

GIFT CARDS: MANDATORY THREE-YEAR REDEMPTION PERIOD

All gift cards issued on or after 1 November 2019 must comply with new Australian Consumer Law (ACL) requirements

The Competition and Consumer Act 2010 (Cth) (Act) provides penalties for non-compliance with the new ACL requirements around gift cards. An overview of the new requirements are:

- Gift cards must be valid for at least three years;
- There are requirements on how the expiry period is to be expressed;
- No post-supply fees may be charged; and
- Some terms and conditions relating to gift cards are prohibited.

What is a gift card?

A gift card is an item commonly known as a gift card or gift voucher that can be used to redeem goods or services. A gift card can be in physical or electronic form.

The Competition and Consumer Regulations 2010 (Cth) (Regulations) specify that the following are not a gift card:

- Items, such as a card, used to purchase goods or services, which can be reloaded with value by the user (so that the available redeemable value is increased);
- Items, such as a card, that are redeemable for electricity, gas or a telecommunication services (note that this exemption does not apply to cards or vouchers for music streaming, video or game services).

Items such as, 'buy a certain number get one free'-style customer loyalty cards (for example, coffee cards), credit, charge or debit cards, public transport tickets and cashless welfare cards are not gift cards.

Gift card validity must be at least three years

On and after 1 November 2019, gift cards must be valid for at least three years. On and after this date it will be prohibited under the ACL to supply gift cards that are not redeemable for at least three years from the day the gift card was supplied to the customer.

What if I supply a gift card with less than three years validity on or after 1 November 2019?

If a gift card is supplied from 1 November 2019 with a validity period of less than three years the card will be taken to have a three year redemption period regardless of any other validity period provided on the gift card.

Despite this automatic conversion to a three year redemption period, suppliers should supply gift cards with the correct validity period. This is because from 1 November 2019 penalties may

be imposed on the supplier of a gift card with a validity period of less than three years.

How should the three year validity period be expressed?

The three year validity period must be displayed prominently on the card by setting out:

- The date the validity period ends;
- The month and year the validity period ends;
- The date the gift card is supplied, or the month and year the gift card was supplied, and a statement identifying the redemption period; or
- The words 'no expiry date' or similar words.

Post-supply fee not allowed

A person must not demand or receive, or have terms and conditions that require, a post-supply fee to be paid in relation to the gift card. A post-supply fee is a fee or charge that must be paid after the gift card is supplied to the customer.

The Regulations specify fees that are not post-supply fees and these include, a booking fee (that is substantially the same as a booking fee for other payment methods) and a fee for re-issuing a lost or stolen gift card.

Some gift card terms and conditions void

A term or condition of a gift card is void if the term or condition has the effect of:

- Allowing or requiring a post-supply fee; or
- Reducing the validity period of the gift card to less than three years.

In addition to the term or condition being void a penalty may be imposed on the supplier where such terms and conditions apply to a gift card.

Exemptions

There are some exemptions to the requirement for the minimum three year validity period (and terms and conditions having the effect of reducing the three year validity period). By way of example:

- Gift cards that pertain to a specific good or service that is available for a specified period or that is supplied at a discount to the market value;
- Gift cards that are supplied for a temporary marketing promotion to a purchaser of goods or services in connection with the purchase of goods or services, or that are part of an employee reward scheme or customer loyalty program.

The above is not a complete description of the exemptions. It is recommended that advice



is sought to determine if a three year validity exemption applies to a particular circumstance.

Non-Compliance

The failure of a supplier to comply with the ACL gift card requirements may incur a penalty, as follows:

- The ACCC may issue an infringement notice, carrying a financial penalty of 55 penalty units for a body corporate (currently totaling \$11,550), and 11 penalty units for an individual (currently totaling \$2,310);
- The court may impose a maximum criminal or civil penalty of \$30,000 for a body corporate or \$6,000 for an individual.

Takeaways

The key takeaways are to ensure the following items are attended to before 1 November 2019:

- The validity period for all gift cards is at least three years and prominently displayed on the gift card as required by the ACL;
- A post-supply fee is not demanded or contained in the gift card terms and conditions; and
- Gift card terms and conditions do not have the effect of reducing the three-year validity period or imposing a post-supply fee.

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Industry Legal Group provides advice to members on commercial law matters. If you have any questions relating to the above case, please contact Industry Legal Group on 1300 369 703 or aaaa@industrylegalgroup.com.au