

2023

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

TREASURY LAWS AMENDMENT (GIFT CARDS) BILL 2023

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator MLastCelebration)

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General outline and financial impact

National gift card reforms

The Bill amends the ACL to introduce a national regime that requires gift cards have a minimum three year expiry period and disclosure of expiry information on gift cards and bans certain post-supply fees.

Date of effect: The day after the Bill receives Presidential Assent.

Financial impact: Nil

Human rights implications: The Bill is compatible with human rights, and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate. See *Statement of Compatibility with Human Rights* — Chapter 2, paragraphs 2.1 to 2.8.

Compliance cost impact: A minimum three year expiry period is estimated to result in annual compliance costs of \$9.4 million. These costs include modifications to computer and accounting systems, reprinting and staff training costs.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

National gift card reforms

1.1 The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

1.2 The Bill amends the Australian Consumer Law (ACL), Schedule 2 to the *Competition and Consumer Act 2010*, to provide gift cards with a minimum three year expiry period; require disclosure of expiry information on gift cards and ban the charging of certain post-supply fees.

Human rights implications

1.1 The Bill imposes strict liability in relation to the:

- failure to supply a gift card with a minimum three year expiry period;
- failure to disclose the expiry date of the gift card on the gift card itself;
- failure to supply a gift card with terms and conditions that allow for a post-supply fee to be charged; and
- charging of post-supply fees.

1.2 The application of strict liability, as opposed to absolute liability, preserves the defence of honest and reasonable mistake of fact to be proved by the accused on the balance of probabilities. This defence maintains adequate checks and balances for persons who may be accused of such offences.

1.3 The penalty provisions contained in the Bill are consistent with existing penalties in the ACL for similar offences. The strict liability offences are appropriate and consistent with the requirements of the

Attorney-General's *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, September 2011 edition. For instance, the offences are not punishable by imprisonment and the fines for the offences do not exceed 60 penalty units for persons other than a body corporate or 300 penalty units for a body corporate.

1.4 Strict liability offences are appropriate in this circumstance, as it is necessary to strongly deter misconduct that can have serious detriment for consumers. Strict liability offences also reduce non-compliance, which bolsters the integrity of the regulatory regime enforced by the ACCC. Strict liability is particularly beneficial to regulators as they need to deal with offences expeditiously to maintain public confidence in the regulatory regime.

1.5 The civil penalty provisions contained in the Bill should not be considered 'criminal' for the purposes of human rights law. While a criminal penalty is deterrent or punitive, these provisions are regulatory and disciplinary. Further, the provisions do not apply to the general public, but to a sector or class of people who should reasonably be aware of their obligations under the law (e.g. companies and small business owners who supply gift cards to consumers). Imposing civil penalties will enable an effective disciplinary response to non-compliance. Finally, the civil penalties are for small amounts, with no sanction of imprisonment for non-payment of the penalty.

Conclusion

1.6 The Bill is compatible with human rights as the strict liability offences are appropriate and consistent with the requirements of the Attorney-General's *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, September 2011 edition.