

SHOPPING CENTRE

COUNCIL OF AUSTRALIA

7 March 2012

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

Dear Sir/Madam,

Gift cards in the Australian market – Issues Paper

Overview

The Shopping Centre Council of Australia (SCCA) would like to make the following submission in response to the Issues Paper released in December 2011 "*Gift cards in the Australian market.*" Our comments relate mainly to shopping centre gift cards (i.e. gift cards accepted or honoured by affiliated retailers in a shopping centre or within a shopping centre company).

The terms of reference of the Commonwealth Consumer Affairs Advisory Council (CCAAC) for this inquiry have been summarised as "to explore and develop options to better protect consumers who use gift card products" (*Foreword* p. iii).

In October 2007, the Council of Australian Governments (COAG) adopted a *Guide for Ministerial Councils and National Standard Setting Bodies on Best Practice Regulation*. It is important that the CCAAC adheres to this COAG Guide when exploring and developing options to "better protect consumers who use gift cards". The COAG Guide requires regulatory bodies to, firstly, establish whether there is a problem which needs to be addressed (Principle 1) and, secondly, if it is found that there is a problem, (i.e. if a case has been established for (further) government intervention), to consider a range of policy options (including non-regulatory and self-regulatory approaches) but always working from an initial presumption against new or increased regulation (Principle 2).

We strongly urge the CCAAC, in its investigations, to adhere to these principles. It is our firm view that the Issues Paper has failed to identify a problem. There is no evidence in the Issues Paper of an issue which requires additional regulation. While the Issues Paper cites a sample of typical complaints, there is no evidence of the *number or volume of complaints* each year. Nor is there any attempt to put consumer complaints in a proper perspective by citing the number of complaints as a proportion of the volume of gift cards sold in a year (estimated by Wright Express Australia to be around 34 million cards last year, both closed-loop and open-loop cards) or as a proportion of the estimated dollar amount of gift card sales (i.e. \$1.8 billion to \$2 billion a year, again according to estimates by Wright Express Australia).¹

¹ Estimates supplied by Wright Express Australia to QIC, a member of the SCCA.

Leaders in Shopping Centre Advocacy

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We seriously doubt, for example, if the number of complaints received by the consumer affairs or fair trading departments around Australia last year would have numbered anywhere near 3,400 (which is only 0.01% of the number of cards sold last year.) If this assumption is correct – and it would have been useful if the Issues Paper had revealed the number of complaints – then the fact that fewer than one in ten thousand gift cards sold resulted in a complaint is evidence that there is no problem which requires additional government regulation. (This, of course, also assumes that every complaint is a valid complaint.)

We have used the phrase “additional government regulation” since the issue and use of gift cards is already regulated by the provisions of the Australian Consumer Law (Schedule 2 of the *Competition and Consumer Act 2010*) and the *Corporations Act 2001*, as the Issues Paper makes clear. The provisions of the ACL – such as those addressing misleading and deceptive conduct; false and misleading representations; unfair contract terms; unconscionable conduct etc. - apply across the board to all consumer products, including the sale of gift cards. There is no evidence, from the Issues Paper, of a need for better protection, or additional protection, for consumers of gift cards than is already provided under the ACL to the consumers of other products.

We firmly believe that all of the “issues facing consumers” discussed in the Issues Paper can be addressed by full and proper disclosure at the time of issuance of the gift card. All gift card issuers provide to customers the terms and conditions of use of the gift card at the point of sale or, if purchased online, these are also available on the web. Provided there is transparency on the part of the organisation which issues the gift card - which clearly addresses key matters such as expiry date; restrictions on low value use; fees and charges; and limitations on use – then there is no need for additional regulation by governments.

In our view, if the CCAAC considers there is a need for further regulation of gift cards, this should be in the form of published guidelines to card issuers and consumers by the appropriate regulatory authority, following detailed consultation with stakeholders. With the advent of the Australian Consumer Law, and in the interests of national consistency, we recommend that the Australian Competition and Consumer Commission (ACCC) would be the appropriate regulatory authority to issue such guidelines, if indeed such guidelines are considered necessary. We strongly recommend the preparation of any such guidelines should be done in consultation with relevant card issuers, retailers, gift card system providers and industry bodies.

Key Issues Affecting Consumers

We now address each of the “key issues affecting consumers” raised in the Issues Paper (page 7).

1. Expiry dates.

It is important that gift cards have an expiry date. In the case of shopping centre gift cards this date is usually twelve months after the date of purchase. The onus should be on the gift card holder to fully redeem the gift card before the expiry date. Companies cannot be expected to carry a significant and growing unknown liability in their financial accounts which would be the result if cards did not have an expiry date. Expiry dates are very much a case of ‘buyer beware’ and there is widespread community awareness (among purchasers and recipients) that gift cards have expiry dates. Gift card providers should not be made liable for inaction on the part of customers.

Provided the purchaser of the gift card is fully informed at the time of purchase about the expiry date of the card, and the expiry date is readily obtained by the recipient of the gift card, it is our view that no further regulatory action is required. This is a matter which should be addressed in the guidelines we have suggested above. Many companies operate an unofficial period of grace in which they accept expired cards and, even after such grace periods have expired, some companies are still willing to consider applications on the basis of special circumstances.

We see no justification for standardising expiry dates since this is a matter which can vary from company to company for sound commercial reasons. A major shopping centre company, for example, may be able to afford to operate a period of 12 months in which a card can be redeemed but such a long period may cause difficulties for a retail company which issues its own gift card. Expiry dates can also be a competitive issue: one company may deliberately impose a longer expiry date because it believes this may give a competitive advantage over a rival. Such decisions are commercial decisions and, provided appropriate disclosures are made, should not be regulated.

2. Restrictions on low value use.

The terms and conditions of some shopping centre gift cards specify that individual retailers may not accept gift cards for purchases below a certain (low) value. It is not common, however, for retailers to impose such restrictions since the primary purpose of gift cards is to drive retail sales. Nevertheless, provided this is clearly noted in the terms and conditions of use of the card available to the purchaser at the time of purchase, this is not a restriction that should be prohibited.

3. Terms and conditions in the event of insolvency.

The insolvency of the gift card issuer is always a risk for a consumer but this is a general consumer risk and is not a risk that can be mitigated by regulation. There is no argument why gift card users should receive priority in the creditors' queue in the event of insolvency. This is a risk that could be exacerbated by wrong-headed regulation. For example, regulation which compulsorily required a long expiry date for gift cards would increase the risk that a card could not be redeemed in the event of insolvency since it may reduce the incentive for the purchaser or recipient of the card to redeem the card as soon as possible after purchase.

The issue of the terms and conditions of use being changed by receivers when the issuer of the gift card is in administration would seem to be a matter for the Australian Securities and Investments Corporation (ASIC).

4. Fees and charges.

Shopping centre companies which issue gift cards are in a different position to single retailers which do the same. Since the shopping centre company operates as an aggregator of tenants, its costs of administering and maintaining the gift card system are much higher than a single retailer issuer of cards. A retail company can often absorb many of these costs through the direct sale of its inventory. The advantage of a shopping centre gift card is that it enables retailers, particularly small retailers, to participate in a gift card scheme when they normally might not have the critical mass or facilities to operate such a scheme themselves.

If fees are charged on the issue of the card, these fees are usually nominal and are obviously known to the purchaser upfront. There are usually no additional fees and charges for shopping centre gift cards and, if there are such fees, these should be stipulated upfront at the time of purchase. The use of periodic fees may become more common if, for example, there was to be regulated long expiry periods.

We understand that it is unusual in the case of shopping centre gift cards for periodic fees or charges to apply to outstanding balances. Nevertheless we see no reason why periodic fees and charges which might apply to the outstanding balance of a gift card should be outlawed, provided these are clearly conveyed to the purchaser of the gift card in the terms and conditions of use.

5. Limitations on use with respect to retailers that accept the gift card.

Shopping centre owners would like to be in a position where they could enforce all retailers within the shopping centre to accept their own gift card. Unfortunately, particularly in the case of major retailers (who often have their own gift card system), this is not possible. Retailers accept gift cards at their own discretion and in some circumstances block gift card BIN numbers from working via their EFTPOS terminals. It is often the case that retailers without EFTPOS facilities are also unable to redeem the card. Once again this is a matter that is addressed in the terms and conditions of use of the gift card, ensuring appropriate disclosure is made.

6. Receiving change.

There is no reason why gift cards should offer the customer the balance difference in cash if the card is used and the remaining funds are under a certain amount. One of the purposes of the gift card is to drive retail sales within the store or within the shopping centre. It is therefore not unreasonable to expect the purchaser or recipient of the gift card to use the balance towards another purchase. Requiring the issuer of a gift card to offer the customer a cash balance changes the nature of the transaction from being one of a gift card to being one of financial product, which is fundamentally different to the commercial intention of the gift card product.

Shopping Centre Council of Australia

The Shopping Centre Council of Australia represents Australia's major shopping centre owners and managers. Our owners own and manage more than 11 million square metres of retail space around Australia. A number of our members operate shopping centre gift card programs and the terms and conditions of the gift card are available on their websites.

Our members are AMP Capital Investors, Brookfield Office Properties, Centro Retail Australia, Charter Hall Retail REIT, Colonial First State Global Asset Management, DEXUS Property Group, Eureka Funds Management, GPT Group, ISPT, Ipoh Management Services, Jen Retail Properties, Jones Lang LaSalle, Lend Lease Retail, McConaghy Group, McConaghy Properties, Mirvac, Perron Group, Precision Group, QIC, Savills, Stockland, Westfield Group and Westfield Retail Trust.

We are very happy to elaborate on any aspect of this submission. Please feel free to contact either:

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Yours sincerely,



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