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CAUSES AND CONSEQUENCES OF THE COLLAPSE OF LISTED RETAILERS IN AUSTRALIA

**Submission to the Senate Economics References
Committee**

ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

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Introduction

CHOICE thanks the Senate Economics References Committee for the opportunity to comment on the causes and consequences of the collapse of listed retailers in Australia.

CHOICE is specifically concerned about the lack of consumer protections available to gift card holders in the event of the collapse of a listed retailer. CHOICE is also concerned about the lack of information available to gift card holders when listed retailers go into administration, with gift card holders often having to hear about changes to their product in the media and to visit a retail store to find out whether they are able to redeem their gift cards.

This submission identifies consumer concerns in relation to matters involving gift cards, specifically gift cards and insolvency.

Gift cards effectively translate the value of cash into a product with far more limitations, terms and conditions, creating clear benefits for retailers and obvious risks for consumers. These risks are exacerbated in the case of a collapsed listed retailer where ambiguity and a lack of regulation cause problems and confusion for consumers. Reform is needed to clarify consumer rights for gift cards.

Summary of recommendations

Gift cards and insolvency	External administrators should honour all gift cards with the retailer continues to trade.
	Funds from gift cards purchased at medium and large retailers should be stored in a trust account.
Gift card expiry	Gift cards should have a minimum five year expiry period.
Lost or stolen cards	Gift card records for medium and large retailers should be made available online or linked to an online account for consumers to access.
	Large and medium sized retailers should give consumers the option of recording a point of contact (phone or email) with each gift card purchased.
Unused funds	Consumers should be able to cash out remaining their remaining gift card balance when it drops below \$10.

Gift cards in the Australian economy

CHOICE acknowledges that the growth of gift cards has given consumers greater choice. While a stigma was once attached to cash and cash-like gifts (e.g. gift cards)¹, gift cards now represent over \$2.5 billion in the Australian economy each year.

‘Closed loop’ (retailer or group specific) gift cards are available at almost all of Australia’s major retailers. ‘Open loop’ (VISA and MasterCard branded pre-paid) gift cards have been growing in popularity since the early 2000s, with sales now accounting for over \$25 billion in revenue in the USA alone² and are available in supermarkets and other selected retailers.

Gift cards continue to represent a large and growing segment of the gift-giving economy. CHOICE research in December 2015 found that 44 per cent of Australians expected to buy gift cards for Christmas.³

CHOICE also conducted more thorough research in 2014 on consumer use and perception of gift cards.

CHOICE nationally representative survey on gift cards: key findings⁴

- 88 per cent of Australians either gave or received a gift card in the preceding year.
- 68 per cent both gave and received a gift card.
- On average, Australians gave and received two gift cards per year.

CHOICE member survey on gift cards: key findings⁵

- 26 per cent preferred gift cards to cash.
- 35 per cent of respondents had a gift card expire before they could use it.
- 50 per cent of respondents said they would prefer gift cards have no expiry.
- Most popular gift cards were those with multiple retailers with no expiry.

¹ Waldfogel, J (1993). The Deadweight Loss of Christmas. *The American Economic Review* (85:5) pp. 1328-1336.

² See Blackhawk Network Whitepaper: <http://www.pymnts.com/thank-you-blackhawk-network-whitepaper-profiling-gift-card-mall-shoppers/>

³ Research by GMI/Lightspeed Research on behalf of CHOICE with a nationally representative sample of n1019 consumers aged 18-75 years between 2 and 9 December 2015.

⁴ CHOICE conducted a nat rep omnibus survey with Nine Rewards in 2014, surveying n1000 Australians aged 18-64 years on their gift card giving and receiving.

⁵ CHOICE conducted a survey of n735 members on incidence and usage of gift cards between 1 October 2014 and 13 October 2014.

CHOICE is concerned at the lack of consumer protections in this growing segment of retail spending. Gift cards can hold large amounts of money, sometimes upwards of thousands of dollars.

Insolvency and gift cards

CHOICE is concerned that when listed companies go into administration, receivers often place arbitrary and unclear terms and conditions on gift card holders.

Currently, consumers have few clear ways of understanding the rules by which they are able to redeem their gift cards when a listed company collapses. Rules for the use of gift cards in an administration period are determined by the administrators and CHOICE has found that such terms can include:

- Gift cards being honoured with specific requirements such as minimum spending amounts, spending limits or other requirements such as spending double the amount loaded on a gift card.
- Gift cards not being honoured and the holder being placed on the list of unsecured creditors.
- Gift cards being fully honoured.

Gift card holders are not informed of the conditions placed on their gift card unless they specifically enquire with the administrators, visit a store directly for information or the details are reported in the media. Consumers who live in rural or regional areas or gift card holders of stores with limited retail locations are particularly impacted in instances where administrators don't honour gift cards or place time limits on their use.

Requiring administrators to honour gift cards would not only benefit consumers, who would be able to spend the full value of their gift cards, but could also benefit administrators and companies looking to move stock in the case of collapse or administration.

Economists have noted that of gift card recipients who spend the full value of their gift cards, a significant proportion will go on to spend more than the value of the card, known as 'upspending'.⁶ According to industry research, 72 per cent of consumers will spend more than

⁶ See: http://www.nytimes.com/2007/01/07/magazine/07wwln_freak.t.html?ex=1325826000&en=970d53de24147ae4&ei=5090&partner=rss&r=0

the value of the card, with the average recipient spending 20 per cent more than the original value.⁷ Such spending would assist administrators in liquidating stock and increasing cash flow.

Case studies: Gift cards and insolvency

CHOICE continues to receive a steady volume of complaints in relation to gift cards and collapsed companies. In particular, the recent collapse of Dick Smith has highlighted the problematic nature of gift cards in the context of insolvency and administration processes.

These two case studies identify two different ways in which retailers and administrators have chosen to restrict consumers' use of gift cards, as well as of the lack of information available to consumers about their rights in relation to gift cards once retailers go into administration.

Case study: Dick Smith

A CHOICE member, Peter, returned a faulty item to a Dick Smith store in December 2015 and was issued a Dick Smith gift card in lieu of refund, to the value of approximately \$50.

"I returned a faulty computer mouse (still under warranty) to Dick Smith Electronics at approximately 5 December, 2015. They would not give me a refund, but instead issued a Dick Smith's gift card to the equivalent value. Since 5 January 2016, as Dick Smith has gone into liquidation, they do not now honour their gift cards. Thus, I have no way to recoup the loss on the faulty item. Frustratingly, they now promote through their email promotions that any item bought from their stores post 5 January, 2016 and is found faulty, they will give a full refund.

I returned to Dick Smith store where item was bought. I explained the situation to the sales staff member. He would not give a refund. He took my telephone details. Never heard anything back."

⁷ See: <http://www.giftcards.com/gift-card-statistics>

Case study: Jeep Apparel

In March 2016, CHOICE received the following message from Facebook follower, Terri, regarding a gift voucher for clothing store Jeep Apparel via the CHOICE Facebook page.

“Can you let your followers know that if they have a gift voucher from Jeep clothing stores they have to buy twice the value of said voucher. My son gave my hubby 100 dollar voucher at xmas we went to spend it only to be told they are under administration, we need to spend 200 or over to redeme [sic] the voucher. This sucks but it’s better than not being able to redeme [sic] it at all.”

Recommendations

- External administrators should honour all gift cards while the retailer continues to trade

External administrators should be obliged to honour gift cards while trading during an administration process. As gift card holders are classed as unsecured creditors, they are unlikely to receive the value, if any, from their unused gift cards at the end of an administration process should a company cease trading.

CHOICE suggests that the law needs to be updated to ensure gift card transactions are treated similarly to regular cash and card transactions when companies are trading under administration. This would reflect consumer perceptions of gift card transactions as similar, if not the same, as cash and card transactions.

Gift card holders as a first option should have the right to redeem the value of their card in store, rather than receive partial value in cash many months or years into an administration process.

Depending on the store and product sold, gift card holders frequently hold cards in small amounts and would be inclined to spend the full value of their cards, if not more, assisting administrators in cash flow, as well as reducing stock.

- Purchase of any company in administration should include an obligation to honour existing gift card holders

Should a company be purchased as part of an administration process, the purchasing company or individual should be obliged to honour gift cards if the retail business continues to operate through the provision of services or sale of goods or is purchased and operates under a new trading name after the administration period ends.

- Gift card funds from cards purchased at medium and large retailers should be stored in a trust account

The case of Dick Smith has again highlighted that consumers are often placed at the bottom of unsecured creditor lists in event of the collapse of a listed retailer. Placing gift card funds into a trust account upon purchase would ensure that the funds allocated to that gift card are protected.

CHOICE suggests that an amendment be made to ASIC Class Order [CO 05/738] to include this requirement at section 5.⁸

Further recommendations in this submission suggest keeping contact details and/or online records of gift card holders. This would aid administrators in refunding gift card holders from any trust account should a listed retailer close its stores.

Other problems associated with gift cards

While acknowledging the precariousness of gift card holders in the administration process, there are broader structural and regulatory problems associated with gift cards. This is heightened in the event of the administration or collapse of a listed retailer.

Major problems identified in CHOICE's research include:

- Expiry
- Lost or stolen cards
- Terms and conditions
- Unused funds

⁸ See: <https://www.legislation.gov.au/Details/F2005L03618>

Expiry

Many gift cards state a specific expiry date, typically 12 or 24 months after the date of purchase. In Australia, few gift cards have an unlimited expiry.

As a result of gift card expiry, a large number of gift cards go unused. 2014 CHOICE research found 35 per cent of respondents had used none of the value of at least one gift card they received in the last three years. 79 per cent reported using the full value of at least one gift card in the last three years.⁹¹⁰

A survey of CHOICE's membership found that 50 per cent of respondents believed that gift cards should not expire at all.¹¹

Gift cards in the United States are legally required to have a minimum of five years expiry. Certain states have higher limits, including seven-year expiry cards as a mandatory minimum.¹² Less than one per cent of gift cards now expire or go unused in the United States, a clear success of the longer minimum expiries which was instituted in 2009.¹³ The success of this legislative change in the United States has informed CHOICE's opinion that Australia should institute similar protections for consumers.

CHOICE is also concerned at inconsistencies in the clear display of expiry dates on cards which is confusing for consumers.

A shadow shop of gift cards conducted in 2012 by New South Wales Fair trading showed that 26 per cent did not show the expiry date or combination of issue date and expiry date on card.¹⁴ 21 per cent of cards made conflicting representations about the card expiry date or period, and consistency was lacking between any or all of the following: the card, its packaging, the receipt and online terms and conditions.

Recommendations

- Gift should cards have a minimum five year expiry.

⁹ CHOICE conducted a survey of n735 members on incidence and usage of gift cards between 1 October 2014 and 13 October 2014.

¹⁰ Ibid

¹¹ Ibid

¹² See: <http://www.ncsl.org/research/financial-services-and-commerce/gift-cards-and-certificates-statutes-and-legis.aspx>

¹³ Ibid

¹⁴ http://www.fairtrading.nsw.gov.au/pdfs/About_us/Operation_gift_card_results.pdf

Instituting mandatory minimum expiry dates of five years would benefit consumers who may have difficulty partially or fully spending the value of their card. This particularly applies to gift card recipients in rural or regional areas, where they may not have short-term access to the store or experience on offer. CHOICE found this was particularly true in the case of non-grocery gift cards (e.g. Westfield and specific stores) and experience gift cards (e.g. Red Balloon).

Where the gift card is a physical card and not an electronic voucher, the expiry date should be clearly stated on the card itself, rather than on any associated packaging, receipt or store display as per the ASIC Class Order [CO 05/738]¹⁵

Lost or stolen cards

CHOICE's research showed that three per cent of gift card recipients had a lost or stolen gift card.¹⁶ While only a small number of gift card holders report lost or stolen cards, this problem would likely be alleviated if businesses took simple steps to record gift card purchases against an email or contact number and card number.

Recommendations

- Gift card records for medium and large retailers should be available online or linked to an online account for consumers to access.

Medium and large retailers should make gift cards easily available online, and include the ability for consumers to replace stolen or lost cards or check their balance with no fee. This could be linked to a card number or optional contact detail provided, similar to courier and mail tracking systems.

CHOICE acknowledges that complying with this requirement would be difficult for some small businesses and has therefore suggested that only medium and large retailers be held to these requirements. CHOICE notes that small businesses would be largely selling gift cards in local areas with a smaller pool of shop assistants, managers and owners which would provide a more tailored customer service for purchasers and recipients of gift cards.

¹⁵ See: <https://www.legislation.gov.au/Details/F2005L03618>

¹⁶ CHOICE conducted a survey of n735 members on incidence and usage of gift cards between 1 October 2014 and 13 October 2014.

- Large and medium sized retailers should give consumers the option of recording a point of contact (phone or email) with each gift card purchased.

Recording contact details of gift card holders would also allow administrators to easily contact gift card holders in the event a retailer goes into administration. It would also allow administrators to easily communicate specific requirements for spending gift cards when a retailer is under administration. Consumers should be proactively offered this option at the point of purchasing gift cards, and informed that it would assist in circumstances where the retailer might go into administration.

Unused funds

Gift card lead to a significant amount of unused funds or 'breakage'. Often a consumer is left with a small amount of funds on the card which they are unable to spend without 'upspending' or forfeiting the remaining funds.

Various states in the United States allow consumers to cash out their gift card when the balance reaches a certain amount, either a cash amount (e.g. \$5 or \$10) or a percentage (e.g. as in the case of Massachusetts, when the balance reaches below 10% of the card's value). This allows consumers to spend the majority of the value of their card instore without 'upspending'. This is particularly important for gift-card holders in lower-socio economic groups, who may be less able to 'upspend' and would otherwise forfeit remaining funds.

Currently in Australia, cashing out gift cards is at the discretion of the retailer.

Recommendation

- Consumers should be able to cash out remaining gift card balance when a gift card's balance goes below \$10

Ensuring that consumers can cash out remaining balances on their cards would mean easy access to remaining amounts of small funds.

In the case of the collapse of a retailer, this would mean less unsecured creditors with gift cards, as consumers are more likely to have redeemed the full value of their card sooner. This could also reduce the burden on administrators.