



1 March 2012

CCAAC Gift Card Review
C/- The Manager
Consumer Policy Framework Unit
Infrastructure, Competition and Consumer Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: CCAAC@treasury.gov.au

Dear Sir/Madam,

Issues Paper - Gift Cards in the Australian Market

I am pleased to enclose a submission prepared by the Australian Consumer Law Committee of the Legal Practice Section of the Law Council of Australia on *Issues Paper - Gift Cards in the Australian Market*.

Due to time constraints this submission has not been considered by the Directors of the Law Council of Australia.

Yours sincerely

Margery Nicoll
Acting Secretary-General.

Issues Paper “Gift Cards in the Australian Market”

The Treasury

Submission by the Australian Consumer Law Committee of the Legal Practice Section of the Law Council of Australia

1 March 2012

The Law Council of Australia is a peak national body representing the legal profession in Australia.

The Australian Consumer Law Committee (“ACLC”) of the Law Council is a special interest group of the Legal Practice Section. The ACLC takes a specific interest in legal developments affecting consumers and liaises with government and non-government bodies involved in consumer law.

Gift Cards in the Australian Market

The ACLC notes that the Terms of Reference for the Commonwealth Consumer Affairs Advisory Council (CCAAC) to review the issue of gift cards in the Australian market, in particular:-

- Issues in relation to the purchase and use of gift cards in Australia, for example, expiry dates, the discharge of low balances on gift cards, the disclosure of terms, conditions and fees of gift cards and the extent of unredeemed gift card balances;
- If there is consumer detriment, determine the level of consumer detriment arising from the terms and conditions of gift cards;
- The views of stakeholders affected by gift card sale practices, including consumers, retailers and other traders, insolvency practitioners and peak industry and consumer bodies;
- Potential losses from insolvencies for consumers who hold a gift card;
- The effectiveness of international regulatory initiatives that seek to address consumer concerns related to gift cards and the appropriateness of these approaches to the Australian market place; and
- Options to address any consumer detriment arising from the sale of gift cards.

The ACLC makes the following submissions in respect of the issues paper:

Features and trends of the gift card market¹

The ACLC notes and agrees that the CCAAC position that the gift card, although ordinarily provided in the form of a plastic card, has now developed to allow gift cards to be delivered electronically to recipient via SMS (mobile gift cards), by email (virtual gift cards) and smart phone applications.

In essence, the purchase of the gift card is the purchase of a “store credit” which is ordinarily gifted from one person to another. Increasingly, however, the purchase of a store credit is not solely for the purposes of goods, but also for the purchase of services. For example, the purchase of a “gold pass” to a movie theatre (which may be used at any movie) and the pre-payment of a voucher, for example, for a “car wash” may also take the form of a gift card.

In addition, large traders commonly offer vouchers or products that are redeemable at another outlet (e.g. petrol vouchers from Coles or Woolworths). It is noted that the inquiry does not intend to examine pre-payment arrangements for mobile phones, internet access and other utility services or group buying websites, however, the problems that arise in respect of the abovementioned “pre-payments” are essentially the same: expiry dates, restrictions on low value use, terms and conditions in the event of insolvency, fees and charges and limitations on user.

¹ Consultation question 1.1 and 1.2.

Expiry Dates

The expiry date on the use of a gift card is a critical factor limiting its use. There is no apparent consumer benefit to time limits. Arguably, a retailer may be unjustly enriched by the non-redemption of a gift card. It may be that the business model for gift cards has a built-in “non-redemption” rate which would include people who fail to redeem the card within a time limit or people who don’t redeem the card because of card loss, death or a simple failure to exercise the rights.

A trader has control over the issue of gift cards. It has the capacity to know, at any given point in time, the amount of gift cards issued and the capacity of gift card holders to redeem the cards. Unless industry can demonstrate a significant consumer benefit to imposing a time limit, there should be no time limit.

If the trader is permitted to impose a time limit on the use of the card (i.e. 12 months from the date of purchase), or a specific date, the date of the expiry must be clearly marked upon the gift card.

There may be a temptation for a retailer facing insolvency to promote gift cards to assist short-term cash flow. Where a consumer buys a card, but the retailer goes ultimately into liquidation, the consumer may lose all rights to redemption. This practice should, of course, be prohibited.

Terms and Conditions

It is noted that some gift cards apply terms and conditions where gift cards cannot be used to purchase items below a certain value.

The ACLC makes two submissions in respect of this matter. First, this information should be clearly provided at the point of purchase. If the card is made available in a stand or other display, the purchaser must be placed on notice by clear communication that the card cannot be used below a particular value.

Secondly, the information should also be contained on the card albeit that it is accepted that the notification of this term would have less priority than the notification or expiry date. If a card has a restriction on the value at which an item can be purchased, then the trader should be obliged to “cash out” the card below that value.

ASIC Act and the ACL

The ACLC considers that the current consumer protection provisions of the ASIC Act and the ACL provide protection, in a generic sense, in respect of the abovementioned matters. However the majority of consumers will be largely unaware of the detail in the application of the generic provisions to the gift card. The ACLC submits that it would be appropriate to develop a number of specific items that a gift card must contain (e.g. the expiry date clearly identified and separate from other types).

It may be useful to provide jurisdiction to resolve a complaint about a gift card to be given to an organisation such as the Financial Ombudsman service. The ACLC recommends that if such an approach be followed, that traders be obliged to submit themselves to the jurisdiction. The issue of a simple and inexpensive means of resolving issues would be in the consumer interests.

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its constituent bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's constituent bodies. The Law Council's constituent bodies are:

- Australian Capital Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 56,000 lawyers across Australia.

The Law Council is governed by a board of 17 Directors – one from each of the constituent bodies and six elected Executives. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive, led by the President who serves a 12 month term. The Council's six Executive are nominated and elected by the board of Directors. Members of the 2012 Executive are:

- Ms Catherine Gale, President
- Mr Joe Catanzariti, President-Elect
- Mr Michael Colbran QC, Treasurer
- Mr Duncan McConnel, Executive Member
- Ms Leanne Topfer, Executive Member
- Mr Stuart Westgarth, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.