



---

## Queensland Parliamentary Library

---

### Using Research Briefs

Research Briefs are prepared by the Library's General Distribution Research Team. Research Briefs concisely summarise issues of importance to Members of Parliament and their constituency.

Research Briefs contain links to relevant information, such as legislation, news clippings, articles, discussion papers, policy papers or other appropriate information. Links are current at date of publication.

Email alerts are sent to all Members' electorate offices and to subscribing Members via email.

They can also be accessed via the Library's Online Collections available on the Queensland Parliament's website at: <http://www.parliament.qld.gov.au/apps/LibraryOC/>

Hard copies of these publications can be obtained from the Library.

Ph: 3406 7219

For further inquiries or comments contact:

[library.inquiries@parliament.qld.gov.au](mailto:library.inquiries@parliament.qld.gov.au) or phone (07) 340 67219.

# Gift cards on the national agenda: Queensland's push to regulate the 'gift that can stop giving'

Australians purchase about \$1.5 billion worth of gift cards annually.

Despite this popularity, gift cards have been increasingly complained about in recent years. Common consumer concerns relate to expiry dates, what happens to gift cards when the issuing business ceases to trade, and who should pocket the interest that accumulates on unredeemed gift cards.

In addition, the terms and conditions for gift cards vary significantly between retailers, and consumers are not always provided with a copy prior to purchase.

Currently, gift cards are largely unregulated in Australia, in a specific sense.

In June 2011, the then Ministerial Council on Consumer Affairs ('MCCA') met and, following calls by Queensland's Attorney-General, the Hon P Lucas MP, agreed to the Commonwealth and Queensland Governments leading work to explore and develop options to better protect gift card consumers.

Queensland's Attorney-General considers that the United States of America and Canada have moved "in the right direction" regarding gift card regulation, particularly by banning, or significantly limiting, expiry dates and certain fees, and by requiring strict disclosures of various terms and conditions.

This *Research Brief* considers the popularity of gift cards, the various issues attaching to them, how they are currently regulated in Queensland, and overseas approaches to regulation.

**Renee Gastaldon**

**Research Brief 2011/No.28**

**December 2011**

**Queensland Parliamentary Library  
General Distribution Research Team  
Research and Information Service**

Ms Karen Sampford, Team Leader	(07) 3406 7116
Mrs Nicolee Dixon, Senior Parliamentary Research Officer	(07) 3406 7409
Mrs Renee Gastaldon, Parliamentary Research Officer	(07) 3406 7241
Ms Mary Westcott, Parliamentary Research Officer	(07) 3406 7372
Ms Kelli Longworth, Parliamentary Research Officer	(07) 3406 7468

### **Disclaimer**

Research Briefs are prepared for Members of the Queensland Parliament, for use by parliamentary committees, in parliamentary debates and for related parliamentary purposes. Information in publications is current to the date of publication. Information on legislation, case law or legal policy issues does not constitute legal advice. Research Briefs are prepared under time and resource constraints related to the program of the Parliament.

Research Briefs on Bills reflect the legislation as introduced and should not be considered complete guides to the legislation. To determine the stage a parliamentary committee has reached in its consideration of a Bill, whether amendments have been made to a Bill during consideration in detail, or whether a Bill has been enacted, the Daily Agenda (Notice Paper) for the Queensland Legislative Assembly and/or the 'Bills and Legislation' Page on the Queensland Parliament's website can be consulted at <http://www.parliament.qld.gov.au/work-of-assembly/>.

Readers may also wish to refer to the report on the Bill by the relevant portfolio committee (or other committee nominated when the Bill was presented) and the Parliament's Record of Proceedings (Hansard).

### **© Queensland Parliamentary Library, 2011**

Copyright protects this publication. Except for purposes permitted by the Copyright Act 1968, reproduction by whatever means is prohibited, other than by Members of the Queensland Parliament in the course of their official duties, without the prior written permission of the Clerk of the Parliament on behalf of the Parliament of Queensland.

Inquiries should be addressed to:

Ms Karen Sampford  
Team Leader, General Distribution Research Team  
Research and Information Service  
Queensland Parliamentary Library  
Parliament House  
George Street, Brisbane QLD 4000

Tel: (07) 3406 7116

Email: [Karen.Sampford@parliament.qld.gov.au](mailto:Karen.Sampford@parliament.qld.gov.au)

Information about Research Publications can be found on the Internet at:

<http://www.parliament.qld.gov.au/explore/publications-and-reports/research>

## Contents

Key Points.....	i
1 Gift cards on the national agenda .....	1
2 Scope of this Research Brief .....	2
3 Overview of gift cards.....	2
3.1 What are they? .....	2
3.2 How big is the gift card industry in Australia? .....	2
3.3 Why are gift cards so popular? .....	3
4 Key issues associated with gift cards.....	4
4.1 Expiry dates.....	6
4.2 When a business that has issued gift cards ceases to trade.....	7
4.3 Accumulation of interest on unredeemed gift cards.....	9
5 Gift card regulation in Queensland .....	9
5.1 Expiry dates.....	9
5.2 When a business that has issued gift cards ceases to trade.....	10
5.3 Accumulation of interest on unredeemed gift cards.....	11
6 Other jurisdictions .....	11
6.1 United States of America .....	12
6.1.1 Federal regulation .....	12
6.1.2 State regulation.....	13
6.2 Canada .....	15
6.3 New Zealand .....	16
7 Interim recommendations for retailers.....	17
Key Documents and Links .....	19
Endnotes .....	20



## Key Points

1. About \$1.5 billion worth of gift cards are purchased in Australia each year. It has been suggested that trends in the growth of the gift card industry in North America will likely be repeated in Australia.
2. Some of the key issues for consumers in relation to gift cards concern:
  - expiry dates;
  - when a business that has issued gift cards ceases to trade;
  - the accumulation of interest on unredeemed gift cards;
  - differences in the terms and conditions various retailers attach to gift cards;
  - lost or stolen gift cards;
  - transactions less than a certain amount not being honoured;
  - cash change not being given for balances remaining on a gift card;
  - not all stores in a shopping centre accepting a centre-wide gift card;
  - fees and charges; and
  - the inconvenience of checking remaining balances.
3. Currently, gift cards are largely unregulated in Australia, both federally and by the various states/territories, in any specific sense.
4. On 3 June 2011, the then Ministerial Council on Consumer Affairs ('MCCA') met and agreed that the Commonwealth and Queensland Governments would lead work to explore and develop options to better protect consumers who purchase gift cards.
5. Prior to the meeting, Queensland's Attorney-General, the Hon P Lucas MP, had indicated that he would raise the need for greater protection of gift card consumers at the meeting. The Attorney-General had said that this was an area of national interest, and a consistent national approach was desirable, however, if necessary, Queensland would be prepared to consider "going it alone".
6. Queensland's Attorney-General has suggested that the United States of America and Canada have moved "in the right direction" with gift card regulation, particularly by banning, or at least significantly limiting, expiry dates and certain fees, and by requiring strict disclosures of terms and conditions.
7. In comparison, the absence of specific regulation of gift cards in New Zealand appears to mirror the situation in Australia.
8. Pending the outcome of the national examination of gift cards currently being undertaken, there are certain steps that retailers issuing gift cards can already take to better protect consumers. Consumers can also take certain steps to better inform and protect themselves.

*For further clarification and analysis of the relevant issues, the reader should consult the Research Brief and refer to the Explanatory Notes to the Bill as well as to the Bill itself.*



## 1 Gift cards on the national agenda

On 3 June 2011, the then Ministerial Council on Consumer Affairs ('MCCA')<sup>1</sup> met and:

... noted community concerns at the terms and conditions around gift cards and the substantial amount of money paid by consumers for these products, and agreed that the Commonwealth and Queensland would lead work to explore and develop options to better protect consumers who purchase these products.<sup>2</sup>

Prior to the meeting, the Hon P Lucas MP, Attorney-General, Minister for Local Government and Special Minister of State ('Attorney-General'),<sup>3</sup> had indicated that he would raise the need for greater protection of gift card consumers at the meeting.<sup>4</sup>

The Attorney-General stated:

The central issue ... that I will be discussing at [the] meeting is whether or not Australia's existing fair trading legislation for gift cards protects consumers from dishonest operators.

...

This is an area of national interest, and it would be good to approach this on a national front but if we can't get that then Queensland is prepared to look at going it alone on this.

...

While a national approach is desirable, I'm anxious to ensure Queensland consumers benefit from better regulation of gift cards as soon as possible.<sup>5</sup>

After the meeting, the Attorney-General indicated that his colleagues had "strongly supported Queensland's proposal", and said:

We will work closely with the Gillard Government and other States and Territories in developing options to better protect consumers from dishonest operators. Identifying best practice options for governing the terms and conditions of gift cards will be an extensive process – but we will work together with a view to developing new laws.<sup>6</sup>

The following were some of the matters the Attorney-General specifically identified for further consideration:

- what happens to the interest on money from gift cards;
- what happens to unspent monies; and
- what happens if the company that has issued a gift card goes broke.<sup>7</sup>

The consumer magazine [CHOICE](#) was quick to support the then MCCA's decision:

We applaud Queensland for raising the roort of the great disappearing gift card value trick and their warning they'll go it alone if other jurisdictions don't agree to look into plugging abuses in this area.

We know from the anger and frustration of too many consumers who try to get redress when they suddenly can't redeem gift cards for a number of less than [ideal] reasons that new laws are needed to regulate terms and conditions.<sup>8</sup>

In contrast, the [National Retail Association](#) ('NRA'), for example, which represents retail, fast food and service businesses of all sizes, has warned that some of the proposed measures might result in gift card services being "wiped out". The NRA has said that it does not consider regulation of gift cards to be necessary, and that concerns about gift cards have been "overstated".<sup>9</sup>

In early December 2011, the Commonwealth Consumer Affairs Advisory Council ('CCAAC') released an issues paper, [Gift cards in the Australian market](#).<sup>10</sup> Responses to the issues paper are requested by 2 March 2012.

## 2 Scope of this Research Brief

This *Research Brief*:

- provides a broad **overview of gift cards**:
  - what they are;
  - the size of the gift card industry in Australia; and
  - why gift cards are so popular with consumers and retailers;
- identifies the **key issues associated with gift cards**, with in-depth discussion about:
  - expiry dates;
  - concerns when a business that has issued gift cards ceases to trade; and
  - the accumulation of interest on unredeemed gift cards;
- discusses the **current regulation of gift cards in Queensland**;
- outlines **key features of gift card regulation in other jurisdictions**, namely the United States of America, Canada and New Zealand; and
- lists some **points the Queensland Government encourages businesses offering gift cards to consider already implementing**, pending the outcome of the national consideration of options to better protect gift card consumers.

## 3 Overview of gift cards

### 3.1 What are they?

Gift cards (also referred to as gift vouchers, stored-value cards, pre-funded cards, non-cash payment facilities and gift facilities)<sup>11</sup> have been described in the following ways:

A gift voucher may be understood as a token or card purchased from a retailer by a consumer and intended to be exchanged for goods or services (either to a specified monetary value or for specific goods or services) to be provided by the retailer at a future time.<sup>12</sup>

Typically, gift cards operate like a special purpose debit card that stores pre-paid amounts of money redeemable at specified outlets.

Although they appear similar to their paper voucher predecessors, stored-value gift cards offer greater appeal for consumers, with colourful designs and durability, while giving merchants better security and selling points.<sup>13</sup>

### 3.2 How big is the gift card industry in Australia?

A recent [CHOICE survey](#) found that about \$1.5 billion worth of gift cards are purchased in Australia each year.

It has also been recently suggested that trends in the growth of the gift card industry in North America will likely be seen in Australia:

Studies from Canada and the USA indicate that gift vouchers have surged in popularity in those countries. In 2006, a study carried out by Statistics Canada found that the rate of gift card sales by large retailers had increased from 53% in the 2003 Christmas season to 82% in 2005: an increase of 29% in two years.

...



In 2008, the Retail Council of Canada noted that Canadian retailers sold ‘approximately \$3.5 billion in gift card sales’. Similarly, in the USA, gift vouchers are now the second most popular gift item after clothing. A 2007 consumer protection report found that American consumers spend around US\$80 billion dollars annually on gift cards.

...

Although it has been difficult to obtain information or statistics in relation to the purchasing and redemption of gift vouchers in Australia, the evidence that is available suggests that commercial and consumer trends evident in Canada and the USA are also being repeated here.<sup>14</sup>

### 3.3 Why are gift cards so popular?

The following are some possible explanations for the popularity of gift cards for consumers and businesses:

So what to do? Giving cash may appeal to economists, but doesn’t appeal generally to anybody else. It’s seen as thoughtless and tacky. But the market works; there is an acceptable and increasingly popular alternative to cash: gift cards, which allow the recipient to buy their own gift.

The best research on this is from the US, where gift cards are most popular, and their use has been growing like topsy as any stigma attached to them as a thoughtless gift is disappearing. According to the US National Retail Federation, Christmas gift card purchases in the US totalled \$US25bn last year and they ranked in the top three in surveys of most-wanted gifts.

...

So if you want to reduce the hassle, time wasting and waste of money involved in [gift] shopping, then for my money gift cards are the way to go, particularly if you’re an inept gift giver.<sup>15</sup>

Gift vouchers are an increasingly popular choice of gift for many people for a number of reasons: they relieve the donor from the time and effort involved in selecting a specific gift for a recipient whose tastes or preferences they may not always know. The recipients can use the vouchers to buy goods or services they might not otherwise have purchased or to purchase better quality goods or services. Finally, gift vouchers do not need to be wrapped, are easily posted to their recipients and give the recipients the freedom to choose a gift they really want.<sup>16</sup>

The bewildering choice of potential gifts and the heterogeneity of tastes make gift vouchers a godsend for people wishing to give presents. For retailers, helping consumers overcome the “tyranny of choice”, by issuing gift vouchers, is a boon for sales. More technologically advanced gift cards can, by storing information, allow tracking of purchases, thereby enhancing opportunities for future sales. Retailers also enjoy the financial benefit of advance payment without providing a discount for the use of consumers’ money. The revenues are recorded as advanced sales, unless a trust fund has been established for the vouchers; there are no specific accounting prescriptions for gift vouchers. Furthermore, the purchasing power of gift vouchers reduces the longer holders take before redemption. Indeed, many gift vouchers are not redeemed in practice ...<sup>17</sup>

Gift cards are ... attractive to retailers for a number of reasons. For example, the use of gift cards can reduce the number of unwanted gifts that are returned, a boon for retailers and consumers alike. Gift cards can also create or build store loyalty, drawing in new customers. Moreover, retailers that offer gift cards benefit from incremental sales, since consumers tend to spend more than the face value of gift

cards by buying more expensive items than otherwise planned or by buying additional items once they are in the store. One retail consulting firm found that 20% of consumers spend almost double the initial face value of their gift cards. Retailers may also benefit when portions of gift card balances remain unredeemed since they gain from the interest earned on the outstanding balances until the gift cards are used.<sup>18</sup>

#### 4 Key issues associated with gift cards

In recent years, gift cards have been one of the most complained about products to the Queensland Government's Office of Fair Trading.<sup>19</sup>

CHOICE has also stated that gift cards have been the subject of numerous complaints to it over the years.<sup>20</sup>

Some of the key issues for consumers with gift cards are discussed below.<sup>21</sup>

(Issues marked with \* are discussed in further detail following this table.)

Issue	Description
<b>Expiry dates*</b>	<p>The vast majority of gift cards in Australia have an expiry date, and retailers have a variable approach to gift cards after they have expired.</p> <p>Retailers can reap enormous windfalls when expired gift cards cannot be redeemed for the goods/services they were intended for.</p> <p>Some argue that expiry dates should be prohibited or, at the least, a minimum validity period should be required.</p> <p>On the other hand, retailers point to difficulties with the continual liability of unexpired gift cards, and problems if large numbers of cards were to be unexpectedly redeemed at the same time.</p>
<b>When a business that has issued gift cards ceases to trade*</b>	<p>After a business has issued a gift card, it may be sold or go into administration, receivership or liquidation. All these events can impact on gift card holders.</p> <p>For example, if a business becomes insolvent, gift card holders will be ordinary unsecured creditors who have no priority in a winding up of the business. Their claims will be subordinate to those of any secured creditors, and to certain unsecured creditors who are given a priority, meaning they are likely to recoup little, if any, of the face-value of their gift cards.</p> <p>Recent high profile cases have drawn attention to the plight of gift card holders when a business becomes insolvent, prompting calls for businesses to perhaps hold funds in trust for the benefit of gift card holders should they become insolvent.</p> <p>However, others consider that such an arrangement might not be viable, particularly for smaller businesses, or question whether gift card holders should be afforded additional protections to other stakeholders (such as suppliers, or persons who have paid a deposit for future services or goods).</p>
<b>Accumulation of interest on unredeemed gift cards*</b>	<p>Interest that accumulates on unredeemed gift card purchases is pocketed by retailers, despite the intended goods/services not having been provided.</p>

	Some have argued that this interest should be directed in other ways, similar to, for example, the interest on solicitors' trust fund accounts.
<b>Differences in terms and conditions for gift cards</b>	<p>The terms and conditions for gift cards can vary greatly between retailers. Sometimes, the purchaser of a gift card does not ask for, nor is provided with, a copy of the terms and conditions.</p> <p>The purchaser may also fail to pass the terms and conditions on to the gift card recipient.</p>
<b>Lost or stolen gift cards</b>	<p>Consumers generally need to treat gift cards like cash - if a gift card is lost or stolen, it is gone and often will not be replaced.</p> <p>Despite this, some retailers do replace lost or stolen gift cards, usually for a fee. In these circumstances, consumers should hold on to receipts and note their card number and other details.</p>
<b>Transactions less than a certain amount not being honoured</b>	<p>If a certain amount remains on a gift card (usually a small amount, e.g. less than \$5 or \$10), some retailers will not allow the holder to use the gift card to purchase something for that amount.</p> <p>Instead, the holder will have to buy something more expensive and pay the amount above the balance on the card.</p>
<b>No cash change for balances remaining on a gift card</b>	<p>In most cases, if the full amount of a gift card is not used, consumers will not receive cash change for the remaining balance.</p> <p>Instead, a retailer will typically allow a card holder to use the card again.</p>
<b>Not all stores in a shopping centre accepting a centre-wide gift card</b>	<p>Certain large shopping centres issue what may appear to be a 'centre-wide' gift card which, although able to be used in a wide variety of stores within the centre, might not be accepted by all the stores.</p>
<b>Fees and charges</b>	<p>Some gift cards have particular fees and charges attaching to them, such as an issue fee or an extension fee if the card has reached its expiry date.</p> <p>Fees and charges on gift cards currently seems to be more extensive in the USA, with the range of possible fees including, for example: activation fees, service fees, inactivity/dormancy fees and fees for replacement of lost or stolen cards.</p>
<b>Inconvenience of checking remaining balance</b>	<p>With some gift cards, the balance remaining on the card can be checked online or via telephone.</p> <p>However, in other cases, the remaining balance might only be able to be checked in-store.</p>

Businesses issuing gift cards also face particular issues, some of which were alluded to in a recent Canadian article:

They're not cheap. Gift cards can cost a retailer from 50 cents to \$3 each, depending on how many are ordered. So if you're a small or medium-sized business, chances are you can't afford to offer your customers your own card option.

There are also implementation costs of up to \$50,000.

Retailers generally have to go to an outside company to set up a program.<sup>22</sup>

More recently emerging practices with gift cards, some of which are listed below, could also potentially result in further consumer protection concerns:

- the use of ‘third party outlets’, such as Australia Post, petrol stations, newsagencies and convenience stores, to sell other retailers’ gift cards;
- the on-selling of unwanted gift cards, for example on ebay, often for a discount; and
- trading or swapping gift cards through ‘purpose built’ online facilities.<sup>23</sup>

#### 4.1 Expiry dates

CHOICE has reported:

- the vast majority of gift cards in Australia have an expiry date;
- in most cases, gift cards expire 12 to 24 months after issue;
- retailers approach expired gift cards in different ways, including:
  - exchanging them for new cards;
  - always honouring a gift card, even if it has expired;
  - allowing a grace period after expiry (e.g. one month) within which the gift card can still be redeemed; or
  - not honouring any gift cards after their expiry date.<sup>24</sup>

Three out of four participants in the CHOICE survey stated that they had received at least one gift card in the past 12 months, with more than half reportedly experiencing “the biggest pitfall of gift cards – it expired before they were able to use its full value”.<sup>25</sup>

A further concern with expiry dates is how prominently they are drawn to the attention of consumers. CHOICE reported that, in some cases, the expiry date will be clearly marked on the gift card, however in other cases, only the issue date together with the required redemption period will be marked on the gift card.

The Attorney-General has described the expiry of unredeemed gift cards as “a massive amount of money going down the drain”, stating his concern as follows:

This is about getting value for money. When you buy a gift card for someone you expect that you will get value for money and that they will be able to use the gift card’s total amount when and on what they like.<sup>26</sup>

Others have regarded the “windfall profits received by retailers as a result of unused and expired” gift cards to be “inequitable and constitute unjust enrichment”.<sup>27</sup>

The following extracts, from recent academic publications, provide further context to the concerns with gift card expiry dates, including attaching likely monetary values to the problem:

[Gift card retailing] represents a retail sector with unusually large disparities between sales and ultimate consumption. Many gift vouchers will never be redeemed – a further benefit to retailers – but will instead be misplaced or lie unused by consumers. There are various reasons why gift vouchers are not redeemed. More than one third of consumers surveyed in the USA stated that they had either lost their vouchers or had forgotten that they had them until the expiry date had passed. A USA consumer magazine calculated in late 2008 that around 25% of gift cards purchased in 2007 still had not been redeemed, while a financial services research and advisory firm estimated that, of the US\$80 billion spent on gift cards in the USA in 2006, about US\$8 billion was never recouped. One large retailer alone received a \$US42 million benefit to its income statement for unused gift cards more than two years old. Over 2006 and 2007, [an electronics retailer], which has a retail presence in the USA, Canada and China, added US\$135 million in unused gift card income to its total operating income.

The same trends have been observed in Canada. According to the Consumers' Association of Canada, one third of all gift vouchers remain unused, while one major retailer alone recently reported a C\$44 million profit from unredeemed gift vouchers. By any estimate, these amounts represent a considerable windfall for the retailers concerned.

...

It is ... difficult to gauge the extent of the losses experienced by Australian consumers as a result of gift vouchers expiring unused, since there is limited retail information available in relation to expired vouchers. Nonetheless, anecdotal evidence suggests that this is as significant a problem for Australian consumers as it has been for consumers in Canada and the USA.<sup>28</sup>

... [M]any gift vouchers are not redeemed in practice; UK experience suggests that as many as a quarter of those issued are never exchanged. This may be attributable to inertia or carelessness on the part of the holder but also to the fact that gift vouchers typically expire after a specified period ...<sup>29</sup>

If a consumer has paid for a gift voucher offering a good or service, the good or service should be provided by the retailer. Yet Australian consumer protection regimes are of little assistance in this area. Currently, the retailer can rely on the gift voucher's expiry date to avoid providing goods or services under the voucher. Indeed, retailers have a commercial interest in their gift vouchers expiring unused. If Australian commercial and consumer trends in relation to gift vouchers follow those in Canada and the USA, gift vouchers will continue to provide a growing source of revenue – and unearned profits – for retailers.<sup>30</sup>

While difficulties in validating the authenticity of old vouchers may be a valid concern for issuers of gift vouchers, generally, there are no sound commercial reasons for imposing expiry dates, which create the potential for consumer loss and windfall gains for retailers.<sup>31</sup>

A CHOICE spokesperson has been quoted as saying that retailers need to make gift card expiry dates clearer and have greater latitude towards expired gift cards.<sup>32</sup> The spokesperson also said:

The idea that you rob 100 per cent of the value [of gift cards] at the arbitrary stroke of midnight is something that really sticks in people's craw.

And that is what has led for them to be banned in certain states of America and [motivated] moves to five year expiry dates.

I'm sure that's something that the industry doesn't want here.<sup>33</sup>

However, retailers have argued that they should not have to make provision for gift cards indefinitely. For example, the NRA has reportedly said that it is "happy to discuss the period of time within which gift cards needed to be redeemed", but added:

I think what you want to do as a retailer or as a business is you certainly want to encourage the redemption of these cards within a reasonable period of time otherwise you have this liability on your books.

In theory, if all these cards were redeemed unexpectedly within a particular point of time it might put some stress on the cashflow of the business.<sup>34</sup>

## 4.2 When a business that has issued gift cards ceases to trade

The Queensland Government's Office of Fair Trading recommends that consumers:

Don't delay unnecessarily in using a gift card. In many instances, gift cards will not be honoured if the business is sold to new owners or goes into administration, receivership or liquidation.<sup>35</sup>

The Attorney-General has labelled as "outrageous":

... recent media coverage about administrators not honouring their gift cards including Borders and Angus and Robertson who left thousands of people with gift cards unable to use them or asked to spend more money just to redeem them.<sup>36</sup>

<b>Case study</b>	<b>Collapse of REDgroup Retail Pty Ltd and Associated Companies (including Angus &amp; Robertson Pty Ltd and Borders Australia Pty Ltd)<sup>37</sup></b>
<b>17 February 2011</b>	<p>Voluntary Administrators were appointed to REDgroup Pty Ltd and its associated companies. REDgroup is the parent company of Angus &amp; Robertson, the 125-year-old bookselling chain, and the Australian licence holder for the Borders chain. 103 Angus &amp; Robertson stores were affected (although an additional 61 franchises were not affected), as were 26 Borders stores and 2,500 staff employed by REDgroup. The move was blamed on various factors, including the growth in online shopping.</p> <p>The announcement came after the US-based Borders (a separate business with different owners) filed for bankruptcy protection in New York.</p>
<b>18 February 2011</b>	<p>The administrators announced that anyone wishing to use an Angus &amp; Robertson or Borders gift card would have to spend at least twice the value of that card. That is, card holders could extract the value of their gift card by matching it dollar-for-dollar in payment. For example, they could buy \$40 worth of books by using a \$20 gift card and paying \$20 in cash or by credit card.</p> <p>Considerable public disquiet followed this announcement. For example, the ACT's Attorney-General urged the administrators to reconsider their decision, calling it "grossly unfair" and "an outrageous imposition on consumers ... I think exploitative", adding it "might be legal, but it's certainly completely unreasonable".</p>
<b>24 March 2011</b>	<p>The administrators announced the above redemption scheme would continue until 3 April 2011 and any gift cards not redeemed by that time would not be honoured under the administration. The deadline was said to be a "necessary part" of the administration and arose from the "need to obtain financial certainty in relation to the gift card liability". Gift card holders were urged to redeem their cards by this deadline.</p>
<b>3 April 2011</b>	<p>After close of business, holders of any unredeemed gift cards could not redeem their cards. Instead, if they wished to make a claim against the companies, they had to register as an unsecured creditor.</p>
<b>25 July 2011</b>	<p>The administrators reported that to date they had received over 1,000 gift card claims totalling approximately \$70,000, and anticipated receiving further claims which might take total gift card claims to \$200,000, which would result in a dividend of 25 cents in the dollar. The administrators had earlier indicated that they expected a dividend in the range of 25-50 cents in the dollar.</p>
<b>4 August 2011</b>	<p>The administrators held a meeting of creditors to determine the future of the companies, with the options being that the companies proceed to liquidation, the creditors approve a deed of company arrangement, or the companies return to the control of the directors.</p>

	Creditors voted in favour of a deed of company arrangement, with a first and final dividend to be declared on 13 October 2011.
--	--

### 4.3 Accumulation of interest on unredeemed gift cards

The Attorney-General has said:

...[A]lso of concern is the fact that interest could be accumulating on unredeemed gift cards and going straight into the trader's pocket, despite the fact that nothing has been provided.

I am interested in exploring a fair way to deal with such funds.

For example, when people engage solicitors to do work for them, money is deposited in a trust account until the work is performed, with any interest accumulated funding community work such as Legal Aid.<sup>38</sup>

## 5 Gift card regulation in Queensland

### 5.1 Expiry dates

Gift card expiry dates are not regulated by Queensland legislation, including in terms of requiring a reasonable redemption period or to compel retailers to honour, replace or refund expired gift cards.<sup>39</sup>

The Queensland Government's Office of Fair Trading recommends that consumers:

Check that the gift card has a reasonable time in which the card can be redeemed. Make sure the recipient is going to be able to redeem the gift card inside the expiry date. Make sure the expiry date is prominent on the card, so that the recipient does not forget it.<sup>40</sup>

Federally, the [Corporations Act 2001 \(Cth\)](#), Chapter 7, contains provisions directed at the regulation of 'non-cash payment facilities'. Gift cards are a specific type of non-cash payment facility.

These provisions set out various licensing, conduct and disclosure obligations, as well as a prohibition on hawking.

In response to concerns that retailers offering gift card facilities should not be "subject to unnecessary and inappropriate regulation under the financial services regime", and in recognition that gift card facilities:

- are "simple, easy-to-use and well understood by retail consumers";
- generally do not constitute a significant part of the business of the person providing the facility; and
- pose "sufficiently low" risk for consumers,

the Australian Securities and Investments Commission ('[ASIC](#)') decided that the costs for retailers of complying with the regime were disproportionate to the risks for consumers using gift card facilities.<sup>41</sup>

Accordingly, in 2005, ASIC issued a class order<sup>42</sup> ([CO 05/738](#) and the [Explanatory Statement](#)) which granted retailers offering gift card facilities unconditional relief from the application of the provisions of the *Corporation Act 2001* mentioned above.

One requirement, however, for the relief to be available, is for any expiry date on a gift card issued on or after 1 June 2006 to be prominently:

- set out on the gift card in a way that makes it clear that it is an expiry date; or
- displayed in a way that could reasonably be expected to come to the attention of a gift card recipient at the time it is given and used, and makes it clear that it is an expiry date.

The situation concerning gift card expiry dates in Australia has been commented on in the following ways:

The generally accepted position ... appears to be that if a gift voucher passes its expiry date still unused, the voucher holder has no remedy.<sup>43</sup>

... Australian consumer protection regimes are of little assistance in this area. Currently, the retailer can rely on the gift voucher's expiry date to avoid providing goods or services under the voucher. ...<sup>44</sup>

The same publication argues:

... that questions of equity arise in these situations and that consumer protection laws in Australia are deficient because they do not protect consumers from losses which result from the expiry of unused gift vouchers. In the absence of effective statutory provisions, a consumer can only seek to enforce an expired gift voucher on the basis of equitable or common law principles such as unconscionability or unjust enrichment. Yet ... none of these causes of action is readily available to the consumer who is seeking to enforce an expired and unused gift voucher. Since no statutory remedies are available either, the consumer is left without recourse.<sup>45</sup>

Interestingly, an academic publication from New Zealand made the following observation, which might also apply in the Australian context:

Why doesn't there appear to be any case law on the issue? First, from a practical perspective, vouchers are often for small amounts and many consumers may not consider a dispute worth pursuing. Second, psychological barriers may exist. Because the persons redeeming vouchers have not personally paid for them, they may feel less inclined to enforce their rights than had they been the purchasers. Nevertheless, not all gift vouchers are for trivial amounts, and so litigation in this area is not unimaginable.<sup>46</sup>

## 5.2 When a business that has issued gift cards ceases to trade

If a business that has issued gift cards is sold to new owners, the new owners will be liable for the gift cards only if they purchased the previous owner's liabilities, including in relation to honouring gift cards.

If a business that has issued gift cards collapses, the holders of those gift cards will be ordinary 'unsecured creditors'.

In the first instance, the claims of all unsecured creditors will be subordinate to those of any 'secured creditors' (i.e those with a 'charge' in connection to the business, such as a mortgage over the property at which the business is located, or a charge over the assets of the business).

Further, in a liquidation of the business, some classes of unsecured creditors, such as employees with outstanding entitlements, will have their claims paid out in priority to those of the remaining unsecured creditors.



It has been suggested that a possible way to address the concerns of gift card holders in these situations could be by requiring retailers to hold funds in trust for the benefit of gift card holders. However, it has been acknowledged that:

... such an arrangement, which must be properly constructed and operated, may not be a viable option for small retailers.<sup>47</sup>

Others question whether gift card holders should be afforded additional protections to other stakeholders (such as suppliers, or persons who have paid a deposit for future services or goods).

### 5.3 Accumulation of interest on unredeemed gift cards

Interest that has accumulated on unredeemed gift cards in Queensland is pocketed by the issuing business.

As mentioned above, in raising this situation as a concern, the Attorney-General alluded, by way of comparison, to how interest on solicitors' trust accounts is dealt with.

Under the [Legal Profession Act 2007 \(Qld\)](#) (see Chapter 3, Part 3.3), interest paid on money kept in solicitors' trust accounts is paid into the Legal Practitioner Interest on Trust Accounts Fund ('LPITAF'). Payments may be made from this fund to various bodies and for various purposes (see s 289), including to Legal Aid Queensland and for grants approved by the Minister for any of the following purposes:

- the advancement of law reform;
- the collection, assessment and dissemination of information concerning legal education, the law, the legal system, law reform, the legal profession and legal services; and
- facilitating access to the legal system, legal information and education and legal services for members of the community, particularly economically or socially disadvantaged members of the community.

In 2010/11, almost 28% (or \$29 million) of Legal Aid Queensland's funding was derived from the LPITAF.<sup>48</sup>

In addition, \$1.48 million of general grant funding was provided to various individuals or organisations, in accordance with the purposes listed above.<sup>49</sup>

## 6 Other jurisdictions

In calling for the then MCCA to consider the issue of better protection for gift card consumers, the Attorney-General said:

I have asked the Department to identify best practice options for the regulation of gift cards with a view to developing new laws regulating the terms and conditions of gift cards.<sup>50</sup>

The Attorney-General suggested:

North America is moving in the right direction in regards to this issue. The US Federal Government has set a five year limit on expiry dates and a number of US States and Canadian provinces have banned them entirely.

Some American states have also introduced legislation that bans all fees and charges, sets strict disclosure requirements and requires retailers to offer customers cash if the value of their card falls under a certain value.<sup>51</sup>

A recent academic publication also reached the following conclusion, after examining gift card regulation in Australia, the United States of America and Canada:

The principal suggestion is to examine Canadian and USA law reforms in this area to see whether Australian consumer protection laws could usefully be amended or enacted along similar lines to protect consumers holding gift vouchers.<sup>52</sup>

## 6.1 United States of America

### 6.1.1 Federal regulation

In August 2010, new federal rules for gift cards came into effect - see the *Credit Card Accountability Responsibility and Disclosure Act 2009* (US) ('Credit CARD Act') and the [Federal Reserve Board final rules](#) which implemented the gift card provisions in this legislation.<sup>53</sup>

The intention of the federal rules was to provide uniform, minimum standards to protect gift card consumers, without precluding the various states from imposing additional or more rigorous protections.

In summary, the key protections under the federal rules are:

<p><b>Expiry dates</b></p>	<p><u>Money</u> on a gift card must be valid for <u>at least five years</u> from the date the card is purchased (any money later added to the card must also be valid for at least five years).</p> <p>Information about any expiry date attaching to the money underlying a gift card must be <u>clearly and conspicuously stated</u> on the card and be <u>disclosed</u> prior to purchase.</p> <p>If a gift card has an expiry date (i.e. an expiry date for the gift card itself, which is separate to the above five year limit on the money underlying a gift card expiring), the holder may, when the gift card expires, request a <u>replacement card at no charge</u> for any unspent money that remains.</p>
<p><b>Disclosure of fees</b></p>	<p>All fees must be <u>clearly disclosed</u> on, or with, a gift card prior to purchase.</p>
<p><b>Restrictions on fees</b></p>	<p><u>Dormancy, inactivity and service fees</u> (e.g. account maintenance or activity-based fees) may only be imposed if <u>three conditions are satisfied</u>:</p> <ul style="list-style-type: none"> <li>• there has been <u>no activity</u> with respect to the card for <u>at least one year</u>;</li> <li>• only <u>one such fee</u> may be assessed in a given <u>calendar month</u>; and</li> <li>• disclosures about such fees must be <u>clearly and conspicuously stated</u> on the card and the person selling the card must provide these disclosures <u>prior to purchase</u>.</li> </ul> <p>A fee can still be charged to purchase a gift card and, for example, to replace a lost or stolen card.</p>

(See also the Federal Trade Commission ('FTC') [Consumer Alert – Buying, Giving and Using Gift Cards](#).)

In 2008, the FTC received a [joint letter](#) from a number of consumer advocacy groups calling on the FTC to take various steps to protect consumers from losing money on gift cards sold by businesses that later become bankrupt. The letter:

- pointed to the “enormous amount of money on retailer gift cards that needs protection”; and
- called on the FTC to declare it “an unfair and deceptive practice for retailers to sell gift cards without segregating and holding in trust gift card funds to guarantee that consumers will be able to use their gift cards and obtain the value on their cards in the event of a retailer’s bankruptcy”.

In particular, the letter called on the FTC to “provide consumers with a permanent solution” by:

- declaring the sale of gift cards without both segregating the funds and holding those funds in a trust to be an unlawful and deceptive practice; and
- prescribing new rules to require retailers to both segregate and hold in trust gift card funds, and to automatically honour a consumer’s gift card from those segregated funds until or unless a bankruptcy court orders otherwise.<sup>54</sup>

Other matters the letter called on the FTC to address included:

- intervening in bankruptcy proceedings to request a court to order that a bankrupt retailer accept its own gift cards at full value as long as the doors remained open;
- developing and maintaining a new registry on bankrupt retailers’ gift card practices;
- requiring retailers to report to the new registry when they filed for bankruptcy; and
- requiring bankrupt retailers to stop selling gift cards no later than the date of a bankruptcy filing.

The FTC [replied](#) to these calls in 2010. In part, the reply states as follows:

Your letter focuses on issues that arise when gift cards are sold prior to a retailer’s filing for bankruptcy (“pre-petition”), as well as issues arising from the sale of gift cards while a company is in bankruptcy (“post-petition”). With respect to such pre-petition sales, the Bankruptcy Code establishes a series of priorities for unsecured creditors. In establishing the Bankruptcy Code, Congress weighed the priorities and placed consumer creditors at a lower priority than employees’ wages and contributions to employee benefit plans. ... Your request to have retailers set up a trust for gift card funds that would be outside the bankruptcy estate would in effect place pre-petition gift card holders at a higher priority than all other unsecured creditors. Given the legislative background, it would not appear appropriate for the FTC to effectively modify the creditor priorities set forth in the Bankruptcy Code. Rather, such a change should be considered by Congress, a body that could reassess the priority afforded to gift card holders with due consideration for all other unsecured creditors.

### 6.1.2 State regulation

The various American states regulate gift cards differently.<sup>55</sup> The Federal Reserve Board recently noted:

At the state level, more than 40 states have enacted laws applicable to gift cards in some fashion. Most commonly, state gift card laws may restrict the circumstances under which dormancy, inactivity, or service fees may be charged and/or restrict the circumstances under which the card or funds underlying the card may expire. Other state laws simply require the disclosure of fees or expiration dates. Many states have applied abandoned property or escheat laws to funds remaining on gift cards, and some states require that consumers have the option of receiving cash back when the underlying balance falls below a certain amount.<sup>56</sup>

An academic publication also recently provided the following summary of the situation:

In the USA, most states now have legislation regulating fees, expiry dates and disclosure policies in relation to retailer-issued gift cards. Certain states, such as California, Connecticut, Florida, Maine, Minnesota, Montana, New Hampshire (for gift cards to the value of US\$100 or less), Oregon, Rhode Island and Washington, have enacted laws prohibiting any gift card expiry dates. Many other states have passed legislation to prescribe a minimum gift card validity period ranging from one to seven years, while some (such as Arizona, Georgia, Nebraska, Nevada, New York,

South Carolina, Texas, Utah and Virginia) simply require that a gift card's expiry date be disclosed clearly on the card.<sup>57</sup>

By way of example, some of the key features of legislation in the states of California, Massachusetts and New York, are noted below.

### **California**

The relevant legislation is the [California Civil Code, sections 1749.45-1749.6](#).

Some of the key features are:

- In general, expiry dates are prohibited. There are some limited exceptions, some of which are listed below, however any such expiry date must be in at least 10-point font on the front of the gift card:
  - gift cards distributed to a consumer without charge under an awards, loyalty or promotional program;
  - gift cards donated or sold below face value at a volume discount to employers or non-profit and charitable organisations for fundraising purposes, in which case the expiry date must not be more than 30 days after date of sale; and
  - gift cards issued for perishable food products.<sup>58</sup>
- Disclosures must be made in at least 10-point font on the face of the gift card, and any words concerning an expiry date must be in capitals.
- Service and dormancy fees are prohibited, unless all of the following factors are satisfied:
  - there is \$5 or less remaining on the card each time the fee is assessed;
  - the dormancy fee is \$1 per month or less;
  - the card has been inactive for 24 consecutive months;
  - the holder may reload or add value to the card; and
  - the card has printed on it a statement in at least 10-point type about the amount and frequency of the fee, that the fee is triggered by inactivity, and at what point the fee will be charged.
- Any gift card with a cash value less than \$10 is redeemable in cash for its cash value.<sup>59</sup>

In addition, in relation to concerns about gift card issuers becoming bankrupt, the Californian legislation<sup>60</sup> provides that:

- a gift certificate “constitutes value held in trust by the issuer ... on behalf of the beneficiary ... . The value represented by the gift certificate belongs to the beneficiary ... and not to the issuer”; and
- an issuer “who is in bankruptcy shall continue to honor a gift certificate issued prior to the date of the bankruptcy filing on the grounds that the value of the gift certificate constitutes trust property of the beneficiary”,

however, an issuer is not required to “maintain a separate account for the funds used to purchase the gift certificate”.

The California Department of Consumer Affairs has recently commented that:

No court has ruled on the effectiveness of this law.<sup>61</sup>

The [letter](#) from the consumer advocacy groups to the FTC, mentioned above in the discussion of gift card regulation at the federal level in the USA, also made the following points regarding these provisions of the Californian legislation, and similar provisions in Washington legislation:

These statutes impose the trust but may also need to require segregation of funds to be fully effective in bankruptcy.

We understand that in order for consumers to obtain the value on their gift cards after the funds are segregated and held in trust, the bankruptcy court must still

approve a request from the company to continue to accept its own gift cards. However, without requiring the segregation and maintenance of gift card funds by retailers in a trust, consumers will continue to lose millions on gift cards.

Finally, the Californian legislation states that a gift card issuer has no obligation to pay interest on the value of the gift certificate held in trust.<sup>62</sup>

### **Massachusetts**

The relevant legislation was recently summarised in a [guide](#) released by the Massachusetts Office of the Attorney General.<sup>63</sup>

Some of the key features are:

- Gift cards must be redeemable for a minimum of seven years.
- The issuer must generally clearly indicate the date of issue and expiry on the face of the gift card, otherwise the card will be redeemable in perpetuity.
- Once a gift card has been redeemed for at least 90% of its value, the holder may elect to receive the balance of the remaining value in cash.
- A purchaser or holder of a reloadable gift card which has been redeemed in part, such that the remaining balance is \$5 or less, must elect whether to receive the balance in cash or continue using the gift card.
- A \$300 fine applies if a retailer imposes dormancy, latency, administrative, periodic, service or other fees that have the effect of reducing the total value amount for which the holder may redeem such a gift card.
- A person who sells or offers to sell a gift card which imposes any fees or charges including but not limited to purchase, activation, renewal or cancellation fees, must provide appropriate notice to consumers. Failure to do so attracts a penalty of \$300.<sup>64</sup>

### **New York**

The regulation of gift cards in New York has been discussed by the Office of the New York State Comptroller, [Frequently Asked Questions](#), and the New York Office of the Attorney General, '[The Attorney General's Gift Card Report: Perils of gift cards, knowing your rights and improving our laws](#)', December 2008.

Some of the key features according to these publications<sup>65</sup> are:

- There is no restriction on expiry dates, other than that they must be clearly and conspicuously stated on the card.
- Any service fees must be conspicuously disclosed to the purchaser.
- No dormancy fee may be charged before the 13<sup>th</sup> month of inactivity.

## **6.2 Canada**

A recent (2009) academic publication stated:

- since 2007, various Canadian provinces (including Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan) have enacted legislation prohibiting expiry dates on gift cards;
- legislative reform was on the agenda in two of the remaining provinces (Quebec and Prince Edward Island), which were considering prohibiting expiry dates on gift cards; and
- in many cases, in addition to prohibiting expiry dates, the provincial legislation also addresses consumer concerns about retailers' non-disclosure of gift card terms and conditions.<sup>66</sup>

By way of example, some of the key features of legislation in the province of Ontario are discussed below.

### **Ontario**

Ontario was the first Canadian province to ban expiry dates.

The relevant legislation is [Regulation 187/07](#), made under the *Consumer Protection Act 2002*.

Some of the key features are:

- Expiry dates on gift cards are prohibited, other than for gift cards issued for charitable purposes or for one specific good or service (e.g. for a facial at a spa).
- Activation and service/dormancy fees are also generally prohibited, however fees to replace lost or stolen cards, or to customise gift cards, are allowed.
- In the case of mall card cards (which are redeemable at more than one unaffiliated store), consumers may be charged a maximum one-time activation fee of \$1.50, and they cannot be charged a dormancy fee for at least 18 months after purchase, after which time a maximum monthly dormancy fee of \$2.50 is permitted.
- The terms and conditions for gift cards must be clearly marked and disclosed to consumers.<sup>67</sup>

The Ontario Ministry of Consumer Services has also issued a [consumer alert](#) for the holders of gift cards regarding possible implications of retailers going out of business or filing for bankruptcy. The alert provides the following context:

A mass e-mail has been circulating the Web warning consumers to use or lose their gift cards due to the current economic downturn and multiple North American store closings.

Consumers need to separate fact from fiction amid growing concerns about the validity of gift cards as our economy struggles.

## **6.3 New Zealand**

It was recently noted in New Zealand that:

Despite their economic significance and the potential disadvantages they present to consumers, gift vouchers appear to attract little policy and legal interest.<sup>68</sup>

In fact, the absence of specific regulation of gift cards in New Zealand appears to mirror the situation in Australia.<sup>69</sup>

The following extracts are taken from a recent (2008) academic publication<sup>70</sup> in which certain conclusions are reached, in the New Zealand context, regarding gift card expiry dates, unredeemed gift cards and the position of gift card holders when the issuing business collapses.

In relation to expiry dates and unredeemed gift cards:

Since gift vouchers tend to have an expiry date of between 6 and 12 months from issue, it is a critical concern whether the purchaser is aware of the limited period of validity at the time of entry into the contract.

...

Casual observation of the way gift vouchers are commonly marketed indicates that purchasers are often not made aware of the expiry date before purchase.

...

It seems ... that gift vouchers holders could best be protected if expiry dates were

prohibited and retailers were required to keep receipts from gift voucher purchasers in trust. ... However ... it would surely be to no one's benefit to overregulate the practice. The complex escheat laws of many of the US states, which prevent retailers keeping windfalls from unredeemed or expired vouchers, should certainly be avoided. A more realisable consumerist goal would be for retailers to be required to provide clear information about their gift voucher schemes prior to purchase.

If the Commerce Commission were to investigate the apparently widespread practice of failing to advise consumers of expiry dates before purchase, retailer behaviour might change for the better without statutory intervention.

In relation to when an issuing business collapses:

The potential pitfalls that can arise from the use of gift vouchers came to public attention following the receiverships of [certain companies] in the late 1990s, when holders of gift vouchers, as unsecured ordinary creditors, discovered their claims were subordinate to those of secured creditors ... . The Ministry of Commerce requested the Law Commission to review this issue to determine whether a new priority was necessary to protect the interests of gift voucher holders in the event of a retailer's receivership or liquidation. The Law Commission concluded that, as no ascertained goods existed at the time a gift voucher is purchased, a person who has received the voucher as a gift cannot claim a proprietary remedy. ... Consequently, it recommended against a preference for gift voucher holders in the event of the retailer's receivership or insolvency ... .<sup>71</sup> This recommendation was followed in the 2006 insolvency law reforms. While this may be a legally coherent response to the issues, it seems unlikely to square with consumer expectations.

Retailers can voluntarily protect consumers by holding funds in trust for the benefit of gift voucher holders. However, such an arrangement, which must be properly constructed and operated, may not be a viable option for small retailers.

...

Both the Ministry of Consumer Affairs and Consumer NZ advise shoppers to inquire whether a retailer operates a trust when purchasing a gift voucher ... .

The article concludes by stating:

Consumer-friendly behaviour is a competitive advantage. Thus a major gift voucher scheme operated by the motor industry promotes the lack of an expiry date as a key marketing point for its gift vouchers. The more that retailers who do keep consumers' funds safe through the use of a trust publicise this fact, the more likely it is that consumers will come to expect similar protection from retailers who currently do not.<sup>72</sup>

## 7 Interim recommendations for retailers

Pending the outcome of the national examination of gift cards currently being undertaken, the Attorney-General has called on retailers to "do the right thing and make a virtue of getting their own house in order before the government steps in and makes them do it".<sup>73</sup>

The Queensland Government's Office of Fair Trading website encourages businesses offering gift cards to:

- **Provide a reasonable redemption period** –at least 2 to 5 years, with the expiry date prominently marked on the card.
- **Not set limits on the minimum amount** a consumer must spend on a gift card in order to be

able to use it.

- **Offer cash change for small amounts** remaining on a gift card.
- **Clearly indicate the stores included and excluded** for shopping centre cards, or cards for groups of stores.
- **So that lost or stolen cards can be replaced**, record the details of any gift cards sold.
- **Customer should be able to check the remaining balances on their gift cards for free**, preferably by an online method, otherwise by a service in-store.
- **Gift card purchasers should be provided with a copy of the terms and conditions**, and be encouraged to pass them on to the gift card recipient. Terms and conditions should also be readily available online and in-store.
- **Customers should be aware of what will happen if the business is sold or goes into administration, receivership or liquidation.** Businesses are encouraged to take steps to ensure gift cards are honoured by the new owner if a business is sold.<sup>74</sup>



## Key Documents and Links

### Ministerial Council on Consumer Affairs Communiqué

- MCCA, [Joint Communiqué](#), 3 June 2011, 'Community concern with gift cards', p 3

### Commonwealth Consumer Affairs Advisory Council Issues Paper

- CCAAC, [Gift cards in the Australian market](#), Issues Paper, December 2011

### Ministerial Media Statements

- Hon P Lucas MP, Attorney-General, Minister for Local Government and Special Minister of State, '[Comment sought on gift card use in the Australian market](#)', *Ministerial Media Statement*, 9 December 2011
- Hon P Lucas MP, Deputy Premier and Attorney-General, Minister for Local Government and Special Minister of State, '[Protection for consumers who purchase gift cards on MCCA agenda](#)', *Ministerial Media Statement*, 3 June 2011
- Hon P Lucas MP, Deputy Premier and Attorney-General, Minister for Local Government and Special Minister of State, '[Commonwealth agrees to crackdown on gift cards](#)', *Ministerial Media Statement*, 3 June 2011
- See also the Attorney-General's discussion on 612 ABC Radio, 3 June 2011

### Key Journal Articles

- Nicky Jones, 'Gift vouchers and expiry dates: when the gift stops giving', *QUT Law and Justice Journal*, 2009, Vol. 9(2), pp 213-231
- Jonathan Barrett, 'Gift vouchers', *New Zealand Law Journal*, August 2008, pp 293-294
- Recent [CHOICE survey](#)

### Newspaper Articles

- Dan Nancarrow, '[Gift card expiry dates could 'kill' service](#)', *Brisbane Times*, 4 June 2011
- Steven Wardill, 'Gift card rule push – Regulation bid wins favour', *Courier Mail*, 4 June 2011, p 19
- Steven Wardill, 'Gift cards crackdown – State seeks laws to stop retailers duding customers', *Courier Mail*, 3 June 2011, p 1

## Endnotes

---

- <sup>1</sup> The MCCA consisted of all Commonwealth, State, Territory and New Zealand Ministers responsible for fair trading and consumer protection laws. Its role was to consider consumer affairs and fair trading matters of national significance and, where possible, develop a consistent approach to those issues. Ministers met biannually, with other official level committees also meeting throughout the year to discuss specific aspects of consumer protection (see the [MCCA webpage](#)). As a result of the recent COAG reforms, the MCCA is now the 'COAG Legislative and Governance Forum on Consumer Affairs'.
- <sup>2</sup> MCCA, [Joint Communiqué](#), 3 June 2011, 'Community concern with gift cards', p 3.
- <sup>3</sup> On the meeting date, the Hon P Lucas MP was also Deputy Premier. He ceased as Deputy Premier on 16 September 2011.
- <sup>4</sup> Hon P Lucas MP, Deputy Premier and Attorney-General, Minister for Local Government and Special Minister of State, '[Protection for consumers who purchase gift cards on MCCA agenda](#)', *Ministerial Media Statement*, 3 June 2011. Also refer to the [Attorney-General's discussion on 612 ABC Radio](#) on 3 June 2011 prior to the meeting.
- <sup>5</sup> 'Protection for consumers who purchase gift cards on MCCA agenda', Ministerial Media Statement.
- <sup>6</sup> Hon P Lucas MP, Deputy Premier and Attorney-General, Minister for Local Government and Special Minister of State, '[Commonwealth agrees to crackdown on gift cards](#)', *Ministerial Media Statement*, 3 June 2011.
- <sup>7</sup> 'Commonwealth agrees to crackdown on gift cards', Ministerial Media Statement.
- <sup>8</sup> CHOICE, '[Looking the gift card horse in the mouth - support for ministerial move to end poor practices](#)', *Media Release*, 3 June 2011.
- <sup>9</sup> Dan Nancarrow, '[Gift card expiry dates could 'kill' service](#)', *Brisbane Times*, 4 June 2011.
- <sup>10</sup> Note that the work on this *Research Brief* preceded the release of the issues paper. The issues paper (p vii) states that the "CCAAC is an expert advisory panel, which provides advice to the Parliamentary Secretary to the Treasurer on consumer policy issues". The issues paper (p ix) explains that the Parliamentary Secretary to the Treasurer, on behalf of the then MCCA, invited the CCAAC to conduct a review on gift cards, which lead to the release of the issues paper. See also: Hon P Lucas MP, Attorney-General, Minister for Local Government and Special Minister of State, '[Comment sought on gift card use in the Australian market](#)', *Ministerial Media Statement*, 9 December 2011.
- <sup>11</sup> Nicky Jones, 'Gift vouchers and expiry dates: when the gift stops giving', *QUT Law and Justice Journal*, 2009, 9(2), pp 213-231, at p 214.
- <sup>12</sup> 'Gift vouchers and expiry dates: when the gift stops giving', *QUT Law and Justice Journal*, p 214.
- <sup>13</sup> Tracy Lee, 'Coles Myer's gift card plan', *Australian Financial Review*, 16 November 2004, p 11.
- <sup>14</sup> 'Gift vouchers and expiry dates: when the gift stops giving', *QUT Law and Justice Journal*, pp 215, 217-218.

- 15 Alan Wood, 'No time like the present with Christmas gifts on the cards', *Australian*, 5 November 2009, p 12.
- 16 'Gift vouchers and expiry dates: when the gift stops giving', *QUT Law and Justice Journal*, p 215.
- 17 Jonathan Barrett, 'Gift vouchers', *New Zealand Law Journal*, August 2008, pp 293-294, at p 293.
- 18 'Gift vouchers and expiry dates: when the gift stops giving', *QUT Law and Justice Journal*, p 215.
- 19 See, for example, Hon K Shine MP, Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland, '[Complaints and queries to Office of Fair Trading top 100,000 in 2008](#)', *Ministerial Media Statement*, 7 January 2009, which stated that, in 2008, "gift and discount vouchers" were the 5<sup>th</sup> most complained about product, with 287 complaints received. However, as noted in 'Gift vouchers and expiry dates: when the gift stops giving', *QUT Law and Justice Journal*, p 218, this Ministerial Media Statement does not indicate the actual nature of the complaints made.
- 20 CHOICE, '[Gift card traps](#)'.
- 21 These issues are drawn from a range of sources, including: 'Protection for consumers who purchase gift cards on MCCA agenda', Ministerial Media Statement; 'Commonwealth agrees to crackdown on gift cards', Ministerial Media Statement; CHOICE, 'Gift card traps'; 'Gift vouchers and expiry dates: when the gift stops giving', *QUT Law and Justice Journal*; and 'Gift vouchers', *New Zealand Law Journal*.
- 22 '[Gift cards: the lure of plastic](#)', *CBC News*, 5 December 2008.
- 23 See, for example, Jason Bryce, 'Gift card sell-on trade takes off', *Sunday Mail*, 4 December 2011, p 60; '[Online firm starts trade in gift cards](#)', *Sydney Morning Herald*, 15 March 2010, '[The inside story on gift vouchers](#)', *ninemsn Money*, January 2008, and the [Card Limbo](#) website which was established in 2010.
- 24 CHOICE, 'Gift card traps'.
- 25 CHOICE, 'Gift card traps'.
- 26 'Protection for consumers who purchase gift cards on MCCA agenda', Ministerial Media Statement.
- 27 'Gift vouchers and expiry dates: when the gift stops giving', *QUT Law and Justice Journal*, p 214.
- 28 'Gift vouchers and expiry dates: when the gift stops giving', *QUT Law and Justice Journal*, pp 215-216, 230.
- 29 'Gift vouchers', *New Zealand Law Journal*, p 293.
- 30 'Gift vouchers and expiry dates: when the gift stops giving', *QUT Law and Justice Journal*, p 214.
- 31 'Gift vouchers', *New Zealand Law Journal*, p 294.
- 32 'Gift card expiry dates could 'kill' service', *Brisbane Times*.
- 33 'Gift card expiry dates could 'kill' service', *Brisbane Times*.

- 34 'Gift card expiry dates could 'kill' service', Brisbane Times.
- 35 Queensland Government, Office of Fair Trading, '[Buying and using gift cards](#)'.
- 36 'Protection for consumers who purchase gift cards on MCCA agenda', Ministerial Media Statement.
- 37 Information in this table is drawn from the [Ferrier Hodgson](#) website (Ferrier Hodgson were appointed voluntary administrators of REDgroup Retail Pty Ltd and its associated companies); '[Angus & Robertson struggles to remain afloat amid \\$46 million debt](#)', AAP, 18 February 2011; and Jacqueline Williams, '[Borders' stance on gift cards exploitative, grossly unfair: Corbell](#)', *Canberra Times*, 19 February 2011.
- 38 'Protection for consumers who purchase gift cards on MCCA agenda', Ministerial Media Statement.
- 39 See 'Gift vouchers and expiry dates: when the gift stops giving', QUT Law and Justice Journal, p 229.
- 40 Queensland Government, Office of Fair Trading, 'Buying and using gift cards'.
- 41 ASIC, [Class Order 05/738 Explanatory Statement](#), p 2.
- 42 ASIC can issue instruments to exempt persons from certain provisions of the *Corporations Act 2001* (Cth), to modify or clarify the operation of certain provisions, or to make declarations about persons who are subject to a particular provision. Class orders are instruments which have a wider application. Usually, they apply to a class of persons who carry out a particular activity in certain circumstances (see ASIC, '[Instruments and class orders](#)').
- 43 'Gift vouchers and expiry dates: when the gift stops giving', QUT Law and Justice Journal, p 219.
- 44 'Gift vouchers and expiry dates: when the gift stops giving', QUT Law and Justice Journal, p 214.
- 45 'Gift vouchers and expiry dates: when the gift stops giving', QUT Law and Justice Journal, p 214.
- 46 'Gift vouchers', *New Zealand Law Journal*, p 294.
- 47 'Gift vouchers', *New Zealand Law Journal*, p 294.
- 48 Legal Aid Queensland, [Annual Report 2010-2011](#), pp 22 and 83.
- 49 Queensland Government, Department of Justice and Attorney-General, '[Legal Practitioner Interest on Trust Accounts Funds Grants Fund recipients 2009-10](#)'.
- 50 'Protection for consumers who purchase gift cards on MCCA agenda', Ministerial Media Statement.
- 51 'Protection for consumers who purchase gift cards on MCCA agenda', Ministerial Media Statement.
- 52 'Gift vouchers and expiry dates: when the gift stops giving', QUT Law and Justice Journal, p 214.
- 53 See also Board of Governors of the Federal Reserve System, [Press Release](#), 23 March 2010 and the [Highlights of Final Gift Card Rule](#) attached to the press release. Other information is available at Board of Governors of the Federal Reserve System, '[What you need to know: New rules for gift cards](#)'.

- 54 This wording is taken directly from the letter.
- 55 For some recent summaries of state gift card consumer protection laws see, for example: National Conference of State Legislatures (NCSL), [‘Gift cards and gift certificates statutes and recent legislation’](#) and Consumers Union, [‘State gift card consumer protection laws’](#).
- 56 Board of Governors of the Federal Reserve System, [‘Part II – Federal Reserve System – 12 CFR Part 205 – Electronic Fund Transfers – Final Rule’](#), *Federal Register*, 1 April 2010, pp 16580-16621, at p 16581.
- 57 ‘Gift vouchers and expiry dates: when the gift stops giving’, QUT Law and Justice Journal, p 217.
- 58 Note that there are some further exceptions to the prohibition on gift card expiry dates, including for cards that can be used with multiple unaffiliated sellers of goods or services.
- 59 These features are largely taken from California Department of Consumer Affairs, [‘FAQs and tips on gift certificates and gift cards’](#), December 2010.
- 60 Specifically sections 1749.6(a)-(b) and (c)(2)(C).
- 61 California Department of Consumer Affairs, FAQs and tips on gift certificates and gift cards.
- 62 Section 1749.6(d)(3).
- 63 The guide contains links to the relevant legislation.
- 64 These features are largely taken from Massachusetts Office of the Attorney General, [‘Guide to gift cards and certificates’](#), and NCSL, Gift cards and gift certificates statutes and recent legislation.
- 65 And also NCSL, Gift cards and gift certificates statutes and recent legislation.
- 66 ‘Gift vouchers and expiry dates: when the gift stops giving’, QUT Law and Justice Journal, pp 216-217. Other useful discussion can also be found at: Lawyers Weekly (Canada), [‘Gift card legislation’](#), 7 August 2009, and McMillan LLP, [‘The increasingly complex regulation of the simple gift card’](#), April 2009 (which contains a summary table of provincial gift card regulation).
- 67 Also see Ontario, Ministry of Consumer Services, [‘Gift cards’](#), [‘What you need to know about gift cards’](#), [‘Gift cards – Frequently Asked Questions’](#) and [‘Gift cards: Information for retailers’](#), and Consumer NZ, [‘Legal rights – gift vouchers’](#).
- 68 ‘Gift vouchers’, New Zealand Law Journal, p 293
- 69 See, for example, New Zealand Government, Ministry of Consumer Affairs, [‘Gift vouchers: the basics’](#) and [‘Trader gone out of business: the basics’](#).
- 70 ‘Gift vouchers’, New Zealand Law Journal, p 294.
- 71 Law Commission, [‘Priority Debts in the Distribution of Insolvent Estates: An Advisory Report to the Ministry of Commerce’](#), *Study Paper 2*, October 1999. See chapter 9, p 60.
- 72 ‘Gift vouchers’, New Zealand Law Journal, p 294.

<sup>73</sup> 'Commonwealth agrees to crackdown on gift cards', Ministerial Media Statement.

<sup>74</sup> Queensland Government, Office of Fair Trading, ['Best practice on gift cards'](#).