

Legislative Council Hansard – 11 October 2017 – Proof

FAIR TRADING AMENDMENT (TICKET SCALPING AND GIFT CARDS) BILL 2017*First Reading*

Bill introduced, and read a first time and ordered to be printed on motion by Mr Scot MacDonald, on behalf of the Hon. Sarah Mitchell.

Second Reading

Mr SCOT MacDONALD (17:03): On behalf of the Hon. Sarah Mitchell: I move:

That this bill be now read a second time.

I am pleased to introduce the Fair Trading Amendment (Ticket Scalping and Gift Cards) Bill 2017. The overall object of this bill is to put New South Wales consumers first by providing fairer access to the sale of sporting and entertainment event tickets. The bill also aims to provide greater protection for consumers who may be denied entry to an event as a result of purchasing tickets in good faith on the resale market. I will address the ticket scalping reforms contained in the bill first and then move to the reforms of the New South Wales Government on gift cards. The bill responds to growing consumer dissatisfaction with New South Wales ticket markets for sporting and entertainment events. There is a widespread feeling among members of the public who love sporting events and live entertainment that the ticketing game is rigged against them.

All too often fans log on to a ticketing website with great anticipation the second that tickets go on sale to the general public only to be met straightaway with the dreaded words "allocation exhausted". Those disappointed fans are then shocked when they find out that there are plenty of tickets available on ticket resale sites such as viagogo, but for vastly inflated prices. Some of those prices can be quite staggering. A Choice survey found that Elton John concert tickets were marked up by more than 500 per cent, from \$129 to \$800. But it was the sale of children's tickets to a Geelong versus West Coast Australian Football League match that set the mark-up record, at 900 per cent, when tickets were being sold for \$70 after being bought for only \$7.

How do scalpers obtain these tickets when ordinary consumers cannot? The answer is increasingly by means of computer programs, or bots, that enable scalpers to buy tickets in super quick time. Ticketmaster reports that in 2016 alone it repelled more than seven billion bot attacks on its websites in 27 countries around the world. A key feature of the bill responds to this growing concern by banning the use of bots to cheat security measures on ticketing websites to purchase large numbers of tickets, which defeats ordinary consumers in the process. By buying tickets in this way, scalpers are not only blocking and fleecing ordinary fans but also taking a free ride on the back of event organisers who took the risk of staging an event and putting in the work to make it happen. Failing to take action against scalpers also allows them to continue hurting the reputation of the sports club or performing artist by treating their fans like mugs.

The bill amends the State's flagship consumer protection legislation, the Fair Trading Act 1987, which incorporates the national Australian Consumer Law as a law of this State. These reforms proudly and unashamedly put consumers first. We are especially committed to providing fair access for ordinary, hardworking consumers and young people who cannot afford to submit to highway robbery to buy a ticket to see their footy club in the grand final or their favourite band in concert. At the same time, the Government welcomes the great support these reforms have already received from major sporting codes such as the National Rugby League, Cricket Australia and live performance industry participants such as Ticketek and event promoters. Those groups can be as angry as anyone about ordinary fans either missing out on tickets or for being fleeced by scalpers and paying hundreds of dollars more than they should.

I now turn to the five major aspects of the bill that aim to provide fair access to consumers: first, prohibiting price gouging via a 10 per cent cap on resale mark-ups; secondly, banning the use of bots in acquiring tickets illegitimately; thirdly, improving transparency in the resale market; fourthly, improving transparency in the primary market; and, fifthly, enforcement by industry participants and the State's consumer law regulator, NSW Fair Trading. It is important to note the types of event tickets to which the bill applies. The bill provides that new part 4A of the Fair Trading Act will apply to tickets for sporting or entertainment events held in New South Wales that are subject to a resale restriction. The term "resale restriction" is defined by section 58B (2). A resale restriction is any term or condition imposed on a ticket that provides for the ticket to be cancelled or rendered invalid if the ticket is resold, or if the ticket is resold in certain circumstances. That definition will ensure coverage by the proposed ticket scalping laws for popular sporting or live entertainment events that have fallen prey to scalpers.

The definition has also been drafted so as to ensure local and amateur events are excluded from the provisions of the bill, which for the school play or the church fete would be onerous and inappropriate. For the large number of events that are captured under the bill, the Government's intention is to impose an appropriate limit on the mark-ups that can be sought or obtained in the ticket resale market. The bill allows the first reseller of a ticket to recoup the cost of the ticket plus the reasonable transaction costs incurred in acquiring the ticket. These include commissions, booking fees, payment surcharges and ticket delivery fees. However, the bill places a limit on the costs that can be recouped, by capping the allowable mark-up to the cost of the ticket plus 10 per cent.

In practical terms, if I buy a \$100 ticket then the original supply cost is \$100. If I am charged a booking fee of \$5 and credit card surcharges of \$3, then the transaction cost is \$8 and the original acquisition cost is \$108. I can legally resell my \$100 ticket for \$108, but no more than \$108, even though my mark-up stands at less than 10 per cent. By the same token, if my \$100 ticket attracted \$15 in booking fees and other charges, then my original acquisition cost is still only \$110, because the law caps it at a 10 per cent mark-up. In cases where a ticket is resold more than once, the bill provides that the second reseller must not resell the ticket for more than the first reseller could sell it for, that is, the cost of the ticket plus transaction costs, capped at a 10 per cent mark-up. This however, applies only when the second reseller knows, or ought reasonably know, the original price and transaction costs of the first reseller.

Proposed section 58H closes an important potential loophole in the prohibition on ticket resale profit, by making it illegal to make supply of a ticket contingent on payment to the supplier of any amount in consideration for the provision to the recipient of any other goods or services. The loophole this provision envisages is where a scalper, faced with a prohibition on anything more than a 10 per cent mark-up on the ticket itself, instead seeks to gouge super profits by claiming the large mark-up is not for the ticket but is for some other related purchase, such as hospitality offerings at the event. On its own, this would amount to a prohibition on any sort of package deal, such as dinner and show offerings at live entertainment venues, or group bookings at sporting fixtures. Accordingly, proposed subsection (2) exempts the supply of tickets under agreements that are authorised by the event organiser or under any other agreement of a kind prescribed by the regulations. This provision has received the support of major industry participants.

The bill focuses not only on individual resellers but also recognises the role of resale platforms in the scalping business, and makes it an offence to publish a prohibited ticket resale advertisement, whether that be on a website, or in a newspaper, magazine or other publication. A prohibited advertisement is one that specifies a price that is more than 10 per cent above the original supply cost. The bill provides that it is a defence to a prosecution for failing to prevent the publication of a prohibited advertisement if the publisher establishes that: the terms and conditions of use of the website clearly stipulate that advertisements featuring prices above the 10 per cent cap are prohibited; as soon as practical after becoming aware of a prohibited advertisement, they took reasonable steps to remove it; and they took such other steps as were reasonable in the circumstances.

The bill acknowledges that what is reasonable for one publication may not be reasonable for another. Some websites are in the sole business of facilitating ticket resale transactions, so it would be reasonable to expect the owners of those publications to monitor the content of advertisements and conduct regular compliance audits. However, there are others where ticket resale advertisements may be incidental to the overall content or purpose of the publication, such as Facebook. What is reasonable for a dedicated ticket resale site could be onerous for a publication such as Facebook, so the defences to a prosecution for a breach of this section are drafted in the bill sensibly and flexibly.

While the bill will prohibit scalping, it recognises that there are often legitimate reasons why a consumer would need to re-sell a ticket if they can no longer attend an event. However, some ticket terms and conditions can include clauses that prohibit the resale of the ticket and allow cancellation of the ticket if it is resold at a profit, or at all. Proposed section 58J therefore protects legitimate resale by providing that any ticket condition that allows cancellation of a ticket for being resold at or below 110 per cent of the original ticket price is void. This bill puts consumers first.

No ticket scalping legislation in this day and age would be complete without tackling the growing and egregious use of ticket bots in the online purchase and resale of tickets. The rise of the bots is widely acknowledged as a major reason why ticket scalping appears to have exploded in recent years, and genuine fans are finding it ever harder to get fair and equitable access to tickets. The Government notes the advent of anti-bot Federal legislation in the United States of America, similar moves in the United Kingdom, and calls within Australia for government intervention to outlaw this shady practice.

Bots are simply computer programs that run automated tasks on a website, which, in the world of ticket scalping, can have a decidedly dark side.

Bots give ticket scalpers three main advantages. First, bots run the task of completing the online ticket purchase process in machine time, many times faster than ordinary human time. Second, bots contain deceptive elements that mask the identity of the user, enabling the scalpers to defeat the ticket website's security measures and purchase unauthorised numbers of tickets. Third, and perhaps less well known, bots can launch cyber attacks on ticketing websites, disabling them for other ordinary users while the scalper purchases their tickets intended for resale at maximum profit. Proposed 58K (2) is drafted deliberately broadly to capture all of these uses of bots, focusing on the use of bots to circumvent security measures of the website and to purchase tickets in breach of the terms of use of the site. I also wish to be clear that "website" should be read broadly to include other digital ticket selling platforms such as smart phone apps.

Industry participants do of course have their own sophisticated anti-bot measures in place, which are constantly evolving. That is why the bill includes a regulation-making power, so that the particular security measures of ticketing websites can be prescribed and added to over time. But in an evolutionary arms' race, the side with something to gain will always be looking for a new way to gain the upper hand. Many commentators believe, and this Government agrees, that enough is enough and it is time for a legislative response. It is time to ban the bots.

Misleading conduct in the ticket resale market has caused headaches for not only thousands of consumers in New South Wales and around Australia, but also consumer law regulators. The ticket resale site Viagogo has topped the Fair Trading consumer complaints register more than once and is being prosecuted in the Federal Court by the Australian Competition and Consumer Commission [ACCC] for alleged breaches of the Australian consumer law. Consumers who use sites such as Viagogo report that they were not aware they were buying a resold ticket or that the ticket price had been marked up from the original price. Consumers in the secondary market are also seldom provided with basic information about the ticket they are buying.

The bill therefore requires permitted ticket resale advertisements, which are those that advertise tickets below the 10 per cent price cap, to specify the original price of the ticket, and the details of the location from which the ticket holder is authorised to view the event. This would include, for example, any bay, seat or row number on the ticket. I note that proposed section 58 F(3) (b) uses the term "any" to describe which information must be published in the secondary market. This means that if there is a bay, seat or row number or any other information about the location from which the ticket holder is entitled to view the event, then this must be included in the advertisement. Consumers should know what ticket they are buying, and they should be able to know all the information recorded on the ticket regarding the location from which they will be able to view the event. Consumers should be put first.

With regard to disclosure in the primary ticket market, the bill responds to a number of reports that have called for increased transparency. Consumer advocates also argue that some of the dissatisfaction and the sense of unfairness around ticket scalping might be reduced if, when they go online to buy their tickets, consumers were aware of how many tickets for popular events are actually available to the general public. The bill therefore provides that the Minister may, by order published on the New South Wales legislation website, require an event organiser or class of event organisers to give public notice, at the time and in the manner specified, of the total number of tickets that are to be made available for sale to the general public.

The Government's intention is that these orders will be made only in the case of major events that are likely to sell out and to be the target of scalpers. The Minister may well make the order for an Ashes test match, a National Rugby League [NRL] grand final or a concert by a major international touring artist such as the Rolling Stones. The purpose of this power is not for it to be used for normal NRL matches, Sheffield Shield cricket, or small live events at a local pub.

Proposed section 58L (6) provides that:

The Minister may not make an order under this section unless:

- (a) the Minister is satisfied that each event organiser for an event to which the proposed order applies has been notified ... of the Minister's intent to make the order, and
- (b) the event organiser has been given a reasonable opportunity to make submissions in relation to the proposed order, and
- (c) the Minister has considered any such submission, and
- (d) the Minister is satisfied that it is in the public interest to make the order.

These requirements will ensure that the event organisers can make a case for any particular considerations that apply to their event and the order made by the Minister can take account of these. The Government intends that this power will be exercised reasonably and that any order can be complied with in practice. The Government has consulted with event organisers about these disclosure requirements and has ensured that in cases where an order is made the requirements are workable and do not impose an unreasonable burden. Tickets are defined as not being available for general public sale if the seller requires the person to pay a fine to acquire a ticket that is in addition to the price of the ticket and any associated transaction costs or register for access to any presale, publication, competition or other special offer. The regulations may also make provision for other circumstances in which a ticket is or is not taken to be available for the general public sale.

Proposed section 58L (3) recognises that the number of tickets available to the general public for a given event can change as a result of factors such as changing stadium configurations or lower than expected pre-sales. They require an event organiser to provide a number that the organiser believes on reasonable grounds to be not more than 10 per cent greater or less than the total number of tickets that will be available to the general public. This means that the organiser can base the number on their reasonable expectations and can build a 10 per cent margin for error into their estimate. This is also important because industry participants have explained during consultation that event configurations can change after tickets go on sale—for example, a television station may need to have more seats empty near its cameras or a performer may decide to extend the size of the stage. Often these changes will lead to only small variations in the number of seats available for sale to the public. The plus or minus 10 per cent range will mean that the event organisers do not need to update their disclosure every time these small changes occur.

The final element of the ticket scalping reforms is enforcement. By inserting a new part 4A in the Fair Trading Act and providing that contravention of this part is a "local contravention", a number of remedies under the Australian Consumer Law are made available. In particular part 5.2 of the Australian Consumer Law will apply to a court on the application of NSW Fair Trading or any other person to grant an injunction to prevent a person contravening the new ticket scalping provisions or requiring them to refund money. A person who has suffered loss or damage because of a breach of the new provisions will also be able to recover damages or compensation, and a court will be able to make a range of other orders such as requiring community service or publishing certain information.

NSW Fair Trading will also be able to use its powers under the Fair Trading Act to enforce the new ticket scalping requirements. The penalties available for breaches of the prohibitions in the bill are the maximum allowable under the Fair Trading Act—200 penalty units for an individual and 1,000 penalty units for a corporation. That means the most egregious ticket scalpers could face price gouging fines of up to \$22,000 for an individual or \$110,000 for a corporation. We are sending a strong message that this Government has had enough of consumers being ripped off and we are serious about stopping ticket scalping.

I turn now to gift cards. This bill will put consumers first by introducing a minimum three-year expiry date on gift cards issued to a consumer in New South Wales and abolishing post-purchase fees that are eroding the value of gift cards. This Government listened when the community voiced concern and frustration about the difficulties they continually experience in redeeming gift cards because of varying expiry periods and industry practices. A review by the Commonwealth Consumer Affairs Advisory Council in 2012 into gift cards in the Australian market acknowledged that breakage—the value left on a gift card when it expires—was a transfer of wealth from the consumer to a business, as the residual value becomes the revenue of the business. At the time it recognised that monitoring in this space would be beneficial.

Importantly, it recommended that Fair Trading regulators revisit the issue after some years. Five years have passed since that review and the gift card market has evolved in many ways. This Government is revisiting this issue as it recognises the concerns of consumers who continue to reiterate the same problems and frustrations, despite the number of years that have passed. It is clear that gift cards are highly popular with both consumers and businesses, and make a valuable contribution to this State's retail sector. That is why it is important that we give consumers in New South Wales greater certainty about what they can expect when they want to redeem their gift card. We need to put consumers first. These reforms will streamline the currently diverse practices of businesses in setting gift card expiry dates, providing greater certainty and fairness for consumers about their rights and businesses about their obligations.

Popular with both consumers and businesses, the Australian gift card market is estimated to be worth \$2.5 billion annually. It is not surprising then, that approximately 34 million gift cards are sold in Australia each year. This was reflected in the 2016 Australian consumer survey where around 69 per cent of the survey respondents indicated that they had purchased a gift card in the past two years. To many consumers gift cards are appealing due to the convenience and flexibility they offer, with most retailers offering and accepting gift cards. When a consumer purchases a gift card they exchange money for the ability to buy a range of goods and services in the future, either for themselves or as a gift to others.

Gift cards can offer ease and convenience in choosing a suitable gift and allow the recipient the freedom to choose the gift they want. One can imagine the distress it can cause a gift giver to know that their present went unredeemed or was partially used because of the short expiry periods or where the enjoyment of the gift was cut short because of administration fees. With the ever-transforming state of technology, consumers and businesses alike are adapting to these changes. Consumers are adopting digital gift cards now more than ever, embracing the convenience of mobile apps and gift cards. Businesses are offering gift cards in different forms and varieties to enhance customer experience and convenience. Australia's growing digital gift card market has also seen an increase in e-gift cards, with many retailers offering the ability to purchase and redeem gift cards online. Many retailers have also teamed up with gift card purchasing and redemption apps that allow consumers to store and use their gift cards through mobile devices.

The diversity of the gift card market in Australia reveals the significant discretion businesses currently have in practice. Businesses have significant discretion and apply various expiry dates to gift cards. There are also inconsistencies in industry practice in how gift card expiry periods are set and calculated. In some cases a gift card is not valid until it becomes activated. Some gift cards are subject to post-purchase fees, which incrementally reduce the value of a gift card over time. With such diverse industry practices, consumers have become increasingly confused and frustrated when it comes time to redeem their gift cards. With the time range of expiry dates ranging vastly from three months to twelve months or more, consumers simply do not have enough time to redeem the full value of a gift card.

The amendments in this bill will put consumers first. Time and again consumers have said that they are experiencing issues with gift cards expiring with value left on them. These issues are turning the delight of receiving a present on a special occasion into an unwelcomed headache for recipients. This is not good enough. The 2016 Australian consumer survey named gift cards as a top 20 product where consumers had concerns. The Government recognises that although gift cards are meant to be convenient and easy to use, consumers sometimes find it difficult to redeem gift cards, having to overcome unnecessary hurdles only to be met with no positive outcome. Consumers have made it clear that they want to be able to use a gift card when it suits their lifestyle and commitments.

Many businesses value their customer relationships and try to do the right thing by allowing a grace period and honouring expired gift cards. This is not the case for all. For those consumers caught by these businesses, it means they lose the money remaining on a gift card. This must change. Consumers must come first. It is estimated that collectively New South Wales consumers could be losing up to \$60 million a year when gift cards expire with value left on them. This is a significant financial loss for New South Wales consumers and people who are on a low income or from regional areas get hit hardest. Many standard retail gift cards are bound to certain stores or chains, which limits a consumers' ability to use it freely, particularly if their closest store is a couple of hours away. This is the reality for regional gift card recipients.

Complaints in New South Wales have been steadily increasing every year. Fair Trading has received more than 1,300 complaints about gift cards since 2012. A petition initiated by an Australian consumer in 2015 on the online platform *change.org* to stop gift vouchers expiring, received more than 8,000 signatures in support. Many consumers voiced their outrage over gift cards expiring and the inability to redeem them once this was the case. For many, gift cards are considered to be like cash, as they have been paid for and are worth a specific amount. Many believe that cash has no expiry and that gift cards should not either. This sentiment has been expressed time and again. Surveys run by Fair Trading, Australian consumer affairs regulators and advocates such as Choice, all indicate that consumers continue to experience a real financial loss.

Some in the retail sector characterise this transfer of wealth as just a part of doing business, and consumers should take responsibility for their own inaction. Consumer groups believe that retailers are enjoying windfall profits at consumers' expense. It is not right that consumers should have to continue to bear this burden. This Government will lift that burden and put consumers first. A "standard practice" does not make it a fair practice. While technically this transfer of wealth is within the current rules of the law, consumers see this as bordering on the unethical. This is a type of practice where businesses obtain an unfair financial advantage from consumers that this Government believes is unacceptable. It is evident to us that consumers are not getting a fair go when it comes to redeeming some gift cards. We are calling it out and doing something about it.

We also recognise that there does need to be a balance in the market. This reform will allow consumers to have a more reasonable period of time to redeem their gift cards, whilst knowing that the value of the card will not be eaten away by fees. This Government wants to make sure that consumers are on an even playing field when it comes to what they should be entitled to, and that businesses are also accountable and aware of their obligations. This reform does just that and ensures that consumers are put first. It creates fairness for New South Wales consumers and protects them or their family and friends from missing out.

This reform will also bring New South Wales in line with international practices, including the United States, which has a national mandatory expiry period of five years. Some States of the United States have a longer expiry period of up to seven years, while others have banned expiry dates altogether. In the period between 2007 and 2011, all 10 provinces in Canada banned gift card expiry dates. The bill will put the State on a similar consumer friendly trajectory for gift cards as these other international jurisdictions. New South Wales will lead the way in Australia. As the gift card industry continues to evolve, so too should our laws to put consumers first. We must ensure that consumers are protected and get a fair go.

I now turn to the substance of the bill. The Fair Trading Amendment (Gift Cards) Bill 2017 makes the following specific amendments to the New South Wales Fair Trading Act 1987. The bill inserts new section 58M and new section 58N into Part 4A of the Fair Trading Act, which details the provisions to regulate gift cards sold to a consumer in New South Wales. The bill uses the term "consumer" throughout when dealing with gift cards. The word "consumer" can mean a few different things. It can mean a store's customer and it can mean the person who uses a product or service. In this case, there is a dual purpose to using the word "consumer". The first is to refer to the person who buys the gift card, irrespective of whether that person ultimately uses the gift card to buy goods or services. Of course, most gift cards are not redeemed by the purchaser as they are ultimately given as presents to others.

The second is to refer only to such purchasers who are also members of the public, rather than businesses buying gift cards to on-sell in the course of trade and commerce. The purpose of this bill is to provide protections for everyday people. The clock should not start ticking on an expiry date from the point of a sale to a business in the supply chain; it should start only once the gift card is bought by an ordinary shopper. With these points in mind, it is appropriate to turn to proposed section 58M (1), which defines a "gift card" as a card or voucher, in hard copy or electronic form that is redeemable for goods or services in New South Wales. It is useful to give a few examples of the how the definition will operate.

The key concept is that the schemes operate only where traders are capable of satisfying their gift card obligations when their customer is in New South Wales. Accordingly, if a restaurant operates only in Tasmania, a gift card it sells to a consumer in New South Wales will not benefit from the scheme. This is because that transaction should be dealt with under Tasmanian law. Conversely, if the trader can redeem the goods or services in New South Wales, including by delivering the goods, then the scheme should and would apply. The provision also defines "expiry date" to mean the date on which the gift card ceases to be redeemable. It further defines "redeemable value" as the value of the goods or services for which the gift card is redeemable.

Proposed section 58M (2) outlines the circumstances in which a gift card that is sold online or by phone is not considered to have been sold to a consumer in New South Wales. The purpose of the provision is to give businesses certainty about whether the gift cards they sell are covered by this new reform or not. Proposed section 58M (2) states that a gift card is not sold to a consumer in New South Wales if the gift card is sold online or by phone and (a) the gift card is to be delivered to the consumer at an address that is outside New South Wales, or, (b) the contact details of the consumer provided in connection with the sale of the gift card include a residential address that is outside New South Wales.

For example, a business could rely on proposed subsection (2) as a defence to show that a gift card that it sold online was not sold to a consumer in New South Wales because a delivery address outside of New South Wales was provided. In this way, the provision gives businesses certainty when they are selling gift cards online or by telephone and are unable to verify where their customer is at the time of purchase. Of course, businesses that do not seek address information from their customers will be unable to avail themselves of this proposed section.

Proposed section 58N (1) states that a gift card must not be sold to a consumer in New South Wales with an expiry date that is earlier than three years after the date of the sale of the gift card. This provision is meant to apply to sales of gift cards to the ordinary consumer, that is, the member of the public who buys a gift card. This provision will give consumers in New South Wales certainty and the ability to use a gift card for at least three years from the date of sale, which gives them enough time to use up the full value of the card as they see fit. This will also introduce some consistency in the minimum expiry date periods that are applied. If a gift card is sold to a consumer in New South Wales with an expiry date that is less than three years from the date of sale, it will be an offence. Businesses may face a penalty notice or a maximum penalty of 50 penalty units.

Proposed section 58N (2) provides that a business that sells a gift card to a consumer in New South Wales or that has agreed with the seller to redeem that gift card, must not impose any administrative charge or fee in connection with the redeeming of the gift card, which has the effect of reducing the redeemable value left on the gift card. In other jurisdictions, administrative fees are incurred post-purchase on an annual basis. Such fees degrade the value of the gift card over time. The purpose of this provision is to prohibit such fees being imposed in New South Wales. Accordingly, a business will now no longer be able to impose a post-purchase fee on a gift card, which will reduce its value over time. This provision will apply to businesses that sell gift cards directly to consumers or who give gift cards to other third parties to sell the cards on their behalf. This provision will stop consumers from losing any of the value on a gift card through such unnecessary fee gouging. If this provision is not complied with, businesses may face a penalty notice or a maximum penalty of 50 penalty units.

Proposed section 58N (3) states that a term or condition of a gift card sold to a consumer in New South Wales is void to the extent that it would make the sale of the gift card, or the imposition of a charge or fee, an offence under this section. This means that the term or condition that violates this new reform will be void and cannot be applied. This proposed subsection does not affect any of the other terms and conditions of that particular gift card. These remaining terms and conditions are intended to continue to operate. Proposed section 58N (4) states that if the expiry date on a gift card is void because of proposed section 58N (3), the expiry date is taken to be three years after the date of sale of the gift card. This provides consumers the benefit of the three-year expiry date period automatically and is intended to give a consumer with a gift card the comfort of knowing the law is behind them if they need to speak to a business about the card's status.

Finally, proposed section 58M (3) provides the Government with the ability to make regulations to prescribe classes of gift cards and persons, as well as any circumstances, that the section will not apply to. This recognises that the gift card market and retail sector are evolving continuously, and enables the reform to be flexible and adapt to market changes. To complement this section and allow for further clarification of the types of gift cards that the reform will not apply to, the Fair Trading Regulation 2012 will also be amended. A new clause 23A will be inserted and lists the class of gift cards that the reforms will not apply to. These are: gift cards or vouchers that are issued as store credit, prepaid cards or vouchers that are redeemable for phone credit or internet access or the like, debit cards, credit cards, prepaid travel cards or any similar product supplied by a financial institution, and those that are a part of a customer loyalty program.

Before the scheme commences, the regulations will also be amended to record that gift cards associated with a discount will not be captured by the scheme. These cards will not be covered as they do not fall within the meaning of a standard retail gift card, as compared to a discount voucher. Further to clause 23A, subsection (2) outlines the penalties a person would face, should the provisions not be complied with. This bill demonstrates the Government's commitment to putting consumers first. It provides transparency and certainty to consumers. They deserve the ability to use up the full value of a card, without it deteriorating, in a reasonable period of time. New South Wales consumers deserve protections that allow them to be on a level playing field with businesses, which already benefit from selling a card. The bill addresses the concerns New South Wales consumers have voiced and continue to voice. This bill is about putting consumers first. I commend the bill to the House.

Debate adjourned.