

Treasury Laws Amendment (Gift Cards) Act 2018

No. 133, 2018

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

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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 column 2 of the table. Any other statement in column 2 has effect according to its terms.

| 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. | 26 October 2018 |

Note: This table relates only to the provisions of this Act as originally enacted.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 Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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), section 99C, subsection 99D(1), section 99E or subsection 99F(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. |

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;

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

 (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. |

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.

[*Minister’s second reading speech made in—*

*House of Representatives on 20 September 2018*

*Senate on 17 October 2018*]

(199/18)