



Giving or receiving gift cards - new rules protect NSW consumers!

When it comes to buying Christmas or birthday presents, Gift Cards can be an easy and convenient answer, especially when you can buy them online or pick one up at many retail outlets. Australians are also very adept at using them with over 34 million Gift Cards sold annually generating over \$2.5 billion in sales.

For those receiving a Gift Card they can be a great choice of present as it enables you to buy exactly what you want from the issuing outlet, be it clothes, books, electronics or beauty treatments. But life's busy and it's easy to forget things and plenty of us have discovered that Gift Card in a drawer or in our purse or wallet that's expired – often only a month or so before you come across it!

Collectively Australians have been losing over \$200 million each year from unredeemed Gift Cards with over \$60 million being lost in NSW alone. They are also unfortunately a significant generator of consumer complaints with over 1,300 being made to the NSW Fair Trading over the last five years – mostly about expiry periods and undisclosed terms.

Unlike in Canada, where Gift Cards are not allowed to expire, until recently in Australia no law existed that provided a minimum period of expiry on Gift Cards. Only a handful of retailers voluntarily offered Gift Cards with no expiry date and most expired after 12 months. Some retailers imposed even shorter expiry periods and once the expiry date passed the issuing outlet was no longer obliged to honour the card or voucher. The only avenue of protection that's been available for consumers was under the generic provisions of the Australian Consumer Law - as an example, some relief may be provided if the expiry date was considered unreasonably short. Consumers have also been able to use unfair contracts legislation to take action against particularly unfair terms and conditions for gift cards.

Fortunately, in NSW relief has arrived as most Gift Cards sold in the state from 31st March 2018 now have a minimum three year expiry period. Recent amendments made to the Fair Trading Act 1987 have introduced a mandatory 3-year minimum expiry date on Gift Cards sold to consumers and in addition businesses issuing Gift Cards will now also be banned from applying post-purchase administrative fees which in the past have had the effect of reducing the balance left on a card.

Three-year minimum expiry period

The new law sets a mandatory minimum expiry period of 3 years for most gift card products. The period begins from the date a gift card is sold to a consumer (issue date). Businesses can choose to apply an expiry period longer than 3 years and no maximum expiry period applies.

Does the 3-year minimum expiry date apply to gift vouchers as well as gift cards?

Yes – the new rules also apply to all Gift Vouchers issued from 31st March 2018.



Ban on post-purchase fees

Once the gift card or voucher has been issued, there is a ban on charging any post-purchase fee associated with redeeming the card/voucher that would reduce its value.

Terms used for post-purchase fees that are banned include: activation fees, account keeping fees, balance enquiry fees, telephone enquiry fees and fees applied when a card is inactive or not being used (sometimes called dormancy or inactivity fees).

There are fees that a business may charge as part of a sale that is a cost of processing a payment. These fees apply regardless of the method of payment, such as overseas transaction fees, booking fees or payment surcharge fees. These are not considered post-purchase fees and are not captured by the ban.

Included cards

All gift cards or vouchers sold in store or online from 31st March 2018 to a consumer who is in NSW at the time of sale or sold to a consumer who provides a NSW address in connection with the sale are covered, unless specifically excluded.

Excluded cards

The reforms do not apply to Gift cards and Vouchers issued to consumers **PRIOR** to 31st March 2018. Other Gift Cards excluded from the new rules include:

- A gift card or voucher that is given by a business for free to a consumer
- A gift card or voucher exchanged for goods returned to the supplier of the goods
- Prepaid cards for phone credit or internet access
- ATM cards, debit cards, credit cards or charge cards
- Gift cards supplied as part of a customer loyalty or employee rewards program
- A gift card or voucher supplied as part of a temporary marketing promotion as a bonus to the purchase of a good or service
- A gift card or voucher sold for a particular good or service that is below the market value of the good or service (a genuine discount)
- A gift card or voucher sold or donated for use in a fundraising appeal, including to a charity or not for profit organisation
- A reloadable card that uses EFTPOS, Visa or Mastercard or a similar electronic payment system
- A gift card or voucher for a good or service available for a limited time where the card or voucher expires at the end of that period (for example, entry to a concert or museum exhibition, or a pair of shoes that is only available for a limited time)



Replacements for lost and stolen cards

If a business chooses to replace a lost or stolen card, the new law does not apply because the replacement transaction is not a sale of a new card. The terms and conditions remain the same as at the time the card was bought. For cards purchased after 31 March 2018, best practice would be for a business to issue a replacement card with the balance of the 3-year expiry period that was left on the lost or stolen card.

If you would like more information or require assistance or advice regarding your consumer rights in relation to Gift Cards or other purchases, please contact [Ken Gray](#) on 4731 5899 or email litigation@batemanbattersby.com.au.