

Major Trade Promotion Lotteries Guidance Note

Lotteries Regulations 2021

Version – December 2022



Government of South Australia
Attorney-General's Department

Major Trade Promotion Lotteries Guidance Note

The following information provides additional guidance for businesses and the public about trade promotion lotteries and the matters that Consumer and Business Services will consider when assessing an application for a trade promotion lottery licence.

Trade promotion lottery licences must also meet the requirements of the *Lotteries Regulations 2021* under the *Lotteries Act 2019*.

Consumer and Business Services

For any further information or assistance in relation to this guidance note, contact CBS Gambling and Associations on 131 882 (and select option 6) or by email at gamblingadministration@sa.gov.au.

Alternatively, written enquiries can be made by mail to:

Consumer and Business Services
Gambling and Associations
GPO Box 1719
Adelaide SA 5001

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Background

Purpose

Consumer and Business Services (CBS) administers applications for lottery licences on behalf of the Liquor and Gambling Commissioner in South Australia. The purpose of this guidance note is to provide additional information for businesses and the public about trade promotion lotteries and the matters CBS will consider when assessing an application for a trade promotion lottery licence.

What is a trade promotion lottery?

A trade promotion lottery is a type of lottery conducted to promote any goods or services where the distribution of prizes is determined by chance rather than skill. A trade promotion lottery is run by a trader, or by a person on behalf of a trader. Under the *Lotteries Regulations 2021*, a “trader” means the seller of the goods or services that are the subject of the promotion.

Entry to the lottery must be free of charge, however participants may be required to purchase the goods or services being promoted to enter. If entry to the lottery requires the purchase of goods or services, the trader cannot charge more for those goods or services than the normal price charged by that trader.

Trade Promotions with a total prize value exceeding \$5,000 are classed as major trade promotion lotteries and require a licence. Trade promotions with a prize value under \$5,000 do not require a licence however need to be conducted in accordance with the *Lotteries Regulations 2021*.

Example: A hairdressing salon wants to promote its hairdressing services to expand its client base. It runs a trade promotion lottery where any client who books a haircut between a certain period goes into the draw to win a \$500 gift voucher to be redeemed at the salon.

The salon does not require a licence as the total prize value does not exceed \$5000.

Promotion of goods or services

The purpose of the lottery must be the promotion of goods or services sold by the trader. Entry to the lottery cannot be the purchase of goods or services that are not otherwise sold by the trader outside of or apart from the lottery, as this would not satisfy the **promotion** purpose of the lottery.

Example: A fishing store sells fishing goods and wants to run a trade promotion lottery with the prize being a fishing charter worth \$10,000. To enter the lottery, participants must purchase a \$50 store membership subscription which entitles members to monthly discounts and products such as fishing posters and keyrings. The store does not ordinarily sell store membership subscriptions, posters or keyrings. The fishing store would not be granted a trade promotion lottery licence because entry to the lottery requires purchase of services (membership subscriptions) that the store does not otherwise sell and therefore cannot satisfy the requirement of “trader” or “promotion”.

The fishing store would be eligible if entry to the promotion was by purchasing a fishing rod at the store between a certain period, provided the sale price for entry was the normal store price for that fishing rod.

Trade Promotion Lotteries by Gambling Providers

Gambling providers may also run trade promotion lotteries, however they are subject to additional requirements set out in the relevant gambling codes of practice. These requirements include:

- the dominant purpose is to reward or retain existing patrons, rather than attracting new patronage or encouraging patrons to gamble more than they would otherwise
- the promotion does not encourage people to gamble for a minimum period or for a minimum amount to qualify for a reward or benefit
- the advertising draws attention to the prize(s) of the promotion, rather than the gambling product itself, and
- limitations on who the promotion can be advertised to (such as account holders or members of a loyalty program).

Further information about Gambling Codes of Practice is available at sa.gov.au/topics/business-and-trade/gambling/codes-of-practice.

Tickets and drawing of winners

Winners can be drawn or win instantly depending on the type of promotion being conducted. Each ticket in the lottery must give rise to an equal chance of winning the major prize in the lottery and be determined by chance or drawing. A game or competition where a person must complete a minor test of skill, such as answering a question, is still a trade promotion lottery if the winner is determined by chance.

A “ticket” means a token of any kind used for the purposes of drawing the prizes and includes recording a participant’s name or telephone number (this can be by electronic means).

If the winners of a competition are determined by skill (and not by chance), it isn’t considered a lottery and does not require a trade promotion lottery licence, for example any tipping competitions or best answer wins a prize.

If a promotion requires entry by phone, the expense for phone charges can’t be more than 50 cents (plus GST and any mobile charges). For information about prizes which are prohibited under a trade promotion lottery, visit: sa.gov.au/topics/business-and-trade/running-a-business/trade-promotions.

Grounds for refusal

The Commissioner may refuse an application for a lottery –

- if a relevant person in relation to the application is not a fit and proper person
- if the lottery is not going to be conducted in a fair and honest way
- if refusal is necessary to maintain public confidence in the transparency and accountability of lotteries
- to protect the community from fraudulent or exploitative activities relating to lotteries
- if the lottery doesn’t comply with a gambling code of practice, or
- on any other reasonable ground.

Some examples where an application for a trade promotion lottery might be refused include:

- there is insufficient connection between the trader’s goods or services being promoted and the goods or services required to be purchased to enter the promotion
- there is no distinct “ticket” that can be identified under proposed terms and conditions
- the prizes require the winner to purchase or sign up for goods or services of an unrelated trader who did not apply for a trade promotion lottery licence
- the trader does not ordinarily sell the goods or services required to be purchased to enter the promotion
- the applicant is not a gambling provider and the goods and services sought to be promoted are not related to gambling, however the trade promotion is sponsored by a gambling provider and the terms and conditions indicate the applicant will receive direct marketing from the gambling provider simply by entering the promotion
- the trader is not a gambling provider and the lottery requires the participant to bet or wager as part of the competition.

Preliminary checklist for traders

The questions and answers below are designed to assist traders in determining whether the promotion they seek to run is likely to meet the key requirements for a trade promotion lottery licence.

Question	If your answer is YES	If your answer is NO
1. Is the total prize greater than \$5000?	You will need to apply for a trade promotion lottery licence	You do not need a licence but you need to abide by the Minor Trade Promotion Rules in <i>the Lotteries Regulations 2021</i>
2. Are you seeking to promote goods and services you sell as a trader (or on behalf of a trader)?	Continue below	You are not eligible for a trade promotion lottery licence
3. Is entry to the lottery free?	Proceed to Question 6	No, continue below
4. Does entry to the lottery require the purchase of goods or services being promoted?	Continue below	You are not eligible for a trade promotion lottery licence
5. Is the price for those goods or services the normal price offered by your business?	Continue below	By proceeding, you may commit a breach

6.	Does each ticket in the lottery give rise to an equal chance of winning the major prize?	Continue below	You are not eligible for a trade promotion lottery licence
7.	Will the winner(s) be drawn randomly?	Continue below	You are not eligible for a trade promotion lottery licence
8.	Are you a gambling provider?	Ensure your T&Cs meet the requirements under the relevant gambling code of practice before applying	Proceed to application

Offences

Conducting, or assisting in conducting, an unlawful lottery is an offence against the *Lotteries Act 2019* and carries a maximum penalty of \$10,000.

Participating in an unlawful lottery (by purchasing a ticket or obtaining a share in the lottery) is an offence and carries a maximum penalty of \$2,500. Consumers should be aware that a trade promotion may be licensed in other States and Territories but not approved for SA residents. Check that a trade promotion is licensed in South Australia by locating the SA permit number in the terms and conditions e.g. SA T23/1234.

A person involved (whether as principal, agent or employee) in the conduct, or promotion, of any lottery who acts in a dishonest, deceptive or misleading manner in connection with the lottery is guilty of an offence.

A maximum penalty of \$50,000 or 2 years imprisonment applies.

More on trade promotion lotteries

Further information on trade promotion lotteries can be found at sa.gov.au/topics/business-and-trade/gambling

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