed on the card or its packaging.[32]

Following the US reforms, the amount of money left on gift cards decreased from US$7 per US$100 in 2008 to less than US$0.75 per US$100 in 2015.[33]

## Post purchase fees

In some international jurisdictions, post purchase fees on gift cards are common business practice. These types of fees can include activation fees, account keeping fees, balance inquiry fees and inactivity fees. In NSW, new legislation to introduce a mandatory minimum three year expiry date period for gift cards also included a ban on post-purchase fees.

During consultation, gift card operators advised that they would consider implementing post-purchase fees if expiry dates were prohibited. Given the potential ongoing costs from managing liabilities and supporting legacy systems (to process gift card payments), if expiry dates were removed, post-purchase fees would serve an important role in maintaining the ongoing viability of the gift card market. A confidential submission, however, noted that there is a limit to the capacity of gift card scheme operators to recover costs from clients through fees, given that contracts with clients would be open-ended and some clients may find gift card schemes to no longer be economically viable.

[32] Federal Trade Commission, Gift Cards, 2011, https://www.consumer.ftc.gov/articles/0182-gift-cards

[33] CEB, Gift Cards State of the Union, 2015, https://www.cebglobal.com/financial-services/tower-group/gift-cards.html.

## Grandfathering Arrangements

Under this option, gift cards that are currently in circulation (already sold) would not be covered by any new laws. Gift cards in circulation would continue to operate according to their existing expiry date arrangements. The gift card industry noted that for products in the market it is not possible to alter the expiry date on a gift card after it has been sold. This is particularly relevant in open loop schemes where the expiry date is embossed on the card and encoded on the magnetic strip and chip.

## Impact analysis for Option 2

### Impact on Businesses

Businesses will need to determine if they will be required to change their systems to remove expiry dates from gift cards. For retailers that rely on physical gift cards or certificates, their physical stocks of gift cards may need to be updated to remove expiry dates, or the business may provide an additional notification to consumers that the expiry date on their pre-printed gift card can be ignored. In addition businesses will be required to identify mechanisms through which they can maintain these payment systems into the future. As such, there may be a one off cost to businesses in replacing their stock of gift cards and designing new cards. For retailers that rely on electronic systems to deliver their gift card program, IT systems may need to be updated to allow for the removal of expiry dates.

In the case of open gift card loop schemes that operate through the Visa, Eftpos or Mastercard payment clearing systems, the rules of those systems require the placement of expiry dates on cards.[34] Gift cards would therefore not be compliant with those rules. The system owners would then need to consider if and how they could amend their rules while still achieving card validation objectives and maintaining security standards. If the rules were not amended, this would reduce businesses ability to offer open loop gift cards and consumers choice to select an open loop scheme.

For all businesses, staff will require training regarding gift card expiry policies and accounting systems will also need to be investigated so that businesses can determine how they will handle gift card liability if expiry dates are removed. In the case of businesses that operate gift card schemes on behalf of clients, these businesses will need to review each existing client arrangement and work with clients to make adjustments to non-compliant schemes.

As prohibiting the use of expiry dates will have the effect of preventing gift card breakage, retailers and gift card scheme operators would no longer be able to take ownership of the funds available from unredeemed gift cards. In the US, dormancy fees and card issuing fees are common practices, card operators in Australia may seek to introduce these fees to cover the costs of operating a gift card scheme.[35] In NSW, post-purchase fees are prohibited. Businesses will either have to absorb these fees or pass these fees on to consumers through increased prices for goods and services.

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[34] Such cards must also prominently disclose the expiry date to obtain relief from the licencing and disclosure requirements of the *Corporations Act 2001* in accordance with the *ASIC Corporations (Non-Cash Payment Facilities) Instrument 2016/211*.

[35] ARA Senate Submission, 2016, page 10.

### Impact on Consumers

Consumers will no longer need to be aware of gift card expiry dates. Removing minimum expiry periods will ensure that consumers will be able to use a gift card without it expiring. It is anticipated that, in line with the experience in the US, that longer expiry periods (or for this Option, no expiry period) will result in a fall in breakage. While some evidence provided in response to the Consultation Regulation Impact Statement claimed this would not be the case – the vast majority of stakeholders consider that longer expiry periods will reduce breakage. [36]

While the benefit to consumers comes at a cost to business, it would appear reasonable for this transfer to take place as it is not fair for businesses to receive payment for a good or service that they never provide.

Depending on the effect on scheme profitability, gift card scheme operators may introduce new fees that will be passed through to consumers. Card scheme operators may seek to introduce fees into the Australian market that consumers are currently unware of. These fees may reduce the amount of funds available on cards to be spent by consumers and may lead to consumer confusion with a transition from simple free gift cards to more complex gift card schemes.

To the extent that the ban on expiry dates results in consumers holding onto gift cards for a longer period, consumers exposure to the risk of the business that issued the gift card becoming insolvent increases. This could reduce some of the benefits associated with the ban on expiry dates, however, the impact is likely to be minimal.

### Net impact

While this option would benefit consumers, who would no longer have to worry about gift card expiry, it would impose significant quantifiable and unquantifiable costs for business. It is anticipated that Option 3 would have similar benefits to Option 2 for consumers, as evidence from the US market suggests that the introduction of a lengthy expiry period resulted in a significant reduction in breakage. While Option 2 could lead to a nationally consistent approach to gift card expiry regulation, the approach would be different to the current NSW regime, meaning businesses would have to update their systems to comply with the new regime. Given that Option 2 imposes much higher costs on businesses, but only marginal benefits to consumer relative to Option 3, Option 2 is not the preferred option.

[36] For example, the ARA and AMPF noted that their data suggests that the longer the expiry period, the lower the redemption rate becomes. A behavioural study by Suzanne Shu and Avelet Gneezy titled Procrastination of Enjoyable Experiences in the Journal of Marketing Research in 2010 found that subjects tend to procrastinate enjoyable experiences. However, the study focused on much shorter time horizons (up to 2 months) in comparison to the proposals for gift card expiry in Options 2 and 3.

| BENEFITS | COSTS |
|---|---|
| • Consumers will no longer experience breakage from failing to redeem a gift card. | • IT systems changes to allow for longer expiry periods. |
| | • Gift card operators may introduce fees for operating gift card schemes. |
| | • Consumers may be dissatisfied if fees are introduced for gift cards. |
| | • Possible costs to accounting systems to allow for liability from gift cards to be carried for a longer period of time. |
| | • Redesign of gift cards and replacement of gift card stock. |
| | • Consumers may experience confusion if gift cards come with additional terms and conditions such as rules around dormancy. |
| | • Businesses will need to be made aware of the exemptions framework and its application to their business. |
| | • Businesses will need to develop modifications to existing card technology to allow for gift cards with no expiry dates. |

## Compliance Costs

A prohibition on the use of gift card expiry dates is estimated to result in a one-off compliance cost of approximately $138 million and ongoing non-quantifiable costs. These costs are transitional costs associated with IT system changes, accounting system changes, reprinting and redesign costs and staff training costs. There are ongoing costs associated with accounting and managing liabilities. There would also be unquantifiable ongoing costs to businesses of having to maintain legacy gift card payment schemes into the future (even when such schemes have not been used for many years).

# OPTION 3: THREE YEAR MINIMUM EXPIRY PERIOD WITH MANDATORY INFORMATION DISCLOSURE

## Three Year Minimum Expiry

Under this option, businesses who offer gift cards will be required to provide a minimum three year expiry period for gift cards. However, it would not prevent businesses from offering a longer or no expiry period if they choose to do so. This will mean that where a gift card is sold a consumer will have confidence that they will be able to use that card for a reasonable period of time.

While many consumers consider that gift cards should not expire, expiry dates serve an important purpose for some businesses in managing the ongoing liability from gift cards. Some stakeholders commented that three year minimum expiry periods provide an appropriate balance between these interests:

> *… we consider that requiring a redemption period of at least 3 years for gift cards represents an appropriate level of protection for consumers, while balancing the interests of business (given … retailers have the option to offer gift cards).* (Queensland Law Society submission)

A three year expiry period provides businesses the ability to confidently write off the gift card liability at a certain period in time and supports a nationally consistent approach:

> *Setting a fixed period for gift cards nationally will remove uncertainty across borders and allow small business to manage the financial liability within their cash flow*.
>
> *… Consistency not only provides certainty for the consumer but reduces the burden on small businesses to know of, and comply with, variations in law across jurisdictions.*
>
> (Submission from the Australian Small Business and Family Enterprise Ombudsman)

## Mandatory Information Disclosure

While a minimum three year expiry period would give consumers confidence that their gift cards will last for a sufficient period of time to enable them to use them, providing consumers with information regarding expiry remains important. Some gift cards, such as open loop gift cards, are already subject to regulations requiring the disclosure of their expiry date.

Under this option, businesses would also be required to provide expiry date information when they supply gift cards. Ideally the expiry date information should be provided with any information about how to redeem the card, to ensure that the end user, and not just the purchaser, is aware of the expiry date. The provision of this information would be subject to certain requirements such as that the disclosure is made in a way that is prominent and legible. This disclosure will reduce information asymmetries that exist in the gift card market, where the end user of the gift card is not provided with all the relevant information about the card. The submission from the Law Council of Australia noted that:

> *This would also bring all gift cards in line with those that are currently regulated under the Australian Securities and Investments Commission (ASIC) Corporations (Non-Cash Payment Facilities) Instrument 2016/211, which provides that gift cards (such as open loop multi-store*

*cards) must prominently disclose the expiry date and would again ensure national consistency of gift card regulation.*

This disclosure of expiry information will also allow consumers who discover an unredeemed gift card the information they need to identify if the card is still valid.

It is common for businesses to supply expiry date information either on a card, or in connection with its supply. This information is typically written onto a gift card or supplied with the packaging associated with a gift card. For example, a NSW Fair Trading study found that, for 43 per cent of cards, comprehensive disclosures were used (showing the card value; expiry date or combination of issue and expiry date; and terms and conditions appeared on cards; and all applicable fees were disclosed). Further, only 26 per cent did not have the expiry date on the card (or the combination of the issue date and expiry date period).[37]

Prominently disclosing expiry information on gift cards helps to ensure that consumers can easily determine what the expiry date is by looking at their card. Implementing prominent disclosure requirements will therefore formalise existing practices for many businesses and lessen the information asymmetry for gift card holders.

### Post Purchase Fees

Similarly to Option 2, consultation addressed the possible use of post purchase fees for gift cards if three year minimum expiry periods were introduced. Unlike Option 2, most stakeholders did not suggest that they were likely to require post-purchase fees to support their businesses under this model. A three year period provides businesses with a clear point in time that allows them to write off unredeemed gift cards, improving their ability to manage liability.

From a consumer perspective, consultation suggested that post purchase fees charged for managing cards (such as activation, account keeping and inactivity fees) could be a significant and ongoing source of consumer detriment that could affect all consumers who receive a gift card. For example:

> *In our view these fees effectively undercut the benefits of extending mandatory minimum expiry periods.* (The Law Society of NSW submission)
>
> *… if allowed, post purchase fees will be used to erode the value of gift cards for consumers* (CHOICE and Consumer Action Law Centre joint submission)

This option proposes prohibiting most post purchase fees due to the potential for ongoing consumer determent. This would have only limited impacts on the ability of businesses to offer gift card schemes. In the short term, businesses that run schemes for client businesses and who currently rely on up-front fees and breakage to fund costs and margins may choose to exit the market. For these (and other) businesses, it is likely that a smaller amount of breakage would still be available, but would be deferred to the end of the three year period (whereas they may currently access this, for example, after one year).

Although post purchase fees would be banned, upfront fees would continue to be allowed. While both sets of fees could be used to fund the costs of operating a gift card scheme, post purchase fees

[37] http://www.fairtrading.nsw.gov.au/pdfs/About_us/Operation_gift_card_results.pdf.

could also be used as a de facto expiry period (as the funds could erode unless the card is used by a certain date).

While this option bans most post purchase fees, there are some post purchase fees that would not be banned. Specifically, fees relating to the purchase of goods in open loop schemes that operate through the payment system would not be banned. For example, cards relying on the Visa, Eftpos and MasterCard payment clearing systems may incur currency conversion fees (such as when a gift card is used for purchases at an overseas website) and booking fees or surcharges related to the purchase of goods. Such fees would need to relate to the costs of the underlying transaction, a point highlighted by the Queensland Consumers Association submission:

> *Post purchase fees and charges should be prohibited, except for surcharges imposed by retailers for use of cards issued by financial institutions.*
>
> *Any fees and charges at the time of purchase should be no greater than the costs likely to be incurred by the issuers.*

## Transition

Stakeholders expressed strong views that sufficient time be provided to minimise any impacts on businesses. While some stakeholders sought significantly longer transition periods, 12 months was typically identified as sufficient time for businesses to transition to the new arrangements. Twelve months allows the majority of businesses sufficient time to run down existing stock, redesign and reprint gift cards (in line with what stakeholders identified as a typical print run cycle) and redesign and test systems without significant disruption.

A 12 month period reduces the need for businesses to scrap their existing gift card stock (particularly where expiry dates have already been embossed and encoded on card stock), to distribute cards across networks, train staff and inform customers of the changes.

By way of example, one significant organisation estimated a $2 million cost to withdrawing and replacing cards if such a transitional period was not permitted and highlighted the limited number of card manufacturers and processors in the Australian market who would be able to meet short term demand from across the industry. During consultation, one major card manufacturer commented that it was working around the clock on the roll out of new gift cards following the NSW legislation and that they had no additional capacity at this time to facilitate a national change over.

## Impact analysis for Option 3

As previously noted, NSW recently introduced a mandatory minimum expiry period of three years for gift cards and gift vouchers sold to a consumer in NSW. These new requirements came into force on 31 March 2018. Consultation indicates that the transition has gone smoothly for big businesses, but that small businesses are still coming to terms with the new laws. Clarity in the design of the exemptions as well as a longer transition period, than initially flagged, has assisted businesses. The major costs identified with transition have been redesign and reprinting costs.

### Impact on Businesses

Most large national retailers are already offering expiry dates of three years or more. Further, there is a trend among larger retailers to move towards longer expiry dates. It is likely that the impacts of a minimum three year expiry date may be felt more heavily by small businesses, who typically use shorter expiry dates.

Option 3 would result in a nationally consistent approach to gift card expiry regulation, as it would be consistent with the NSW and proposed SA approaches. As such, under Option 3 businesses would not need to maintain multiple systems to manage gift cards depending on where the card is issued. Having a nationally consistent approach would also assist businesses, particularly less sophisticated small businesses, by providing a single set of standards that need to be complied with in relation to gift card expiry. In this context, the additional costs of adopting 3 year minimum expiry periods nationally are likely to be minimised, when compared with not adopting a national approach.

The form of technology supporting a gift card will impact on the costs for businesses of transitioning to a 3 year minimum expiry period. In open loop schemes, many cards have an expiry date embossed on the card (and encoded on the magnetic stripe and chip) that cannot be altered. These would have to be run down or replaced at additional cost. A 12 month transitional period would significantly reduce these costs.

Businesses may also have to change systems to account for longer expiry periods. If gift cards are controlled through an electronic system there may need to be IT changes to accommodate longer expiry systems. Businesses accounting systems may need to be altered to ensure that they are able to carry gift card liability for longer periods of time than at present. Additionally there may be staff training costs if they need to be made aware of the longer expiry periods.

Where the technology used by businesses is less sophisticated, those businesses who currently only provide short expiry periods may need to replace their gift card stock in order to adjust to longer mandatory expiry periods. Similarly, some types of gift cards may have information pre-filled, while other gift cards may simply have a blank space for an expiry date to be filled in. Depending on how the expiry date information is currently presented, this will affect whether or not a business needs to redesign and replace its existing gift card stock.

While there may be costs associated with the provision of expiry date information on gift cards, businesses typically already provide this information, so the costs of changing disclosures are likely to be small. While not all gift cards are currently required to provide gift card expiry information; consultation confirmed that the majority of businesses provide this information with gift cards. This consultation confirmed NSW Fair Trading's prior investigation of gift cards expiry dates.[38]

With more awareness around gift card expiry, it is also likely that more consumers will redeem gift cards. This would result in reduced gift card breakage to gift card issuers and gift card scheme operators. If this breakage can no longer be utilised by businesses when unredeemed, gift card scheme operators may decide to apply fees for issuing gift cards, thereby raising the cost of gift card schemes to businesses. This may also result in a transfer of the costs for gift card schemes from gift card recipients to gift card purchasers. A prohibition on post purchase fees will prevent this loss of consumer welfare, and as businesses do not currently have post-purchase fees on gift cards sold in Australia, banning the use of these fees minimises the potential for regulatory cost.

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[38] New South Wales Fair Trading, Operation Fair Trading Results, 2012, http://www.fairtrading.nsw.gov.au/pdfs/About_us/Operation_gift_card_results.pdf

Retailers and gift card scheme operators may have to wait longer before they can make use of funds associated with unredeemed gift cards. Businesses however noted that three years was a preferable option as it allowed them to clearly identify a point at which they could write off gift card liabilities.

### Impact on Consumers

Consumers will experience the benefit of longer minimum expiry periods. This reduces the likelihood that consumers will face disappointment from expired gift cards in a short period of time. The experience in the US following the introduction of minimum expiry periods is that there was a significant reduction in breakage – Option 3 is anticipated to have a similar impact in the Australian context.

As with Option 2, the benefits to consumers are largely a transfer from business to consumers, however, this appears to be appropriate given it is unfair on consumers for a business to receive payment for a good or service that is never provided.

Currently in the Australian market gift cards are provided for free, unlike in the US. If gift card scheme operators moved to introduce fees for issuing gift cards, to account for a loss in revenue from lower breakage, purchasing gift cards may increase in price. This would increase a cost to consumers purchasing gift cards.

To the extent mandating a minimum three year expiry period results in consumers holding onto gift cards for a longer period, consumers' exposure to the risk of the business that issued the gift card becoming insolvent increase. This could reduce some of the benefits associated with Option 3, however, the impact is likely to be minimal.

### Net impact

Option 3 is the preferred option as it has a higher net benefit than Options 1 and 2.

As with Option 2, Option 3 will benefit consumers and address the problems associated with gift cards expiring before the consumer is able to use the card. However, Option 3 does not face many of the unquantifiable costs and practical challenges that would be incurred under Option 2. For example, existing card technology enables the use of three year expiry dates and would enable businesses to effectively manage their liabilities on an ongoing basis.

While the benefits associated with a reduction in unredeemed gift card balances effectively results in a transfer from businesses to consumers, this outcome would increase fairness for consumers as the benefit currently received by businesses is a payment for a good or service that is never provided.

Option 3 would also result in a nationally consistent approach to gift card expiry regulation and would prevent business from having to transition to a new regime multiple times (i.e. update IT systems to comply with the NSW regime and again for the national regime).

The benefits of nationally consistency will only be realised if the details of the legislative amendments across states are consistent. This will be particularly important when defining a gift card, so that the minimum expiry date applies to a consistent set of gift cards. Consideration will be given to this use in the legislative drafting process.

Option 3 is also preferred over the status quo. While Option 3 involves some short term transition costs, it avoids the ongoing compliance costs and uncertainty for businesses associated with not having a national approach. Option 3 also improves fairness for consumers and will have broader benefits for the market over time by improving consumer outcomes.

| BENEFITS | COSTS |
|---|---|
| • Consumers have lower breakage rates as longer minimum expiry periods provide consumers with more time to use gift cards. | • Increased costs to provide information to consumers on expiry periods. |
| • Nationally consistent approach to gift card expiry regulation. | • Possible IT changes to allow for longer expiry periods. |
| | • Redesign of gift cards and replacement of gift card stock (reduced significantly by a 12 month transitional period). |
| | • Possible costs to accounting systems to allow for liability from gift cards to be carried for a longer period of time. |
| | • Gift card scheme operators may introduce fees for schemes as breakage rates lower. |
| | • Possible price increases to purchasing gift cards as businesses pass on fees. |

### Compliance Costs

A minimum three year expiry period is estimated to result in initial compliance costs of approximately $46 million. These costs are associated with IT system changes, reprinting and redesign costs, accounting system changes and staff training costs. This policy option is also expected to attract ongoing disclosure costs of around $5 million per year. These ongoing disclosure costs are derived from the time taken by an employee to meet disclosure arrangements at the time of sale.

# EVALUATION

Consumers are currently experiencing detriment associated with gift cards expiring before they have the opportunity to redeem the balance on the card and businesses are facing a complex regulatory environment, with different rules in different States and Territories.

The options in this RIS seek to address these problems by:

1. ensuring that consumers who purchase and receive gift cards have a reasonable period of time to use the gift card before it expires, leading to a reduction in breakage;

2. providing businesses with certainty through a nationally consistent approach to gift card expiry regulation; and

3. continuing to promote a viable gift card market that meets the needs of consumers.

The three options outlined in this RIS each achieve some of these objectives to some degree, however, on balance Option 3 most adequately addresses the problem and meets the desired objectives.

In regards to objective 1, both Options 2 and 3 would address this objective by providing a reasonable period of time for a consumer to utilise a gift card before it expires. However, Option 1 of maintaining the status quo would not meet this objective as there would continue to be no minimum expiry periods for gift cards. Evidence from the United States suggests that implementing Option 3 would result in a significant reduction in breakage. Option 2 would certainly provide a sufficient period of time for consumers to use gift cards, as there would be no expiry date.

In regards to objective 2, Options 2 and 3 have the potential to achieve a nationally consistent approach. However, as Option 2 is inconsistent with the current approach in NSW and the proposed approach in SA, many of the benefits associated with national consistency would not be realised under Option 2 as businesses would need to incur compliance costs to transition to their systems to accommodate no expiry period. Option 1, the status quo, would not lead to national consistency, as it would maintain the current piecemeal approach to gift card expiry regulation.

In regards to objective 3, all three options are likely to continue to allow the Australian gift card market to exist. However, Option 2 is likely to present a range of challenges for businesses, such as technical issues associated with the need for an expiry period using certain payment technology and the need to manage liabilities on balance sheets for an indefinite period. These factors suggest that Option 2 could have a negative impact on the gift card market. In contrast, Options 1 and 3 would not face the challenges associated with Option 2.

Option 3 is the preferred option.

| Policy Objective | Option 1 | Option 2 | Option 3 |
|---|---|---|---|
| **Reasonable period of time to use the gift card before it expires, leading to a reduction in breakage;** | No | Yes | Yes |
| **Provide businesses with certainty through a nationally consistent approach** | No | Potential but Inconsistent with NSW | Yes |
| **Promote a viable gift card market that meets consumer needs** | Yes | Yes, but with technical challenges | Yes |

# 4. CONSULTATION SUMMARY

## Process

On 2 May 2018, Treasury released a Consultation Regulatory Impact Statement examining gift card expiry dates in Australia and undertook extensive consultation. The consultation period closed on 30 May 2018. The consultation Regulatory Impact Statement posed a number of questions to stakeholders to assist in better defining the problem and to analyse the costs and benefits of different policy options.

Treasury conducted an industry roundtable with key stakeholders in Sydney on 4 May 2018 and conducted teleconferences with 27 stakeholders over the course of the consultation period. Treasury received 20 formal submissions to the consultation process and 25 informal consumer comments.

## General findings

There was strong support for a national consistent approach to gift card expiry, rather than having separate State laws. While some businesses and business group supported no restrictions on expiry dates and some consumers and consumer advocates supported a prohibition on expiry dates, generally there was support for a three year minimum expiry date.

## Consumers and Consumer Advocates

Consumers and their advocates supported a ban on gift card expiry, noting that expired gift cards represent real financial losses to consumers. One group cited a member survey finding that one in three respondents had a gift card expire before use.

Consumer advocates emphasised that consumers should receive value for the money they have invested and that that value should not be time limited. A nationally consistent 3-year minimum expiry period was seen as an improvement on the status quo and supported as the next best policy option.

Consumer advocates supported prominent and legible disclosures on cards and associated materials of important consumer information, such as the value and the expiry date.

Some advocates sought a ban on post purchase fees for activities such as card activation, account keeping, balance inquiry, and inactivity/dormancy. These fees were noted to undercut the benefits of extending mandatory minimum expiry periods.

## National Retailers and representatives

Most national retailers are already moving to three year expiry dates or no expiry date. In some cases, this change has been promoted by the NSW legislation, in others, it has been a voluntary decision of the retailer for competition and customer service purposes.

National retailers noted that the gift card market is growing and that gift cards are becoming more popular. Breakage rates (unredeemed balances) were noted to be low, in the order of three per cent for some schemes.

National retailers highlighted the importance of developing nationally consistent legislation on gift card expiry to facilitate trade and commerce across borders. They encouraged the Commonwealth to work closely with the States and Territories.

The need to prevent conflicting compliance regimes across jurisdictions was also noted by industry associations. Some industry associations do not support regulation. The ARA and the Restaurant and Catering Industry Association prefer a voluntary code of conduct, while the Caravan Parks Association of Queensland supports three-year minimums as the next best policy option.

National retailers noted the importance of a long transitional period, preferably up to 12 months (some up to 18 months), so that the replacement of cards, update of systems and training of staff could occur in a planned fashion.

Retailers highlighted the large costs associated with implementing a change to gift card expiry dates.

Retailers identified that promotional gift cards were used to stimulate demand for goods services in low demand periods.

## Small Businesses and Small Business Advocates

Small business advocates noted that gift cards and special offers (such as discount vouchers) were important tools used to promote small businesses and to manage stock levels. Most of these were in physical (paper) form.

Some small business advocates acknowledged that there needs to be a balance between the interests of consumers and the interests of small businesses. Some were supportive of a three-year minimum expiry date while others favoured 12 months. National consistency was identified as providing certainty for these businesses and reducing burdens associated with informing themselves of, and complying with, different state laws.

Small business advocates did not support a ban on the use of expiry dates, noting that carrying liabilities associated with gift cards has an impact on small business cash flows. Small businesses are also required to account for the liability until it is expended, which requires them to cover those liabilities with adequate assets.

One small business suggested that 12 months was ample time to use a gift card in its industry and highlighted the need to produce card stocks well in advance to maximise savings on card production. This was noted to create a risk of significant stock loss.

Exemptions for gift cards associated with specific or time limited events were identified to be important to some industries, such as live performance. Advocates also noted that the costs of providing specific goods and services can increase over time and may be delivered at a loss if expiry dates were prohibited. Conversely, advice was provided that the value of the good or service can also devalue for the consumer (such as where an accommodation voucher is for a fixed value and the price of the accommodation increases over time).

One advocacy group sought a transitional period of 6 months to allow changes to be made to accounting systems, budgeting practices, website purchasing processes and physical voucher stock.

## Gift Card Scheme operators

Gift card scheme providers highlighted the variety of uses of gift cards such as customer and staff rewards, prizes, trade incentives and cash back and sampling offers. Some gift card schemes noted that they operate in the business to business market, with none sold directly to individual consumers. These schemes may have shorter expiry periods that commence when the scheme operator sells cards to a business for resupply or gifting, rather than when the end user receives the card. Upfront fees are charged for the initial sale rather than to the end user.

Some scheme providers noted that shorter expiry dates were necessary to the operation of their schemes as, unlike schemes run by retailers, they did not make a margin on sales of goods (one used an upfront fee to recover its costs). Unredeemed balances provided that margin. Scheme operators noted breakage rates of approximately three per cent.

One scheme operator supported various exemptions for payment system cards, business to business cards, cards sold at a discount (as the consumer receives an upfront benefit), as well as marketing and rewards cards. It did not regard a prohibition on expiry dates as being viable for its business and suggested that a three-year expiry period would necessitate charging post-purchase fees and would require a three-year implementation period.

### Payments System Operators

Payment system operators generally support a national uniform approach to any regulation, noting that most gift cards issued in Australia are able to be used nation-wide. One noted that segmented and inconsistent regulation on a state-by-state basis is both confusing for consumers, and administratively and economically burdensome for business.

Some were supportive of a three-year minimum expiry date over other options, provided that the types of cards to be regulated are clearly defined.

Operators also advised that point of sale networks reject cards that have no expiry date. Further, expiry dates are encoded onto the physical card itself and can’t be adjusted.

Some payment system operators noted that post purchase fees can include amounts debited to cards for currency conversion on overseas purchases. Operators also noted that upfront fees make smaller value cards less attractive to consumers.

Operators noted that any consideration of regulatory changes should include how current card stocks would be managed. Stock includes existing cards held by card manufacturers, and stock in stores or offices ready for distribution. One operator suggested a transitional period of two years for most gift card holders to run down stock levels.

# IMPLEMENTATION AND REVIEW

The proposals in this Regulation Impact Statement would be implemented via amendments to the Australian Consumer Law. The Australian Consumer Law is set out in a schedule of the *Competition and Consumer Act 2010* and is applied by each state and territory in the application Acts in each State and Territory. The precise drafting of the amendments would be subject to legal advice on appropriate wording. Under the intergovernmental agreement governing the Australian Consumer Law, the proposed amendments would require a vote of Consumer Affairs Ministers.

Implementing the preferred option (Option 3) would involve:

- mandating minimum three-year expiry periods for gift cards;
- prohibiting post-purchase fees;
  - including fees specific to the operation of cards (such as activation, account keeping, balance checking and inactivity/dormancy fees);
  - excluding fees specific to purchase transactions when consumers use card (such as currency conversion fees, booking fees and payment surcharges);
- requiring that the expiry date be prominently displayed on gift cards in a manner that makes clear that it is the expiry date; and
- consideration of appropriate exemptions.

In order to provide businesses with time to update their systems and run down their stock of gift cards that are not compliant with Option 3, it is proposed that the reforms come into effect around 12 months after legislation to mandate minimum three year expiry dates is made. While some businesses suggested that a longer time period is required, most were supportive of a 12 month transition period.

During the legislative drafting process, consideration will be given to ensure that there is a nationally consistent approach to gift card expiry. For example, there will likely be technical differences in wording in the Commonwealth legislation in comparison to the existing NSW legislation. Care will be taken to ensure that, to the extent possible, similar gift cards are treated in the same manner across Australia.

The Australian Consumer Law is enforced by a multiple regulator model. As such, at the Commonwealth level the new gift card requirements will be administered and enforced by the Australian Competition and Consumer Commission (ACCC). At the State and Territory level, the relevant regulators will be:

- New South Wales — NSW Fair Trading
- Victoria — Consumer Affairs Victoria
- Queensland — Queensland Office of Fair Trading

- South Australia — Consumer and Business Services
- Western Australia — Western Australia Consumer Protection (Department of Commerce)
- Tasmania — Consumer, Building and Occupational Services
- Northern Territory — Northern Territory Consumer Affairs
- Australian Capital Territory — Access Canberra

Treasury, the ACCC and other Consumer Affairs Australia and New Zealand members will monitor the impact of the amendments as part of their ongoing monitoring of the Australian Consumer Law, to ensure the amendments appropriately address the problems identified in this Regulation Impact Statement.