
From: Ben Au
Sent: Wednesday, 31 October 2018 5:21 PM
To: Consumer Law
Subject: IGEA response to consultation on proposed exposure draft Gift Cards Regulation

Dear Consumer Policy Unit

Addition of gift cards in relation to customer loyalty programs to the list of exemptions outlined in the exposure draft Gift Cards Regulation

The Interactive Games & Entertainment Association (IGEA) would like to respond to the Treasury's consultation on the proposed exposure draft Treasury Laws Amendment (Gift Cards) Regulations 2018.

IGEA is the peak industry association representing the business and public policy interests of Australian and New Zealand companies in the interactive games industry. Our members publish, market, develop and distribute interactive games and entertainment content and related hardware.

IGEA is seeking the addition of gift cards for customer loyalty programs to the list of gift cards that will be exempt from the '3 year rule' introduced by the Treasury Laws Amendment (Gift Cards) Act 2018. This addition is necessary and will also ensure there is consistency between Commonwealth and NSW laws regarding gift cards, with gift cards for customer loyalty programs already exempt under NSW regulations.

Gift cards for customer loyalty reward programs

Under the proposed new Paragraph 89C(3)(d) of the Competition and Consumer Regulations 2010, section 99B and paragraph 99F(1)(b) of the Australian Consumer Law (which provide that gift cards must be redeemable for at least 3 years) do not apply to "a gift card supplied in relation to an employee reward scheme". IGEA would like gift cards for customer loyalty programs to be included in this exemption and suggests that the proposed new Paragraph 89C(3)(d) of the Competition and Consumer Regulations 2010 inserted by the draft Gift Cards Regulation instead read "a gift card supplied in relation to a customer loyalty or employee reward program".

IGEA considers that it is important to include customer loyalty programs as a specific exemption to the 3 year rule. The existing categories of gift cards that are exempt from the 3 year rule, such as gift cards supplied as part of a temporary marketing promotion or gift cards donated for a promotion purpose, are not broad enough to necessarily cover gift cards provided as part of customer loyalty programs. The specific addition of gift cards for customer loyalty programs would mirror the existing exemption set out in clause 23A of the Fair Trading Regulation 2012 (NSW) which excludes "a card or voucher supplied as part of a customer loyalty or employee rewards program" from the NSW rule that gift card expiry dates must not be less than 3 years.

All the reasons set out in the draft Explanatory Statement to the draft Gift Cards Regulation explaining why an exemption is needed for employee reward schemes also apply to customer loyalty programs, including:

- There are a myriad of different contractual and administrative arrangements for customer loyalty programs (which may be even more complex) and they can similarly be managed in-house or through a third party with the customer being able to choose from a range of reward options
- An exemption from the 3 year rule for customer loyalty programs is similarly also needed to ensure a uniform approach for customer loyalty programs
- Customers will still be protected under the Australian Consumer Law as gift cards must comply with disclosure and post-supply fee requirements
- As gift cards are provided as rewards for customer loyalty, there is limited risk of financial harm or detriment to the customer

Similar to gift cards for temporary marketing activities, gift cards that are provided as part of customer loyalty programs (particularly where they are managed in-house) may also be used to manage demand during off-peak periods and to manage stock levels. A three year expiry period would reduce the ability of businesses to manage short term demand and stock levels using gift cards and their ability to use gift cards to stimulate short term demand for goods and services. If such offers are curtailed, it could lead to detriment to consumers.

We hope this matter is straightforward but if you have any questions on this issue, please do not hesitate to contact me. I would be grateful if you could let me know of the outcome of Treasury's consideration of this response prior to finalisation of the draft Gift Cards Regulation.

Regards

Ben Au

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Interactive Games & Entertainment Association (IGEA)

M:

P:

E:

www.igea.net

The logo for IGEA consists of the letters 'IGEA' in a large, bold, blue, sans-serif font. The letters are closely spaced and have a slight shadow effect.

Interactive games & entertainment association