



FTMIN18/89

Statement of Regulatory Intent

Fair Trading Act 1987 – section 58N – regulation of gift card expiry dates and post-purchase administrative fees

This Statement sets out the compliance and enforcement approach that NSW Fair Trading will take when Schedule 2 of the *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017* commences on 31 March 2018.

Section 58N(1) of the Act states that a person must not sell a gift card to a consumer in NSW with an expiry date that is less than three years after the sale of the gift card.

Section 58N commence on 31 March 2018 and must be complied with.

Transition arrangements for compliance and enforcement of section 58N(1) will run from 31 March 2018 to 30 September 2018

There will be a transition period from 31 March 2018 to 30 September 2018. During this time, Fair Trading will take the enforcement approach outlined in this Statement when monitoring compliance with section 58N(1) only.

Fair Trading acknowledges that it may not be practical for a business to amend the labelling of all existing stock of cards and card packaging. The **existing stock** of cards means cards and packaging that were already in stock, or printed and awaiting distribution before 31 March 2018.

The purpose of the transition period is to help businesses to:

- sell their existing stock of gift cards and card packaging labelled with expiry dates that are less than three years during the transition period
- adapt their operational requirements to the new laws, including updating IT platforms, compliance manuals and staff training.

During the transition period, businesses can continue to sell their existing stock of gift cards and card packaging which are labelled with shorter expiry dates if they take actions to inform consumers about the new laws. **These cards must be honoured for at least three years despite their non-compliant labelling.**

In assessing whether to take enforcement action, Fair Trading will consider the nature and extent of the actions a business has taken to inform consumers of the new laws, including the following.

Existing stock physical gift card and card packaging – best practice to comply

Fair Trading considers best practice to be:

- permanently amending existing stock physical cards and card packaging by removing the old expiry period or date, and physically notating on the card and packaging an expiry date or period of at least three years – this could be done at point of sale; AND
- updating terms and conditions on a business's website; AND

- not ordering or supplying any new cards with expiry dates of less than three years, unless an exempt gift card product under the Fair Trading Regulation.

Physical gift card and card packaging – alternative actions taken by a business

If a business has not followed the best practice approach, Fair Trading will consider the particular circumstances and whether the business has taken actions to inform consumers about the three-year minimum expiry date requirement. Some actions that may be considered by Fair Trading include:

- updating terms and conditions on the business's website
- updated terms and conditions available at point of sale
- placing signage on stands where gift cards are located and/or at point of sale informing customers of the changes
- handing a flyer to the customer at point of sale informing them of the changes
- putting a note on any receipt issued with a purchased gift card.

Online gift vouchers – best practice to comply

Fair Trading considers best practice to be that all digital gift cards or vouchers and accompanying material contain an expiry date or period of at least three years from 31 March 2018.

Online gift vouchers – alternative actions taken by a business

If a business has not followed the best practice approach, Fair Trading will consider the particular circumstances and whether the business has taken actions to inform consumers about the three-year minimum expiry date requirement. Some actions that may be considered by Fair Trading include:

- updating terms and conditions on the business's website
- updating terms and conditions available at check out
- updating the accompanying material (e.g. email that is sent with the e-voucher) that is sent to the gift voucher purchaser and/or recipient.

Compliance and enforcement approach to post-purchase administrative fees and voiding provisions

The transitional arrangements outlined above do not apply to the prohibition on post-purchase administrative fees (section 58N(2)) and the voiding provisions (section 58N(3) and section 58N(4)).

This means that from 31 March 2018, a business must not impose any administrative fee that reduces the redeemable value of a gift card after the card has been sold. Some examples include fees for calling a customer service centre to check the balance of a gift card or a fee that is applied when a gift card is inactive.

A term or condition of a gift card will be void if it imposes an expiry date that is less than three years or a post-purchase administrative fee.

Fees not intended to be captured by the gift card laws

Fair Trading recognises that there are fees that a business may charge as part of a sale regardless of the method of payment. This includes:

- overseas transaction fees,
- booking fees, or
- payment surcharge fees,

that can sometimes be charged as a cost of processing a payment.

Fair Trading does not consider these to be post-purchase administrative fees for the purposes of section 58N(2) and section 58N(3).

More information

Fair Trading will evaluate and assess appropriate enforcement action according to the regulatory compliance and enforcement approach as set out in its [Compliance and Enforcement Policy](#)

More information about the regulation of gift card expiry dates is available on the Fair Trading website at www.fairtrading.nsw.gov.au.



Rose Webb

Commissioner

14 February 2018