

14 September 2023

Economic Development, Science and Innovation Committee  
Parliament Buildings  
Wellington  
By email

## SUBMISSION on Fair Trading (Gift Card Expiry) Amendment Bill

### 1. Introduction

Thank you for the opportunity to make a submission on the Fair Trading (Gift Card Expiry) Bill (the Bill). This submission is from Consumer NZ, an independent, non-profit organisation dedicated to championing and empowering consumers in Aotearoa. Consumer has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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### 2. Background

At Consumer NZ we receive regular complaints from consumers about expired gift cards. We have been calling for an end to unfair gift card expiry dates since launching our [gift card campaign](#) in 2016.

When we first launched our campaign, many major retailers in Aotearoa only offered 12 months to consumers to use their gift cards. Some extended their expiry dates in response to our campaign. Unfortunately, many continue to offer unreasonably short time frames on their gift cards.

Of the 61 gift cards we reviewed in November 2022, we found:

- 14 gift cards had 12-month expiry dates

- 1 gift card had an 18-month expiry date
- 19 gift cards had 2-year expiry dates
- 6 gift cards had 3-year expiry dates
- 1 gift card had a 4-year expiry date
- 6 gift cards had a 5-year expiry date
- 14 gift cards had no expiry dates.

However, we've also received complaints about many smaller retailers, such as beauty salons and massage therapists, that only allow customers 6 months to use their gift cards.

In our view, many of these expiry dates are unreasonably short and too often result in the retailer receiving a windfall profit but not having to provide any goods or services in return.

Allowing retailers to adopt different expiry dates can also be confusing for consumers, particularly when expiry dates are not clearly communicated. We therefore strongly support the introduction of a minimum expiry date in Aotearoa.

### **3. Comments on the Bill**

We urge the Committee to consider extending the three-year minimum to five years to ensure consumers don't miss out on what is rightfully theirs.

Since launching our campaign, we've had many consumers contact us who've had genuine reasons for not being able to use their cards before they expired. Reasons include moving overseas, misplacing gift cards, experiencing traumatic events (such as the death of a family member), serious health issues (e.g. a cancer diagnosis) and Covid.

In our view, five years provides a more reasonable amount of time for consumers to redeem their gift cards. Other jurisdictions have also adopted minimum expiry periods of five years or more. For example, in Canada, most gift cards cannot have expiry dates. In the US and Ireland, they must be valid for at least five years.

Overseas jurisdictions have also introduced a range of other laws to ensure consumers who receive gift cards are adequately protected. In Ireland, for example, traders:

- cannot insist a gift card or voucher is spent in one transaction.

- must provide change in the form of cash, electronic transfer or another voucher if the entire value isn't spent in one transaction.
- cannot limit the number of vouchers that a person can redeem in one transaction.
- cannot prevent a consumer from selling or transferring the voucher to another person.
- must clearly communicate the expiry date on the voucher itself or another durable medium.

We urge the Committee to consider including similar rules in the Bill as we have received complaints or queries from New Zealand consumers about most of these issues.

Also, even though some of these terms are likely to be prohibited by the unfair contract terms provisions of the Fair Trading Act, in practice, there is little consumers can do about unfair terms, other than complain to the Commerce Commission, because the Disputes Tribunal does not have jurisdiction to hear unfair terms claims. We believe this needs to change with the introduction of a right to take private action to have an unfair contract term declared unenforceable.

### ***Enforcement***

We also suggest the Committee gives further thought to enforcement of the proposed provisions. The Bill appears to create a statutory obligation on traders to not sell a gift card that expires within three years. However, there is no underlying offence for failing to comply with this provision. In our view, this is problematic and means the Commerce Commission won't be able to effectively enforce the provisions.

In our view, issuing a gift card that is valid for less than 5 years should be an infringement offence.

We also urge the Committee to consider whether the new provisions may be more appropriate to move to part 4A, rather than Part 1 of the Fair Trading Act.

### ***Definition of gift card***

Finally, we are concerned about the definition of "gift card" in the Bill.

We consider products supplied by financial institutions (such as Prezzy cards) should be included. In our view, there is no reason why people who receive these cards should have less time to redeem them than other gift cards.

We have no other specific comments on the wording of the Bill.

Thank you for the opportunity to provide comment.

*ENDS*