

NEW GIFT CARD LAW IN NSW

In general, gift cards have been governed by standard consumer laws.



However, for the first time in Australia, New South Wales is introducing specific requirements for gift cards/vouchers sold to consumers in NSW on or after 31 March 2018

The LAW

#1

Three year minimum expiry date

Any gift card sold to a consumer in NSW from 31 March 2018, must have a minimum expiry date of three years.

#2

Hidden charges

The seller (or the business accepting the gift card) is not allowed to charge any administrative fee that would reduce the value of the gift card.

#3

Under three years?

If you sell a gift card and the expiry date is less than three years, then the expiry date will be deemed to be changed to three years.

Fines of up to \$5,500 per breach

But... why do we need a new law?

The law has been introduced to protect consumers by making sure that money spent on a gift card is not reduced by fees or early expiry dates.

At the moment, in NSW around \$60 million a year is lost from expired gift cards!

Do the changes apply to cards purchased by/for non-NSW residents?

- Is the gift card bought in a physical store in NSW?
- Is the gift card bought online or by phone and a NSW contact/delivery address is provided?

Then, **YES** the changes will probably apply

Transition Period

There is a transition period until 30 September 2018 during which a business can sell its "old" non-compliant gift cards

...however...

the gift cards sold during the transition period are still captured by these new laws. Businesses must notify customers that the gift cards have a 3 year expiry by, for example, manually changing the expiry date at the point of sale, updating gift card terms on their website, putting signage in store, providing customers with a leaflet at point of sale and adding a note on the receipt.

Importantly

The transition period does not apply to digital or e-gift cards - they should show a 3 year expiry date from 31 March 2018.

Exceptions

(3 year expiry not required)

Gift cards given for free to consumers or as part of a marketing promotion as a bonus to another purchase (this includes prizes in a trade promotion)

Gift cards given for returned goods

Prepaid cards for phone/internet

Gift cards sold for below market value of the relevant goods/services or donated for a fundraising appeal

Debit/credit/ATM cards or reloadable cards that use EFTPOS, Visa or similar

Gift cards given as part of customer loyalty or employee rewards programs

Are prepaid EFTPOS cards affected?

Yes, though non-reloadable prepaid gift cards that use EFTPOS, Visa, Mastercard or a similar electronic payment system do not need to comply with the new laws until 1 October 2018.

And the rest of the country?

At this stage, it is only NSW that has this new law. However, **CHOICE** wants to see such laws rolled out across the country. The Victorian government has said that this is an area it is looking at - so watch this space!

CONTACT

David Smith
Partner, Melbourne
T 03 9252 2563
E david.smith@gadens.com

Madeleine McMaster
Lawyer, Melbourne
T 03 9252 7702
E madeleine.mcmaster@gadens.com

Allison Rickard
Law Clerk, Melbourne
T 03 9252 2586
E allison.rickard@gadens.com

Jess Bell
Law Clerk, Melbourne
T 03 9252 7701
E jessica.bell@gadens.com