

9 August 2018

Our ref: KB-C+C

Consumer Policy Unit
The Treasury
Langton Crescent
PARKES ACT 2600By email: consumerlaw@treasury.gov.au

Dear Consumer Policy Unit

Exposure Draft: Competition and Consumer Amendment (Gift Cards) Bill 2018 and Consultation Paper

Thank you for the opportunity to provide comments on the Exposure Draft of the Competition and Consumer Amendment (Gift Cards) Bill 2018 (the **exposure draft**) and on the consultation paper on proposed regulations (the **consultation paper**).

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Competition and Consumer Law Committee who have substantial expertise in this area.

Consultation paper

The consultation paper sets out the policy intent of the proposed reforms and seeks feedback to ensure these reforms give efficacy to the policy intent. We generally consider that the proposals seem reasonable and that there is a basis for the proposed exemptions from the 3 year expiry date. The transition period also appears reasonable, however, we will be guided by business on that front.

We strongly suggest that the proposed exemptions be expressly provided for in the act itself. Provisions that affect rights or impose obligations should not be placed in subordinate legislation. We consider the exemptions should be clearly set out to prevent confusion on the part of the both the supplier and consumer. However, we note that the regulations could ensure flexibility by expanding on the exemptions and/or providing examples.

We welcome the opportunity to review the regulations before they are made.

As to re-loadable prepaid cards, we consider that the distinctions outlined in the consultation paper are adequate and we consider it is sound to ensure consistency with the Australian Consumer Law (ACL).

Competition and Consumer Amendment (Gift Cards) Bill 2018

We are content with the exemptions proposed in paragraphs 16 to 29. We note that at paragraph 29 of the consultation paper we are asked to comment on a benchmark for a genuine discount, for example, one of 30%. We agree that it is necessary to ensure that a business is only exempt if what it is offering is a "genuine discount" and, that there may be benefit in having a consistent standard, however, we cannot give advice as to whether 30% will be appropriate in each case.

We are also content with the exemptions outlined in paragraphs 30 to 37. However, we note that the gift cards and vouchers described in paragraph 31 are not be exempt while those described in paragraph 35 are. We agree with this rationale as the consumer has not purchased a good or service in the latter set of examples however, we believe that caution should be exercised to ensure that the distinction between to two types of gift cards/vouchers is clearly understood.

We agree with the comments in paragraph 39 that even if it is not reasonable for cards and vouchers to remain redeemable for a period of three years, consumers should be given sufficient information about their terms and conditions including a clearly displayed expiry date. We believe this will give effect to the rationale for these reforms and lead to increased awareness amongst consumers.

We also agree with the recommendations about post-purchase fees.

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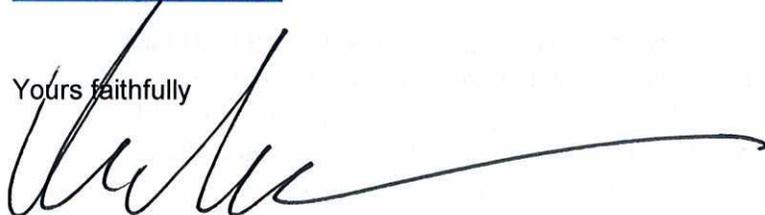
As to our specific comments on the exposure draft, we repeat our comments above that the exemptions should be set out in the act. We suggest that a provision could allow for specific details and examples to be contained in the regulations. The exemptions could be provided in a new provision or as a subsection to proposed section 99A.

As to proposed section 99B, we query whether the drafting should be altered so that a person has a positive obligation to provide a gift card that is redeemable for a period of at least 3 years after the day of supply and to display, prominently on the gift card, the day the gift card ceases to be redeemable or the words, "no expiry date".

Proposed sections 191A, 191B, 191C, and 191D contain strict liability offences. We do not consider this is reasonable. A strict liability offence will not allow for a reasonable excuse to be provided by a supplier, such as that there was a genuine mistake on the gift card.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Kate Brodrik by phone on (07) 3842 5851 or by email to k.brodrik@qls.com.au.

Yours faithfully



Ken Taylor
President