

## CHANGES TO AUSTRALIAN CONSUMER LAW AND GIFT CARD EXPIRY DATES

By Joni Burns, Solicitor

31 October 2018

In the midst of tumultuous times for Australian parliament recently, you may have missed the far-reaching changes which were introduced to the *Australian Consumer Law (ACL)* and *Australian Securities and Investment Commission Act 2001 (ASIC Act)* on 18 October 2018, to clarify and strengthen consumer protections related to gift cards, product safety and price transparency.

We recently wrote about the increases in maximum penalties for breaches of ACL [here](#). These changes were implemented as a result of the review of the ACL by Consumer Affairs Australia New Zealand (CAANZ) in April 2017, and the latest updates are a further implementation of CAANZ's recommendations. Below we discuss a few of the highly relevant changes which may affect you.

### Gift card expiry date changes extended nationwide

The explanatory memorandum for the *Competition and Consumer Amendment (Gift Cards) Bill 2018* states that estimated losses from gift card expiry in Australia are considered to be in the range of \$70 million annually. So, it's no surprise that the ACL will soon be amended to provide that all gift cards must have a minimum three year expiry period, bringing national law in line with recent changes in NSW and SA (see our article on the NSW changes [here](#)). In addition, the other requirements for gift cards brought in by the new legislation include: a) a requirement for the prominent display of expiry dates on the gift card, and b) a ban on certain "post-supply fees" which include fees related to redemption of the card, which can erode the balance of the gift card over time.

The changes will be implemented from late 2019, at which point businesses will be expected to carry outstanding gift cards on their books for three years and comply with the other requirements, which will combine to require an analysis (and potentially an overhaul) of accounting systems and increased compliance costs.

### Increased price transparency

The change in this space will primarily impact online retailers, and operates over the top of the existing component pricing legislation. The new requirements mean that additional fees or charges associated with **pre-selected product options** must be included in headline prices. This variation is targeted at online retailers, and the strongest example is in the airline industry, where stated ticket prices (under component pricing legislation, the "minimum total price") commonly do not include pre-selected options by the airline such as baggage, inflight meals or carbon offsets. For example, a ticket from Melbourne to Sydney has a headline price of \$500 but when customers elect to purchase the ticket, the ticket is priced at \$510 as it now includes a pre-selected carbon offset for \$10. In this scenario, under the new law, the airline is required to state the headline price as \$510. However, if a ticket price is offered with additional options which are not pre-selected by the airline, the headline price does not have to include the price of the extras. There will be a grace period for compliance of 12 months, however advertisers need to start this compliance process swiftly so as not to be caught out.

### Increased investigative powers regarding product safety

The powers of the Commonwealth Minister for Competition Policy and Consumer Affairs and the Australian Competition and Consumer Commission (ACCC) have been broadened to enable them to obtain information about unsafe products from third-party suppliers, whereas previously they could only require suppliers of the product to do so. The practical implication of this is that

regulators will be able to issue disclosure notices regarding product safety information to overseas suppliers, other traders, test laboratories, safety consultants and consumers who have purchased or been injured by the hazardous product.

### **What does this mean for you?**

If your business or that of your client/s provides gift cards, displays prices online with pre-selected options, or produces products with safety risks which could be deemed unsafe it is important to be across these changes and make the necessary alterations to processes and procedures as soon as possible. We note that whilst there is a 12 month transition period for changes to gift cards and online price transparency, the amendments to product safety investigations have immediate effect.

### **Contact us**

If you would like further information on how these consumer law changes impact you or your business, please contact one of our experts below. We can provide tailored legal and practical advice to assist you with compliance with Australian Consumer Law and the ASIC Act.

#### **Joni Burns**

(03) 9907 4308

[joni.burns@anisimoff.com.au](mailto:joni.burns@anisimoff.com.au)

#### **Clint Fillipou**

(03) 9907 4302

[clint.fillipou@anisimoff.com.au](mailto:clint.fillipou@anisimoff.com.au)



[www.anisimoff.com.au](http://www.anisimoff.com.au)



<https://www.facebook.com/AnisimoffLegal>



<https://twitter.com/AnisimoffLegal>



<http://www.linkedin.com/company/anisimoff-legal>