

ARA Response to Treasury Consultation on Gift Card Regulations *October 2018*



Australian
Retailers
Association

AUSTRALIAN RETAILERS ASSOCIATION

1300 368 041

www.retail.org.au

policy@retail.org.au



Table of Contents

About the ARA	3
Executive Summary	3
1: Exemptions Not Included in Draft Regulations	4
1.1: Second-hand/on-sold gift cards	4
1.2: 'No consideration'	4
Conclusion	6



Treasury Laws Amendment (Gift Cards) Regulations 2018

About the ARA:

The Australian Retailers Association (ARA) is the retail industry's peak representative body representing Australia's \$310 billion sector, which employs more than 1.2 million people. The ARA works to ensure retail success by informing, protecting, advocating, educating and saving money for its 7,500 independent and national retail members, which represent in excess of 50,000 shopfronts throughout Australia. The ARA ensures the long-term viability and position of the retail sector as a leading contributor to Australia's economy.

Members of the ARA include Australia's most trusted retailers, from the country's largest department stores and supermarkets, to specialty retail, electronics, food and convenience chains, to mum-and-dad operators.

Executive Summary:

Gift cards are a significant product which enhance consumer experience; they are readily accessible, easy to redeem and offer choice and flexibility. Retailers continue to provide this service, which benefits consumers and the broader economy, through increased choice, competition and stronger local businesses.

The ARA has been involved in various consultation processes regarding gift card expiry date regulations during 2017 and 2018.

The ARA has continued to represent retailers throughout this process including through a [previous submission](#) to the Treasury's Regulatory Impact Statement on Gift Card Expiry Dates in May 2018, and a previous submission to the Treasury's Exposure Draft of the *Competition and Consumer Amendment (Gift Cards) Bill 2018*. The ARA and some of our members have also been involved in a number of roundtable discussions with the Treasury throughout this process.

This submission is in response to the release of the *Treasury Laws Amendment (Gift Cards) Regulations 2018* Exposure Draft (draft regulations). The ARA and our members have a number of pre-existing and new concerns following the release of the draft regulations, including the omission of select gift card categories from exemptions under the regulations. These concerns will be considered in this submission.



1: Exemptions Not Included in Draft Regulations:

1.1: Second-hand/on-sold gift cards:

The ARA is concerned that clarity over liabilities for on-sold gift cards through third-party suppliers is not forthcoming through the regulations.

A common practice exists where pre-activated, pre-loaded or second-hand gift cards are on-sold through marketplace-style vendors, through business-to-business partnerships, or by other means. In some cases, these gift cards are sold for less than their original face value, and significant periods of time may have passed from the initial purchase and activation at the store to the end consumer receiving the gift card.

During consultations, both with our members and through the Treasury, the ARA became concerned that the original retailer may ultimately become liable for honouring the gift card's three-year non-expiry period, even if the majority of that period has already elapsed by the time the card is held by the end-consumer.

The ARA seeks action from the Treasury to ensure that retailers are not unfairly disadvantaged by these activities and their interplay with gift card regulations.

- ✓ **Recommendation 1:** The ARA recommends that the requirement to honour a three-year non-expiry period ends with first-supply, and gift cards on-sold through marketplace-style vendors are subject to the remaining balance of the non-expiry period when purchased by the end-consumer.
- ✓ **Recommendation 2:** Alternatively, the ARA recommends that liability is passed through the supply chain, and the end-supplier carries the liability to honour the expiry period. This is important for retailers, who have little-to-no control or visibility over gift cards once they have been purchased and left the store.

1.2: 'No consideration':

The original Consultation Paper referred to 'no consideration' as including "Gift cards offered to customers for free, or where the customer has not paid for a voucher directly or indirectly."

In our previous submission, the ARA supported in-part the definition of 'no consideration' as outlined in the Consultation Paper. Retailers often engage in creative promotional activities in order to encourage custom or increase sales. These marketing activities are crucial to the retail business model.

The ARA remains concerned that the definition of 'no consideration' in the Consultation Paper excluded categories of gift cards which are offered as part of standard and regular promotional activities carried out by retailers. This concern has



extended to the release of the draft regulations, which specifically omit several key gift card categories from 'no consideration' exemptions, including:

1. Store credits and/or returns cards offered to customers in exchange for goods returned to that store:
 - a. Store credits and returns cards are often issued as a gift card or gift card-like item and are generally provided for change-of-mind returns or returns without proof of purchase, consistent with requirements under the Australian Consumer Law and retail store policies.
- ✓ **Recommendation 3:** The ARA recommends that store credits and returns cards should be specifically exempted from the requirements by regulation. These kinds of gift cards fall under 'no consideration.'
2. Gift cards provided to customers in exchange for points earned via a loyalty scheme:
 - a. 'No consideration' is relevant in this example as the majority of loyalty schemes are offered at no cost to the customer, and purely reward repeat business.
 - b. Gift cards earned under store loyalty schemes are provided free of charge to loyalty customers as a gesture of goodwill and a customer relationship exercise.
 - c. A number of ARA members run loyalty programs based on the accrual of points as equivalent to the dollar value of each transaction (i.e. accumulate two points per dollar spent).
 - d. Many of these loyalty programs which automatically send gift cards or loyalty bonuses to their customers once a certain points threshold has been met through the respective program (i.e. 2000 points = a \$20 gift card).
 - e. Contrary to the advocacy of some consumer groups, consumers are unlikely to regard loyalty program bonuses as 'like cash'; rather, these are treated as a bonus discount in many cases.
 - f. As the vast majority of retail loyalty programs charge no sign-up fee or ongoing fees or costs to their customers, these programs are run at a significant cost to their respective businesses.
 - g. This cost will be exponentially increased should gift cards attached to loyalty programs not be exempted from these regulations. These additional costs will likely prove prohibitive for many retailers, who will be left with no choice but to significantly amend their loyalty offerings at cost, which will ultimately disadvantage consumers and discourage innovation.



- ✓ **Recommendation 3:** The ARA recommends that gift cards attached to loyalty programs are specifically exempted from the requirements by regulation. This category is specifically exempt from the NSW regulations and should be specifically excluded from the Federal regulations to ensure consistency.

Conclusion:

The ARA and our members remain concerned about a number of details resulting from the draft regulations. We believe a range of amendments should be considered in order to ensure the new regulations are practical, flexible and easily applicable for businesses, including exemptions for store credits and/or returns cards, gift cards provided in conjunction with loyalty programs, and clarification of liabilities in connection with the second-hand gift card market.

This is especially important for businesses which have recently adjusted their practices to comply with existing regulations in some states.

We are grateful for the opportunity to engage with the Treasury on this matter, and we are happy to discuss our submission further at the earliest convenience. For more information, please contact Josh Walker, ARA Policy Officer at policy@retail.org.au.

Kind regards,

Russell Zimmerman
Executive Director
Australian Retailers Association

Josh Walker
Policy Officer
Australian Retailers Association