

Fair Trading (Gift Card Expiry) Amendment Bill

Member's Bill

As reported from the Economic Development, Science and Innovation
Committee

Commentary

Recommendation

The Economic Development, Science and Innovation Committee has examined the Fair Trading (Gift Card Expiry) Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

Introduction

The Fair Trading (Gift Card Expiry) Amendment Bill is a Member's bill in the name of Dan Bidois MP. It seeks to amend the Fair Trading Act 1986 to give recipients of gift cards a more reasonable period in which to redeem their full value. As introduced, the bill would insert new section 24A into the Act to prohibit the sale of gift cards with an expiry date of less than 3 years after the initial sale date.

The bill as introduced would define a gift card as a card or voucher (hard copy or electronic) redeemable for goods or services. The definition would exclude certain types of card or voucher, namely:

- (a) a card supplied in substitution for returned goods
- (b) a prepaid card or voucher redeemable for phone credit, internet access, or other similar services
- (c) a debit card, credit card, prepaid travel card, or any similar product supplied by a financial institution
- (d) a card or voucher supplied as part of a customer loyalty programme.

These excluded types of card or voucher would not be subject to the minimum expiry period.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

As set out below, we propose several amendments to the bill and substantial restructuring of its provisions. We do not discuss minor or technical amendments.

Restructuring of the bill

Overall, we consider that the bill's provisions would be more appropriate under Part 4A of the Fair Trading Act rather than Part 1 of that Act as proposed in the bill as introduced. This reflects our recommendation to make contravention of the bill's provisions an infringement offence (see below). Rather than having the bill insert new section 24A into the Act, we are proposing that it amend section 36A and insert new subpart 3A into Part 4A of the Act, comprising new sections 36WA, 36WB, and 36WC.

Accordingly, we recommend replacing clauses 4 and 5 of the bill as introduced. Our proposed new clause 4 would include "gift card expiry dates" in the purpose section of Part 4A of the Act. New clause 5 would insert our proposed subpart 3A into Part 4A of the Act.

Our specific amendments are detailed below.

Cards and vouchers supplied in substitution for returned goods

As noted above, the bill as introduced would exclude certain cards and vouchers from its provisions, so they would not be subject to the 3-year minimum expiry period. One such exclusion is cards supplied in substitution for returned goods. However, the bill is silent about vouchers that serve a similar purpose.

We consider that the exclusion should apply to both cards and vouchers that are supplied in substitution for returned goods. Therefore, we recommend including the words "or voucher" in section 36WA(a) in proposed new subpart 3A of Part 4A of the Act. This would exclude vouchers that are supplied in substitution for returned goods and clarify that they are not intended to be covered by the provisions in the bill.

Clarification regarding Prezzy Cards and other "open loop" cards

Most gift cards can only be redeemed at a specific store or chain of stores (a "closed loop" system). Some, however, operate on an "open loop" system and can generally be redeemed in more places. An example is the Prezzy Card, which can be used at most businesses.

The bill is unclear about whether open loop cards would fall within its provisions. Unlike debit cards, credit cards, or prepaid travel cards—which are specifically excluded—open loop cards have more similarities to gift cards as they are:

- promoted as a form of gift card
- transferrable to another person
- unable to be used to access money or a debt security.

We recommend clarifying that the bill would include open loop cards such as Prezzy Cards within the definition of “gift cards”. To do this, we propose amending paragraph (c) of the proposed definition of “gift card” to exclude “a debit card, credit card, prepaid travel card, or other similar card that allows cash withdrawals” (new section 36WA(c)). Since Prezzy Cards do not allow cash withdrawals, they would be included in the provisions of the bill. The requirement for a minimum expiry date would therefore apply to Prezzy Cards.

Gift cards supplied through customer loyalty programmes

In the bill as introduced, proposed new section 24A(4) sets out that the provisions of the bill would not apply to cards and vouchers supplied as part of a customer loyalty programme. We consider that this exclusion is intended to only apply to cards or vouchers used to participate in a customer loyalty programme, for example, a Flybuys card. It is not intended to apply to gift cards “purchased” through a customer loyalty programme, for example, a New World gift card purchased with Flybuys points.

We therefore recommend amending this provision by inserting new section 36WA(d). This amendment would add to the bill’s exclusions “a card or voucher supplied as part of a customer loyalty programme (other than a card or voucher supplied in exchange for a reduction in customer loyalty points)”. This would clarify that the exclusion from the definition of “gift card” would apply to cards or vouchers used to participate in customer loyalty programmes, but gift vouchers purchased through a loyalty programme would still be required to have a 3-year minimum expiry period.

Cards or vouchers for time-limited events or discounts

The bill as introduced is not clear about whether it would apply to cards and vouchers provided for time-limited events. We consider that the bill should not apply to these cards or vouchers.

We recommend inserting section 36WA(e) into the Act to exclude from the definition of a gift card any card or voucher used for purchasing goods or services that are only available for time-limited events.

Our intention is that a time-limited event would not include sales and promotions. To make this clear, our proposed section 36WA(e) refers to a “festival, concert, or similar event” as examples of a time-limited event.

Cards or vouchers that entitle holders to a discount (including “two for one” deals) would not be covered by the bill as they are not directly “redeemable for goods or services”. Rather, they are redeemable for a discount on goods or services that still need to be purchased.

Devices achieving the same purpose as cards or vouchers

We consider that the definition of a gift card or voucher should not be restricted by its form. We recommend including in the definition of “gift card” in our proposed section 36WA the words “(in whatever form)”. We consider that this would make clear that the bill’s provisions should apply to devices other than cards and vouchers which are used for the same purpose as a gift card. This would prevent attempts to disguise a gift card in a different form, such as a bracelet or an electronic voucher.

Cards used to pay for transport and utilities

The bill as introduced is not clear about whether it would apply to cards or vouchers used to pay for public transport (such as Snapper and Hop cards), or telecommunication, electricity, gas, or water services. We consider that it is not intended to apply to these cards or vouchers. We therefore recommend inserting section 36WA(b). This would exclude “prepaid cards or vouchers redeemable only for telecommunication services, public transport, or electricity, gas, or water services” from the provisions of the bill.

Second-hand consumer sales of gift cards

The bill as introduced is unclear about how its proposed expiry date provisions would apply to sales of second-hand gift cards by consumers. We do not consider it practical for the bill to apply to second-hand sales by a consumer.

We therefore recommend inserting the words “in trade” into our proposed sections 36WB(1) and 36WC. The words “in trade” are used throughout the Act and have the effect of excluding private or consumer-to-consumer sales. This would exclude the situation of a consumer on-selling a gift card from the provisions of the bill.

Cards sold to raise funds for a charitable purpose

We consider that gift cards sold as part of charity sales should not be included in the provisions of the bill. We therefore recommend inserting new section 36WA(f) into the Act to exclude a card or voucher sold principally to raise funds for a charitable purpose from the provisions of the bill.

Display of the card’s expiry date

There is no current legislative requirement for an expiry date to be printed on a gift card. The bill as introduced does not propose to introduce such a requirement.

We consider that requiring the expiry date to be shown on a gift card would be sensible in the context of a mandatory minimum expiry date. Therefore, we recommend inserting section 36WC into the Act to require every gift card to state when it ceases to be redeemable by reference to one of the following:

- (a) the expiry date
- (b) the month and year the gift card ceases to be redeemable
- (c) the date the gift card is sold and a statement that identifies the period during which the gift card is redeemable

(d) the words “no expiry date” or words to that effect.

We have modelled our recommendation on Australian law. We consider that our proposed amendment would make the expiry date of a gift card clear for businesses and customers.

Making contravention of the bill’s provisions an offence

As introduced, the bill would not make it an offence to issue a gift card with an expiry date of less than 3 years. There would be no penalty under the Fair Trading Act for contravening the bill’s prohibition of short-dated gift cards, other than civil remedies.

We propose making contravention of the bill’s provisions an infringement offence as we consider that providing for a penalty would incentivise compliance and enable the Commerce Commission to enforce the new provisions. In deciding on this, we also gave thought to an appropriate level of fee and fine to impose for contravention. This led to our decision to restructure the bill, moving its provisions from Part 1 of the Act (which deals with serious offences carrying large penalties, of up to \$600,000) to Part 4A, which deals with infringement offences for specific consumer transactions.

We therefore recommend inserting clause 6 into the bill. This would amend section 40B of the Act to make it an infringement offence to contravene new sections 36WB (gift card expiry date must not be less than 3 years) or 36WC (expiry date must appear prominently on gift card). A person would be liable to an infringement fee prescribed by regulations, or a fine not exceeding \$10,000 for an individual or \$30,000 for a body corporate, pursuant to section 40(1B) of the Act.

We recommend that, despite provisions being moved to Part 4A of the Act, sections 41 and 42 of the Act should continue to apply to the new provisions. These sections allow a court to grant an injunction to prevent or stop a breach and to order a retailer to disclose information to the public or publish a corrective statement if they have breached the rules.

We also recommend a consequential amendment, inserting clause 9 and Schedule 2 to provide for consequential amendments to the Fair Trading (Infringement Offences) Regulations 2014. For offences against section 40(1B), the regulations currently prescribe an infringement fee of \$1,000.

A transition period

There is no transition period in the bill as introduced. We note that this could leave the Commerce Commission little time to inform businesses about the changes. Further, businesses would lack time to prepare their systems to implement the changes, or to sell existing stocks of gift cards with pre-printed dates. We consider that a transition period would increase compliance with the bill.

We therefore recommend that clause 2 of the bill be amended to state that its provisions would take effect 18 months after the date of Royal assent.

ACT New Zealand differing view

The ACT Party opposes this bill, as ACT believes that this bill will create an unnecessary burden on New Zealand businesses. We believe the bill takes away businesses' ability to manage their liabilities, as well as the financial sustainability, of their gift cards or vouchers programme. It is important for Parliament to encourage responsible business practices. However, ACT believes that we must leave it to businesses to decide the length of their gift cards or vouchers, to allow them to manage their services or offerings to meet the market demand and their changing circumstances.

Appendix

Committee process

The Fair Trading (Gift Card Expiry) Amendment Bill was referred to the Economic Development, Science and Innovation Committee of the 53rd Parliament on 1 August 2023. The committee called for submissions with a closing date of 14 September 2023. It received and considered submissions from 12 interested individuals.

The bill was reinstated with this committee in the 54th Parliament on 6 December 2023. We considered and received submissions from eight interested groups and individuals. We heard oral evidence from four submitters on 15 February 2024.

Advice on the bill was provided by the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Dr Parmjeet Parmar (Chairperson)

Dan Bidois

Reuben Davidson

Hon Willie Jackson

Tanya Unkovich

Dr Vanessa Weenink

Helen White

Scott Willis

Carlos Cheung, Shanan Halbert, Hon Jenny Salesa, and Sam Uffindell also participated in our consideration of this bill.

Related resources

The documents received as advice and evidence are available on the Parliament website.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Dan Bidois

Fair Trading (Gift Card Expiry) Amendment Bill

Member's Bill

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Schedule 2
Consequential amendments to Fair Trading (Infringement
Offences) Regulations 2014

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Fair Trading (Gift Card Expiry) Amendment Act **2022**.

2 Commencement

This Act comes into force ~~on the day after the date on which it receives the~~ 18 months after Royal assent.

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3 Principal Act

This Act amends the Fair Trading Act 1986 ~~(the principal Act)~~.

4 ~~New section 24A inserted (Prohibition on gift card expiry dates of less than 3 years)~~

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~~After section 24, insert:~~

~~24A Prohibition on gift card expiry dates of less than 3 years~~

~~(1) A person must not sell to a consumer a gift card with an expiry date that is earlier than 3 years after the date of sale of the gift card.~~

~~(2) A term or condition of a gift card sold to a consumer is void to the extent that it contravenes **subsection (1)**.~~

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~~(3) If the expiry date of a gift card is void because of **subsection (2)**, the expiry date is taken to be 3 years after the date of the sale of the gift card.~~

~~(4) In this section,~~

~~**expiry date** of a gift card means the date on which the gift card ceases to be redeemable~~

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~~**gift card** means a card or voucher (in hard copy or electronic form) that is redeemable for goods or services, but does not include—~~

~~(a) a card supplied in substitution for goods returned to the supplier of the goods; or~~

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~~(b) a prepaid card or voucher redeemable for phone credit, internet access, or other similar services; or~~

~~(c) a debit card, credit card, prepaid travel card, or any similar products supplied by a financial institution; or~~

~~(d) a card or voucher supplied as part of a customer loyalty programme.~~

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~~(5) This section only applies to a gift card sold after the commencement of this section.~~

~~Compare: Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017 Schedule 2 (NSW)~~

5 ~~Section 40 amended (Contraventions of provisions of Parts 1 to 4A an offence)~~

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~~In section 40(1), replace “or 24” with “24, or 24A”.~~

4 Section 36A amended (Purpose of Part)

After section 36A(c), insert:

(ca) gift card expiry dates; and

5 New subpart 3A of Part 4A inserted

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In Part 4A, after section 36W, insert:

Subpart 3A—Gift card expiry dates

36WA Definitions

In this subpart, unless the context otherwise requires,—

expiry date, in relation to a gift card, means the date on which the gift card ceases to be redeemable

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gift card means a card or voucher (in whatever form) that is redeemable for goods or services, but does not include—

(a) a card or voucher supplied in substitution for goods returned to the supplier of the goods; or

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(b) a prepaid card or voucher redeemable only for telecommunication services, public transport, or electricity, gas, or water services; or

(c) a debit card, credit card, prepaid travel card, or other similar card that allows cash withdrawals; or

(d) a card or voucher supplied as part of a customer loyalty programme (other than a card or voucher supplied in exchange for a reduction in customer loyalty points); or

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(e) a card or voucher redeemable only for goods or services available at a time-limited event (such as a festival, concert, or similar event); or

(f) a card or voucher sold principally to raise funds for a charitable purpose.

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36WB Gift card expiry date must not be less than 3 years

(1) A person must not, in trade, sell to a consumer a gift card with an expiry date that is less than 3 years after the date of sale of the gift card.

(2) A term or condition of a gift card sold to a consumer is void to the extent that it contravenes **subsection (1)**.

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- (3) If the expiry date of a gift card is void because of **subsection (2)**, the expiry date is taken to be 3 years after the date of sale of the gift card.

36WC Expiry date must appear prominently on gift card

A person must not, in trade, sell to a consumer a gift card unless the card states prominently when it ceases to be redeemable by reference to one of the following:

- (a) the expiry date;
- (b) the month and year the gift card ceases to be redeemable;
- (c) the date the gift card is sold and a statement that identifies the period during which the gift card is redeemable;
- (d) the words “no expiry date” or words to that effect.

6 Section 40B amended (Infringement offence, etc, defined)

In section 40B, definition of **infringement offence**, after paragraph (d)(iv), insert:

- (v) **section 36WB** (gift card expiry date must not be less than 3 years):
- (vi) **section 36WC** (expiry date must appear prominently on gift card).

7 Section 41 amended (Injunctions may be granted by court for contravention of Part 1, Part 2, Part 3, and Part 4)

- (1) In the heading to section 41, replace “Part 1, Part 2, Part 3, and Part 4” with “**specified provisions**”.
- (2) In section 41(1)(a), after “Parts 1 to 4”, insert “or **section 36WB or 36WC**”.

8 Section 42 amended (Order to disclose information or publish advertisement)

In section 42(1), after “Parts 1 to 4”, insert “or **section 36WB or 36WC**”.

9 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in **Schedule 1** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

10 Consequential amendments to Fair Trading (Infringement Offences) Regulations 2014

Amend the Fair Trading (Infringement Offences) Regulations 2014 as set out in **Schedule 2**.

Schedule 1
New Part 3 inserted into Schedule 1AA

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Part 3
Provision relating to Fair Trading (Gift Card Expiry) Amendment
Act 2022

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3 **Amendments do not apply to existing gift cards**

The amendments made by the Fair Trading (Gift Card Expiry) Amendment Act **2022** do not apply to a gift card sold before the commencement of that Act.

Schedule 2
Consequential amendments to Fair Trading (Infringement Offences)
Regulations 2014

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In the Schedule, form 1, under the heading “**Alleged infringement offence**”, after the seventh bullet point, insert: 5

- **contravening section 36WB of the Act (gift card expiry date must not be less than 3 years)†**
- **contravening section 36WC of the Act (expiry date must appear prominently on gift card)†.** 10

In the Schedule, form 2, under the heading “**Alleged infringement offence**”, after the seventh bullet point, insert:

- **contravening section 36WB of the Act (gift card expiry date must not be less than 3 years)†**
- **contravening section 36WC of the Act (expiry date must appear prominently on gift card)†.** 15

Legislative history

10 November 2022
1 August 2023

Introduction (Bill 184–1)
First reading and referral to Economic Development, Science
and Innovation Committee