

## NSW GOVERNMENT CLEARLY SICK OF WASTED CHRISTMAS PRESENTS – GIFT CARD EXPIRY LAWS NOW CHANGED

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How many times have you felt elation when you discovered a forgotten gift card in your bottom drawer? You probably received it as a Christmas present, and now you've found it a year later, only to realise moments later that it has expired (cue the crushing disappointment). Well those days might be over, if you live in NSW and do a spring clean at least every 3 years that is.

### The Change

The NSW Government has amended the *Fair Trading Act 1987 (NSW)* by introducing a mandatory minimum expiry period of 3 years for gift cards and vouchers sold to consumers in NSW, with the change coming into effect on 31 March 2018. Note that changes apply to both gift cards and vouchers equally and the use of the expression "gift cards" is for simplicity only. Importantly, the law is a State law, meaning that it extends to NSW only. However, given the size of the NSW market and the costs of printing and advertising different dates in other States, it is very likely that these changes will practically have national reach.

The new changes also include a ban on post purchase administration fees, like activation, account keeping, balance check and similar fees, however, fees associated with payment processing are still allowed (such as overseas transaction fees, booking fees and payment surcharge fees).

Importantly, the changes **do not affect gift cards or gift vouchers sold prior to 31 March 2018**.

### Who is affected?

As above, the changes are NSW-specific, however, they will have an impact on any business that sells gift cards or gift vouchers to consumers in NSW or to consumers that reside in NSW. Again, given printing and administrative costs, many gift card providers will likely choose to apply a "one size fits all" approach, so complying with the NSW laws may see the required changes rolled out nationally.

The main test here is whether the relevant gift card is "sold" to a consumer and whether it was sold in NSW or to a consumer residing in NSW at the time of sale. If the answer to both of these questions is yes, then, subject to some exclusions, the legislation will apply. Importantly, it is irrelevant where the card issuer is located (e.g. it could be overseas or in another Australian State/Territory) in determining whether the legislation will apply; the relevant consideration is if they are selling gift cards in NSW or if they are selling/delivering gift cards to individuals who provide a NSW address.

On a practical level, the scope of the providers impacted by these changes is significant, as any gift card sold in NSW (whether to a NSW resident or a resident of another State/Territory or jurisdiction) and all online sales with delivery to a NSW address, will be caught.

### What is excluded?

Certain types of gift cards are excluded from the expiry date requirements of the new legislation. Generally, any gift card that is not actually 'sold' (e.g. given by a business free with purchase or as part of a loyalty program or a temporary marketing promotion as a bonus to a purchase) will not be subject to the new legislation. In our view, this would include gift cards awarded as prizes in trade promotions, as the gift card is not "sold" as such in that context. In addition, cards supplied in substitution for goods returned to the supplier, prepaid cards

redeemable for phone or internet access, a debit, credit, prepaid travel card or any other similar products supplied by a financial institution will not be subject to an expiry date of 3 years.

Non-reloadable prepaid gift card that uses EFTPOS, Visa or Mastercard or a similar electronic payment system will also be subject to a temporary exemption, until 1 October 2018. However, from 1 October 2018, these cards must also comply with the new laws.

A handy list of the exemptions is also available at the NSW Fair Trading [website](#), or if you would like to discuss them further please let us know.

### **Is there a transition period?**

Yes, of sorts.

Businesses can run down existing stock of pre-printed gift cards until 30 September 2018, however, those cards will be subject to the new legislation. Namely, the expiry period on such cards cannot be less than 3 years and no post purchase administration fees can apply. The business selling the gift card must make this new expiry date clear to consumers; the method is up to the business, but it must be sufficiently clear (e.g. by crossing out an existing expiry date and inserting a new one, updating card Terms and Conditions, etc).

### **Contact us**

If you would like more information about the above changes and how they might impact your business, please get in touch with either of our team below.

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