



# **Treasury Laws Amendment (Gift Cards) Act 2018**

**No. 133, 2018**

**An Act to amend the *Competition and Consumer Act 2010*, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
	<b>Schedule 1—Gift cards</b>	<b>3</b>
	<i>Competition and Consumer Act 2010</i>	<b>3</b>





# Treasury Laws Amendment (Gift Cards) Act 2018

No. 133, 2018

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## An Act to amend the *Competition and Consumer Act 2010*, and for related purposes

[Assented to 25 October 2018]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Treasury Laws Amendment (Gift Cards) Act 2018*.

### 2 Commencement

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

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day after this Act receives the Royal Assent.	26 October 2018

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Gift cards

### *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), section 99C, subsection 99D(1), section 99E or subsection 99F(2);

#### 3 Section 134C (after table item 6)

Insert:

- |    |   |  |
|----|---|--|
| 6A | subsection 99B(1),<br>section 99C,<br>subsection 99D(1),<br>section 99E or<br>subsection 99F(2) | (a) if the person is a body<br>corporate—55 penalty units;<br>or<br>(b) if the person is not a body<br>corporate—11 penalty units. |
|----|---|--|

#### 4 Subsection 2(1) of Schedule 2

Insert:

*gift card*: see section 99A.

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

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

Repeal the paragraph, substitute:

- (a) for the following purpose:

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

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

Insert:

### **Division 3A—Gift cards**

#### **Subdivision A—Introduction**

##### **99A Meaning of *gift card***

A *gift card* is:

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

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

##### **99B Gift cards to be redeemable for at least 3 years**

- (1) A person must not, in trade or commerce, supply a gift card to a consumer if the day that the gift card ceases to be redeemable is earlier than 3 years after the day of that supply.

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

- (2) If:
  - (a) a gift card is, in trade or commerce, supplied to a consumer; and
  - (b) the day that the gift card ceases to be redeemable is earlier than 3 years after the day of that supply;



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

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

### **99C When gift card ceases to be redeemable to appear prominently on gift card**

A person must not, in trade or commerce, supply a gift card to a consumer if one of the following does not appear prominently on the gift card:

- (a) the date the gift card ceases to be redeemable;
- (b) the month and year the gift card ceases to be redeemable;
- (c) the date the gift card is supplied and a statement that identifies the period during which the gift card is redeemable;
- (d) the month and year the gift card is supplied and a statement that identifies the period during which the gift card is redeemable;
- (e) the words "no expiry date" or words to that effect.

Note: A pecuniary penalty may be imposed for a contravention of this section.

### **99D Terms and conditions not to allow post-supply fees**

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

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

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

### **99E Post-supply fees not to be demanded or received**

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

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

### **99F Certain terms and conditions of gift card void**

- (1) A term or condition (however described) of a gift card is void if it has the effect of, or purports to have the effect of:
  - (a) allowing or requiring the payment of a post-supply fee in relation to the gift card; or
  - (b) reducing the period that the gift card ceases to be redeemable to a period that ends earlier than 3 years after the day the gift card is supplied to a consumer.
- (2) The supplier of a gift card must ensure that the terms or conditions (however described) of the gift card do not include, or purport to include, a term or condition that is, or would be, void because of subsection (1).

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

- (3) This section does not affect a person's liability for an alleged contravention of:
  - (a) section 99B(1); or
  - (b) section 99C; or
  - (c) section 99D(1); or
  - (d) section 99E; or
  - (e) section 191A; or
  - (f) section 191B; or
  - (g) section 191C; or
  - (h) section 191D.

### **Subdivision C—Miscellaneous**

#### **99G Regulations may limit application of this Division**

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

- (a) gift cards of a kind prescribed by the regulations; or
- (b) persons of a kind prescribed by the regulations; or

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

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

Insert:

### **Division 3A—Gift cards**

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

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

Penalty:

- (a) if the person is a body corporate—\$30,000; or
  - (b) if the person is not a body corporate—\$6,000.
- (2) Subsection (1) is an offence of strict liability.

#### **191B When gift card ceases to be redeemable to appear prominently on gift card**

- (1) A person commits an offence if:
- (a) the person, in trade or commerce, supplies a gift card to a consumer; and
  - (b) one of the following does not appear prominently on the gift card:
    - (i) the date the gift card ceases to be redeemable;
    - (ii) the month and year the gift card ceases to be redeemable;
    - (iii) the date the gift card is supplied and a statement that identifies the period during which the gift card is redeemable;
    - (iv) the month and year the gift card is supplied and a statement that identifies the period during which the gift card is redeemable;
    - (v) the words “no expiry date” or words to that effect.

Penalty:

- (a) if the person is a body corporate—\$30,000; or
  - (b) if the person is not a body corporate—\$6,000.
- (2) Subsection (1) is an offence of strict liability.

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

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

Penalty:

- (a) if the person is a body corporate—\$30,000; or
  - (b) if the person is not a body corporate—\$6,000.
- (2) An offence against subsection (1) is an offence of strict liability.

### **191D Post-supply fees not to be demanded or received**

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

Penalty:

- (a) if the person is a body corporate—\$30,000; or
  - (b) if the person is not a body corporate—\$6,000.
- (2) An offence against subsection (1) is an offence of strict liability.

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

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

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

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

Insert:

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

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

Insert:

6A	section 99B(1), 99C, 99D(1), 99E or 99F(2)	(a) if the person is a body corporate—\$30,000; or (b) if the person is not a body corporate—\$6,000.
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**10 In the appropriate position in Chapter 6 of Schedule 2**

Insert:

**Part 5—Application and transitional provisions relating to the Treasury Laws Amendment (Gift Cards) Act 2018**

**302 Application of amendments relating to gift cards**

The amendments made by Schedule 1 to the *Treasury Laws Amendment (Gift Cards) Act 2018* apply to gift cards supplied on or after 1 November 2019.

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[Minister's second reading speech made in—  
House of Representatives on 20 September 2018  
Senate on 17 October 2018]

(199/18)

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