New Gift Card Laws – Article (The Australian)

With festive season round the corner, the consumer law has been amended to incorporate provisions that would ensure that the customers do not lose out on account of expired gift cards. **–**

The Australian customers lose billions of dollars every year on account of unused gift cards issued by businesses, particularly during the festive season, due to their limited validity period, which currently seldom exceeds one year. Needless to say, it spells an undue benefit to the business issuing the gift card. Additionally, the businesses charge fee for various services like activation fee and balance validity check, which again is detrimental to the consumer as it is a cost to him without any corresponding benefit. In order to curb this practice, the Australian Consumer Law (ACL) has been amended effective 1 November 2019 to provide protections for gift card consumers across Australia. Though some states already have similar laws in place, this change is applicable across the country and supersedes any scheme to the contrary. Though cards and vouchers sold before 1 November 2019 may continue to have the same expiry period and applicable fees as at the time of purchase, if terms and conditions of a gift card issued on or after that date do not comply with the reforms, then such conditions will be void and the new requirements will apply regardless of what the gift card states. Barring some exclusions, the **fundamentals** are:

- gift cards must display expiry dates, which is a minimum period of three years; and
- most post purchase fees on gift cards are banned.

Gift cards (physical or online) must **prominently display the expiry date** as either the full date or as a period of time. For example:

- "Supply date: March 2020. This card will expire in 3 years".
- "This card expires 5 years after supply. Supply date 15/8/20".
- "Valid for 3 years from 11/19".

The period begins from the date a gift card is sold to a consumer. A period longer than the minimum stipulated period is not barred. A gift card must also state if there is no expiry date. Once a gift card has been issued, the **business cannot charge any post-purchase fee**, including activation fees. account keeping fees and balance enquiry fees. This, however, does not restricts **fees that a business can charge as part of a sale to cover** upfront fee as well as the cost of processing a payment, such as overseas transaction fees, booking fees, payment surcharge fees and fees charged for the reissue of a lost, stolen or damaged card. Businesses are expected to **sufficiently display this information for the customers and their internal staff**, at various places where the cards are available for sale, or are used for sales, such as their websites and other promotional material, including on physical gift cards, internal systems,

training and compliance manuals, at the POS and on any receipt issued when the gift card is purchased.
Excluded cards: The three year requirement does not apply to gift cards that are:

- able to be reloaded or topped up
- for a good or service available for a limited time where the card or voucher expires at the end of that period (e.g. entry to a concert or museum exhibition)
- supplied to a purchaser of goods or services as part of a temporary marketing promotion (e.g. a wine voucher valid for one month that is mailed to a consumer as a free bonus with a purchased item and was not part of the purchase offer)
- donated free of charge for promotional purposes (e.g. a local shopping centre has a one-day marketing promotion where each visitor to the centre on that day is handed a $20 gift card that is valid for use at any store in the centre for that day only)
- sold for a particular good or service at a genuine discount (e.g. $50 card for salon service valued at $100)
- supplied as part of an employee rewards program
- given as a bonus in connection with a purchase of a good or service for use in the same business (customer loyalty programs)
- second-hand gift cards.
- part of a temporary marketing promotion (e.g. customers buy a certain product from Business A, which provides a $50 voucher to use at Business B).

Penalties for non-compliance: A $30,000 fine in the case of a body corporate, or $6,000 for individuals awaits any breach of compliance. In addition, the ACCC can impose infringement notices, each being 55 penalty units (currently $11,500) for a body corporate and 11 units (currently $2,420) for persons other than a body corporate.