



Trade Promotion Lottery Licence Fact Sheet

Lottery and Gaming Regulations 2008

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What is a trade promotion lottery?

A trade promotion lottery means a lottery conducted with a view to promoting the sale of goods or services.

The winners must be determined by lot, drawing or chance. A lottery can also include a scheme for the distribution of property, real or personal, or a right to participate in the purchase of goods (e.g. a ballot for the purchase of tickets to an event).

A competition in which the winners are determined by skill (e.g. any tipping competitions including footy tipping competitions) is not considered a lottery under the *Lottery and Gaming Act 1936* (the Act), and therefore does not require a trade promotion lottery licence.

Competitions in which entrants are required to complete a minor test of skill (e.g. answer a simple question etc) and then the first correct entry drawn is the winner, are considered to be trade promotion lotteries as the winner is determined by a draw.

When is a licence required?

There are two classes of trade promotion lotteries which require a licence under the *Lottery and Gaming Regulations 2008* (the Regulations).

Major Trade Promotion Lottery Licence

A major trade promotion lottery has either of the following characteristics:

- the total value (*nationally*) of all prizes in the lottery exceeds \$5000
- the prizes include both instant prizes and drawn prizes (*regardless of the value of the prizes*)

But does not include a trade promotion (instant prize) lottery

Instant prizes are a prize to be won on a ticket or token of any kind:

- that has on it a number, letter or symbol giving rise to a winning chance
- that is realisable (*without being drawn*) immediately after its acquisition by the participant in the lottery,

and includes a prize to be found within the packaging of goods that are the subject of a trade promotion lottery. Instant prizes include electronically-awarded prizes.

Entry into a major trade promotion lottery must be free except that:

- the participant may be required to purchase any goods or services which are the subject of the promotion or give some other valuable consideration
- the cost of entry by fixed (*landline*) telephone must not exceed 55 cents including GST
- the cost of entry by mobile telephone cannot exceed the cost of the telephone call and the amount received by the holder of the trade promotion lottery licence must not exceed 50 cents
- the cost of entry by post must not exceed the normal cost of postage.

Trade Promotion (Instant Prize) Lottery Licence

All trade promotion (instant prize) lotteries require a licence **regardless** of the total prize value.

If a trade promotion lottery only contains instant prizes but includes an unclaimed prize draw in the terms and conditions, it is still considered a trade promotion (*instant prize*) lottery.

If a trade promotion lottery only contains instant prizes but the terms and conditions include a second chance or major draw, it is considered a major trade promotion lottery.

Entry into a trade promotion (*instant prize*) lottery may be dependent on the purchase of:

- any of the goods
- services which are the subject of the promotion, otherwise entry in the lottery must be free.

Minor Trade Promotion Lotteries do not require a licence however they must comply with the minor trade promotion lottery rules set out in the minor trade promotion lottery conditions. (see page 5 for further information)

Applying for a licence

An application for a trade promotion lottery licence must be completed and forwarded together with the appropriate application fee and required attachments.

Application forms can be lodged by one of the following methods:

- Online – Please refer to the ‘*Trade promotion lottery licence - online application page*’ on our website for further information
- Mail - to Lottery Licensing, GPO Box 672, Adelaide, South Australia, 5001
- Courier/hand delivered - to Lottery Licensing, 3rd Floor, East Wing, Zurich Building, 50 Grenfell Street, Adelaide.

Application forms are available from Lottery Licensing or can be downloaded from our website.

Lodgement of an application does not mean the application is granted. No advertising of a trade promotion lottery can commence until a trade promotion lottery licence number has been granted. Under the Regulations, the licence number and all other required information must appear on all advertising.

It is unlawful to include “Permit or Licence Pending” on advertising.

If any discrepancies are noted during assessment or processing, this will increase the time in which a licence number is granted. Applicants should ensure that application forms include all required attachments and the proposed lottery complies with the Regulations. The person nominated as the “applicant’s representative” will be contacted with the results of the assessment via the contact details provided.

The Minister must refuse an application for a trade promotion lottery licence if the Minister is of the opinion that:

- the purpose of the lottery is, or includes, the promotion of prohibited goods or services
- the prizes for the lottery include prohibited goods or services
- a gift, reward or benefit (*other than a prize in the lottery*) being offered as an inducement to enter or participate in the lottery includes prohibited goods or services
- in the case of a lottery consisting of bingo sessions - the lottery is to be conducted on the premises to which a gaming machine licence under the *Gaming Machines Act 1992* relates.

An application for a trade promotion lottery licence may be refused:

- on any reasonable grounds
- if the terms and conditions of the lottery provide for the manner in which an unclaimed prize is to be dealt, and the Minister is of the opinion that those terms and conditions do not allow a **reasonable** opportunity (*having regard to the nature of the prize*) for the prize winner to claim the prize.

Please ensure the title of a trade promotion lottery is unique to enable it to be easily distinguished from other lotteries and the contact details are clearly legible.

If a trade promotion lottery is also to be conducted in another State or Territory, contact should be made to the appropriate interstate licensing department to ascertain their requirements. Contact links to interstate departments can be obtained from our website.

Who can apply for a trade promotion lottery licence?

An application for a trade promotion lottery licence may be made by a trader or by the trader's representative (*applicant's representative*).

What information must be attached to an application form?

To avoid delays, please ensure the following attachments are included with the application form:

- if the promotion involves multiple traders, please provide details on the application form for all traders (*use additional sheets if required*)
- a copy of the terms and conditions of entry, the proposed entry form, and any proposed advertisement (see page 3 for advertising requirements)
- details of any inducements to enter or participate in the lottery (*if applicable*).

If the trade promotion lottery induces instant prizes:

- details of the manufacture, packaging or storage of instant prize tickets in the lottery
- a statement that the prizes, number, letters or symbols that give rise to the winning chance or chances cannot be detected by a person participating in the lottery prior to acquiring the relevant goods or services.

If the trade promotion lottery is drawn by an electronic drawing system:

- that is already approved, the OLG approval number must be provided on the application form and a letter stating that the electronic drawing system has not changed since that approval must be provided
- that has not been approved, an Application for Approval of an Electronic Drawing System form must be submitted, with supporting documentation (*see Electronic Drawing Systems on page 3*).

Over what period of time can a trade promotion lottery be conducted?

A trade promotion lottery licence can only be granted for a maximum period of 12 months.

This period is from the commencement date to the final closing date for entries into the lottery.

Can a blanket licence be granted?

No. The Regulations do not make provision for a licence to be granted to a trader to conduct multiple lotteries within a specified period (*e.g. 'blanket licences'*).

What fees are payable on a trade promotion lottery application?

The application fees required to be submitted when applying are set out on the application forms.

If the applicant requests that the licence number be granted within 5 business days from the date the application is **received** at this office, the **premium** fee is payable.

The fees may be subject to change and payment of the fee is not subject to Goods and Services Tax (GST).

Credit card, cheques or money orders are accepted – cheques or money orders are to be made payable to the "Liquor and Gambling Commissioner". **Please note** that application fees are not refundable.

Can tickets be sold?

No. Entry into a trade promotion lottery must be **free**, except for the cost of lodging the entry by either mail or telephone. However, to enter a trade promotion lottery, a participant may be required to purchase any of the goods or services that are the subject of the trade promotion lottery.

What goods and services can be promoted in a trade promotion lottery?

The goods and services to be promoted are the trader's normal business products.

Trade promotion lotteries cannot promote prohibited goods or services which include:

- Tobacco products within the meaning of the *Tobacco Products Regulations Act 1997*
- Firearms, antique firearms and ammunition within the meaning of the *Firearms Act 1977*
- Dangerous articles and prohibited weapons within the meaning of the regulations made under the *Summary Offences Act 1953*
- Cosmetic surgery and other similar medical or surgical procedures undertaken with the predominant purpose of improving personal appearance
- Any goods or services the sale of which in South Australia would be an offence.

What prizes cannot be offered in a trade promotion lottery?

A trade promotion lottery cannot have prohibited goods or services as prizes.

Liquor within the meaning of the *Liquor Licensing Act 1997* is prohibited from being offered as an **inducement** to enter or participate in the lottery. It is not prohibited for participants to purchase liquor to enter the lottery or to be given by the trader as a prize in the lottery.

What value can be placed on a prize?

Under the Regulations, the value of a prize means:

- if the item is an antique or a piece of artwork, craftwork or collectible bric a brac or is second-hand, the price likely to be paid for the item if sold at auction
- in any other case the retail price, or a **reasonable** estimate of the likely retail price, of the item.

The value of the prize advertised in the terms and conditions **must** reflect an accurate retail value of the prize. If the advertised value of a prize is more than the true retail value, this could be considered as being dishonest, deceptive or misleading conduct by the trader.

Who can enter a trade promotion lottery?

Any person can enter a trade promotion lottery, subject to the terms and conditions of entry as determined by the trader.

A person is prohibited from entering a trade promotion lottery if the product promoted or a prize is not available for sale to that person because of his or her age. This must be clearly stated in the terms and conditions of entry and all advertising.

What information must be included on all advertising of the trade promotion lottery?

All advertisements of a major trade promotion lottery (*other than advertisements on television, radio or at the cinema*) must contain the following information:

- the name and address of the trader
- the licence number
- the duration of the lottery
- the nature and value of the prizes to be won
- the number of draws in the lottery and the date, place and time for the drawing of the lottery
- the date on which and method by which participants in the lottery will be advised of the results of the drawing of the lottery.

All advertisements of a major trade promotion lottery on television, radio or at the cinema must contain the following information:

- the licence number
- how a person may enter the lottery
- the nature and value of the prizes to be won
- how and where to get a copy of the full terms and conditions of the lottery.

All advertisements of a trade promotion (instant prize) lottery must contain the following information:

- the name and address of the trader
- the licence number
- the duration of the lottery
- the nature and value of the prizes to be won
- if the full terms and conditions of the lottery are not included in the advertisement, how and where they may be obtained.

When is a scrutineer required?

A scrutineer is only required to attend a **particular** draw where the total value of all prizes (nationally) in the draw equals or exceeds \$20,000.

The scrutineer **cannot** be associated with the licensee or otherwise involved in the conduct of the lottery.

Who can be a scrutineer?

A scrutineer must be one of the following:

- a commissioner for taking affidavits in the Supreme Court
- a justice of the peace
- a notary public
- any other person authorised to take declarations under the *Oaths Act 1936*
- a person of a class authorised by the Minister to be a scrutineer.

The following class of persons are permitted under the definition of scrutineer:

“the Commonwealth Government’s prescribed list of persons authorised to witness and sign statutory declarations under the Statutory Declarations Act 1959.”

Further details of these persons can be found on the Attorney-General’s Department website at www.ag.gov.au/statdec under “list of signatories”.

What information must be provided for approval of an electronic drawing system?

Under the Regulations, a trade promotion lottery must not be drawn electronically unless the system has been approved by the Minister.

An Application for Approval of an Electronic Drawing System form must be completed, submitted and approved by this office, prior to the draw. The application form can be obtained from Lottery Licensing or downloaded from our website.

The following supporting documentation **must** be provided with the application:

Electronic draw process report

- details the processes and controls to ensure all lottery entries are eligible
- details the processes for determining the results of the lottery.

System overview

- describes the electronic drawing system components (*e.g. hardware, firmware, operating system, software, configuration etc*)
- includes firmware/software version numbers, patches, service packs etc
- details the random number generator (*RNG*) used by the system
- details software signatures (*e.g. CRC32, HMAC-SHA1 etc.*) for application files providing the electronic drawing system functionality.

Source code

- copies of the source code for the software providing the electronic drawing system functionality.

Independent test report

- a signed test report from an appropriately qualified and independent body or person, certifying that:
 - the RNG has been tested and produces outcomes which pass a suitable number of recognised statistical tests (*examples: chi-squared, equi-distribution (frequency) test, gap test, poker test, coupon collector's test, permutation test, run test, spectral test, serial correlation test potency and degree of serial correlation, and tests on sub-sequences*)
 - all entries in the lottery have an equal chance of selection
 - the system has appropriate security measures and controls to prevent manipulation of the entries and results
- the report must include (*or have attached*):
 - a statement of independence from the supplier of the system and the trade promotion operator
 - details of the relevant qualifications of the issuer of the report

If the electronic drawing system is already approved in another Australian/New Zealand jurisdiction, you may attach copies of the approval document(s).

Note:

the supporting documents are preferred in electronic format on CD or DVD disk.

What information must be provided if the trade promotion includes tickets as instant prizes?

Each of the following must be submitted together with the application for a trade promotion lottery licence if applicable (*tickets*):

- details of the manufacture, packaging or storage of instant prize tickets in the lottery
- a statement that the prizes, number, letters or symbols that give rise to the winning chance or chances cannot be detected by a person participating in the lottery prior to acquiring the relevant goods or services.

Compliance with trade promotion lottery rules

In special circumstances, a waiver can be granted to waive compliance with a specified trade promotion lottery rule if it is considered that the waiver does not prejudice the interests of participants in the trade promotion lottery.

Additional conditions may be imposed by the grant of a waiver.

Variations to a licence

How can a licence be amended or varied?

An approved trade promotion lottery cannot be amended or varied without the prior approval of the Minister.

An Application to Amend a Trade Promotion Lottery Licence form must be completed and forwarded to this office together with a copy of the amended terms and conditions of entry and the appropriate application fee. The terms and conditions must clearly indicate the proposed changes.

As a trade promotion lottery licence cannot be granted for more than 12 months, this office **cannot** approve an application to amend an existing trade promotion lottery licence if the duration of the lottery will be more than 12 months.

The amendment application fee to be paid is set out on the application form. The fees may be subject to change and payment of the fee is not subject to Goods and Services Tax (GST). If the total

value of all prizes in the trade promotion lottery has increased, a further application fee may be required in addition to the amendment fee.

Approval to amend a trade promotion lottery licence may not be granted if it has already commenced or if the participants may be disadvantaged by the proposed amendments.

How can a licence be cancelled or suspended?

Written application must be made to this office seeking approval of the Minister if the trader wishes to cancel a trade promotion lottery.

Also, the Minister may cancel or suspend a trade promotion lottery licence if any of the following apply:

- the licence was improperly obtained
- the licensee commits or is found guilty of an offence against the Act or Regulations
- the licensee contravenes a condition to which the licence is subject
- the Minister is of the opinion that the purpose of the lottery being conducted under the licence is; or includes, promoting prohibited goods or services.

Conduct of a trade promotion lottery

How should a trade promotion lottery be conducted?

You must allow sufficient time for each phase of the trade promotion lottery, including the coordinating of applying for the trade promotion lottery licence, printing of tickets and advertising of the lottery.

Sufficient time should be allowed for the collection of entries, drawing of winners, notifying winners of how they can collect their prizes, and publication of winner's details etc.

How should the draw be conducted?

The trade promotion lottery must be drawn on the date and at the time and place specified in the advertisements of the lottery. If the total value of all prizes in the draw equals or exceeds \$20,000, the draw must be conducted in the presence of a scrutineer who is not associated with the licensee or otherwise involved in the conduct of the lottery.

Every entry must have a fair and equal chance of winning the major prize in a lottery. A participant cannot be restricted to winning only one prize if they are permitted to submit multiple entries.

The participants in a trade promotion lottery cannot be required to be present at the drawing of a trade promotion lottery in order to win a prize. Therefore, a prize cannot 'jackpot' if the winner is not present or a redraw conducted because the winner is not present.

When must the prizes be delivered?

If a prize is not delivered to its winner at the time the lottery is drawn, the winner must, **within 14 days** of the draw, be notified in writing of the prize he or she has won and the particulars of how the prize is to be delivered or collected.

How should winners be notified of the results?

The name and address of each winner of a prize valued at over \$250 must be published within 30 days of the draw:

- in a newspaper circulating generally throughout the State
- if the lottery has only been advertised in a particular magazine, newspaper, newsletter or other publication (*whether electronic or otherwise*) or on a particular website, in that magazine, newspaper, newsletter or other publication or on that website
- if entry in the lottery is only permitted on a particular website, on that particular website.

If the lottery involves multiple draws, the winners' details from each draw must be published within 30 days of that draw.

What information must be provided to the Minister at the conclusion of a lottery?

The name and address of each winner of an instant win prize valued at over \$250 or any drawn prize (*regardless of the value*) must be forwarded to the Minister within 14 days of the draw

What if the prizes are not claimed?

If the terms and conditions for a trade promotion lottery include **reasonable** provisions for dealing with unclaimed prizes, there is no minimum requirement on how long the prizes must be retained after the draw, providing those provisions are adhered to.

If the terms and conditions for a major trade promotion lottery do not include **reasonable** provisions for unclaimed prizes, they must be retained for three months after the draw, and the licensee must comply with the requirements of the Regulations.

Provisions for dealing with unclaimed prizes will be assessed by this office.

If a prize in a trade promotion (instant prize) lottery remains unclaimed at the close of the lottery, the person who conducted the lottery may dispose of the prize in an appropriate manner.

For what period of time are the trade promotion lottery records to be maintained?

Ticket butts, entry forms and other records relating to the lottery must be retained for a period of at least three months after the final draw of the lottery.

Minor trade promotion lotteries

A minor trade promotion lottery is an exempted lottery if all of the following apply:

- the prizes do not include any instant prizes or prohibited goods or services
- the lottery is not for the purpose of promoting the sale of prohibited goods or services
- no prohibited goods or services are offered as an inducement to enter or participate in the lottery
- the lottery does not consist of bingo sessions conducted on the premises to which a gaming machine licence under the *Gaming Machines Act 1992* relates
- the person conducting the lottery complies with the minor trade promotion lottery rules.

The minor trade promotion lottery rules are set out in the minor trade promotion lottery conditions which are available from Lottery Licensing or can be downloaded from our website.

Under the Regulations, a minor trade promotion lottery must not be drawn electronically unless the system has been approved by the Minister.

An Application for Approval of an Electronic Drawing System form must be completed, submitted and an approval granted by this office, prior to the draw. The application form can be obtained from Lottery Licensing or downloaded from our website.

General**Are there penalties involved in breaches of the Act or Regulations?**

There is a range of penalties for conducting a trade promotion lottery in breach of the requirements of the Act or Regulations.

Regulation 40 of the Regulations provides that a person who identifies or discloses the identity of a winning ticket in a trade promotion lottery before the ticket is acquired by the person entering the lottery is guilty of an offence.

Also Section 113A of the *Lottery and Gaming Act 1936* provides that a person involved (*whether as principal, agent or employee*) in the conduct of any lawful or unlawful lottery, gaming or betting operations who acts in a dishonest, deceptive or misleading manner in connection with the operations is guilty of an offence. The maximum penalty to be applied to a person found guilty of an offence against Section 113A of the Act is \$50,000 or 2 years imprisonment.

Where can you obtain a copy of the Lottery and Gaming Act 1936 and the Lottery and Gaming Regulations 2008?

Copies of the Act and Regulations can be downloaded from the South Australian legislation website www.legislation.sa.gov.au