

EXPOSURE DRAFT

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Competition and Consumer Amendment (Gift Cards) Bill 2018

No. , 2018

(Treasury)

**A Bill for an Act to amend the *Competition and
Consumer Act 2010*, and for related purposes**

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1 **A Bill for an Act to amend the *Competition and***
2 ***Consumer Act 2010*, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Competition and Consumer Amendment (Gift*
6 *Cards) Act 2018*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

3 Schedules

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

Schedule 1—Amendments

Competition and Consumer Act 2010

1 Subsection 131A(1)

Repeal the subsection, substitute:

(1) Despite section 131, this Division does not apply, other than in relation to the following provisions of Schedule 2 as they apply as a law of the Commonwealth, to the supply, or possible supply, of services that are financial services, or of financial products:

- (a) Division 3A of Part 3-2;
- (b) Division 3A of Part 4-2;
- (c) Part 5-5.

2 After paragraph 134A(2)(e)

Insert:

(ea) subsection 99B(1) or 99C(1), section 99D or subsection 99E(2);

3 Section 134C (after table item 6)

Insert:

6A	subsection 99B(1) or 99C(1), section 99D or subsection 99E(2)	(a) if the person is a body corporate—55 penalty units; or (b) if the person is not a body corporate—11 penalty units.
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4 Subsection 2(1) of Schedule 2

Insert:

gift card: see section 99A.

post-supply fee: see section 99C(2).

5 Paragraph 3(2)(a) of Schedule 2

Repeal the paragraph, substitute:

(a) for the following purpose:

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Schedule 1 Amendments

- 1 (i) for goods other than gift cards—for the purpose of
2 re-supply;
3 (ii) for gift cards—for the purpose of re-supply in trade or
4 commerce; or

6 After Division 3 of Part 3-2 of Schedule 2

6 Insert:

7 **Division 3A—Gift cards**

8 **Subdivision A—Introduction**

9 **99A Meaning of *gift card***

10 A *gift card* is:

- 11 (a) an article (whether in physical or electronic form) that:
12 (i) is of a kind that is commonly known as a gift card or
13 gift voucher; and
14 (ii) is redeemable for goods or services; or
15 (b) an article of a kind specified in regulations made for the
16 purposes of this paragraph;
17 but does not include an article of a kind specified in the
18 regulations.

19 **Subdivision B—Requirements relating to gift cards**

20 **99B Supply of gift cards**

- 21 (1) A person must not, in trade or commerce, supply a gift card to a
22 consumer if:
23 (a) the day that the gift card ceases to be redeemable is earlier
24 than 3 years after the day of that supply; or
25 (b) the following does not appear prominently on the gift card:
26 (i) if the gift card ceases to be redeemable on a particular
27 day—the day that the gift card ceases to be redeemable;
28 (ii) if the gift card does not have a day on which it ceases to
29 be redeemable—the words “no expiry date” or words to
30 that effect.

1 Note: A pecuniary penalty may be imposed for a contravention of this
2 subsection.

3 (2) If:

4 (a) a gift card is, in trade or commerce, supplied to a consumer;
5 and

6 (b) the day that the gift card ceases to be redeemable is earlier
7 than 3 years after the day of that supply;

8 the day that the gift card ceases to be redeemable is taken to be 3
9 years after the day of that supply.

10 (3) Subsection (2) does not affect a person's liability for an alleged
11 contravention of subsection (1) or section 191A.

12 **99C Terms and conditions not to allow post-supply fees**

13 (1) A person must not, in trade or commerce, supply a gift card to a
14 consumer if the terms or conditions (however described) of the gift
15 card allow or require the payment of a post-supply fee in relation to
16 the gift card.

17 Note: A pecuniary penalty may be imposed for a contravention of this
18 subsection.

19 (2) A *post-supply fee* is a fee or charge payable in relation to a gift
20 card after it is supplied, other than a fee or charge of a kind
21 specified in the regulations.

22 **99D Post-supply fees not to be charged**

23 A person must not, in trade or commerce, request or demand
24 payment of a post-supply fee in relation to a gift card.

25 Note: A pecuniary penalty may be imposed for a contravention of this
26 subsection.

27 **99E Certain terms and conditions of gift card void**

28 (1) A term or condition (however described) of a gift card is void if it
29 has the effect of, or purports to have the effect of:

30 (a) allowing or requiring the payment of a post-supply fee in
31 relation to the gift card; or

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Schedule 1 Amendments

1 (b) reducing the period that the gift card ceases to be redeemable
2 to a period that ends earlier than 3 years after the day the gift
3 card is supplied.

4 (2) The supplier of a gift card must ensure that the terms or conditions
5 (however described) of the gift card do not include, or purport to
6 include, a term or condition that is, or would be, void because of
7 subsection (1).

8 Note: A pecuniary penalty may be imposed for a contravention of this
9 subsection.

10 (3) This section does not affect a person's liability for an alleged
11 contravention of:
12 (a) section 99B; or
13 (b) section 99C; or
14 (c) section 99D; or
15 (d) section 191A; or
16 (e) section 191B; or
17 (f) section 191C; or
18 (g) section 191D.

19 **Subdivision C—Miscellaneous**

20 **99F Regulations may limit application of this Division**

21 The regulations may provide that some or all of the provisions of
22 this Division do not apply to or in relation to:

23 (a) gift cards of a kind prescribed by the regulations; or
24 (b) persons of a kind prescribed by the regulations; or
25 (c) gift cards supplied in circumstances prescribed by the
26 regulations.

27 **7 After Division 3 of Part 4-2 of Schedule 2**

28 Insert:

1 **Division 3A—Gift cards**

2 **191A Gift cards to be redeemable for at least 3 years**

- 3 (1) A person commits an offence if:
4 (a) the person, in trade or commerce, supplies a gift card to a
5 consumer; and
6 (b) the day the gift card ceases to be redeemable is earlier than 3
7 years after the day of that supply.

8 Penalty:

- 9 (a) if the person is a body corporate—\$30,000; or
10 (b) if the person is not a body corporate—\$6,000.

- 11 (2) Subsection (1) is an offence of strict liability.

12 **191B Date gift card ceases to be redeemable to appear prominently**
13 **on gift card**

- 14 (1) A person commits an offence if:
15 (a) the person, in trade or commerce, supplies a gift card to a
16 consumer; and
17 (b) either:
18 (i) the day the gift card ceases to be redeemable does not
19 appear prominently on the gift card; or
20 (ii) if the gift card does not have a day on which it ceases to
21 be redeemable—the words “no expiry date”, or words to
22 that effect, do not appear prominently on the gift card.

23 Penalty:

- 24 (a) if the person is a body corporate—\$30,000; or
25 (b) if the person is not a body corporate—\$6,000.

- 26 (2) Subsection (1) is an offence of strict liability.

27 **191C Terms and conditions not to allow post-supply fees**

- 28 (1) A person commits an offence if:
29 (a) the person, in trade or commerce, supplies a gift card to a
30 consumer; and
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1 (b) the terms or conditions (however described) of the gift card
2 allow or require the payment of a post-supply fee in relation
3 to the gift card.

4 Penalty:

5 (a) if the person is a body corporate—\$30,000; or

6 (b) if the person is not a body corporate—\$6,000.

7 (2) An offence against subsection (1) is an offence of strict liability.

8 **191D Post-supply fees not to be charged**

9 (1) A person commits an offence if the person, in trade or commerce,
10 requests or demands payment of a post-supply fee in relation to a
11 gift card.

12 Penalty:

13 (a) if the person is a body corporate—\$30,000; or

14 (b) if the person is not a body corporate—\$6,000.

15 (2) An offence against subsection (1) is an offence of strict liability.

16 **191E Regulations may limit the application of this Division**

17 The regulations may provide that some or all of the provisions of
18 this Division do not apply to or in relation to:

19 (a) gift cards of a kind prescribed by the regulations; or

20 (b) persons of a kind prescribed by the regulations; or

21 (c) gift cards supplied in circumstances prescribed by the
22 regulations.

23 **8 After subparagraph 224(1)(a)(v) of Schedule 2**

24 Insert:

25 (va) section 99B(1), 99C(1), 99D or 99E(2) (which are about
26 gift cards);

27 **9 Subsection 224(3) of Schedule 2 (after table item 6)**

28 Insert:

6A section 99B(1), 99C(1), (a) if the person is a body
99D or 99E(2) corporate—\$30,000; or

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Amendments Schedule 1

(b) if the person is not a body
corporate—\$6,000.

1 **10 In the appropriate position in Chapter 6 of Schedule 2**

2 Insert:

3 **Part 3—Application and transitional provisions relating to**
4 **the Competition and Consumer Amendment (Gift**
5 **Cards) Act 2018**
6

7 **293 Application of amendments relating to gift cards**

8 The amendments made by Schedule 1 to the *Competition and*
9 *Consumer Amendment (Gift Cards) Act 2018* apply to gift cards
10 supplied on or after 1 November 2019.

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