



Association for Data-Driven Marketing & Advertising


TRADE PROMOTIONS

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GAMES OF SKILL OR GAMES OF CHANCE:

What is involved in preparing to conduct a trade promotion

This document is intended to be used as an overview of what to consider when deciding to run a trade promotion. It is not to be used as a substitute for either legal advice or direct reference to State and/or Territory regulations.

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CONDUCTING A TRADE PROMOTION:

In Australia, a competition aimed at promoting your business or brand is called a trade promotion competition. There are two types of Trade Promotions: Games of Skill and Games of Chance. Both forms of promotions are governed by the legal and regulatory requirements in each state and territory of Australia in which they are being conducted.

In a competition where the winner is determined by an element of chance, some states in Australia require you to obtain a permit or authority in order to legally conduct the promotion.

The first question to ask yourself when determining what type of trade promotion competition you are running is "how will the winners be determined?". The answer will directly determine the regulations and permit/ authority requirements that apply to your competition.

GAMES OF SKILL:

A game of skill involves the winning entry being judged based on the entry criteria. The winner is determined entirely on merit – there must be no element of chance at any point throughout the promotion. Games of skill are less regulated than games of chance. For example, Games of Skill across Australia do not require a permit of authority regardless of the scale of the prize offered.

However - even though a permit is not required, most states still impose regulations on competition operation procedures, e.g.:

- Clear guidelines as to judging criteria must be available to entrants prior to entering;
- All entries must be judged individually on their merit; and
- One winner is chosen based on the skill and originality of their submission.

Games of skill are often cheaper for the promoter to conduct as they do not involve permit applications, however they often attract less entries as entrants are required to do more than just enter.

GAMES OF CHANCE:

Alternatively, Games of Chance are competitions where a degree of chance is involved in determining the winner/s. A trade promotion competition involving chance is called a Trade Promotion Lottery. These are sometimes referred to as draws, instant wins etc.

Please note: in South Australia, 'instant win' competitions have special regulations.

If you intend to run a Trade Promotion Lottery, you will be required to comply not only with the state and territory laws governing the conduct of the competition, but in some states you will also be required to apply for a Trade Lottery Permit / Authority.

In some jurisdictions the permit application is simple and involves a straightforward online form and fee payment, however in other jurisdictions the process can be lengthy and complex. If not prepared perfectly in line with the requirements, delays can result in a backwards and forwards communication battle between states.

Remember that permit numbers need to appear on your trade promotion creative so consider your deadlines and give yourself ample time to apply for the permits.

DO YOU NEED A PERMIT/ AUTHORITY:

Whether or not you need a permit or authority to run your trade promotion will depend on the:

- type of trade promotion you are running;
- total prize value of the trade promotion; and
- states or territories in which you are conducting the trade promotion.

TRADE PROMOTION LOTTERIES IN QUEENSLAND, VICTORIA AND TASMANIA:

Queensland, Tasmania and Victoria do not require businesses to acquire Trade Promotion Lottery permits. Despite this, each business is required to comply with a variety of state specific mandatory conditions. Some of the key conditions businesses must adhere to include:

- Entry into a trade lottery is free unless entry is gained by purchasing goods or services at their normal retail value;
- If the Trade Promotion Lottery is to be drawn, the method of the draw must ensure that each ticket in the draw has a random and equal chance of being drawn;
- All information relating to the competition must be communicated and easily accessible to entrants including eligibility requirements, dates of the draw, publishing dates etc;
- Winners are notified and prize/s are awarded within the specified timeframe and by the specified means;
- Where prizes exceed \$1,000 the names of winners are published in a newspaper, or online for a period of 28 days;
- The winner of a prize does not incur a cost to accept a prize (other than a trivial cost);
- Where a prize is left unclaimed, it must be kept for 3 months from the day the winner is decided (unless the conditions allow for the re-drawing of winners for unclaimed prizes or the jackpotting of unclaimed prizes. If the prize is not claimed within 3 months, a redraw must occur);
- Prizes do not include weapons, cosmetic surgery, tobacco product, or alcohol where the competition is open to entrants under the age of 18;
- Records are maintained for up to 5 years including books, finances and prize details; and
- The purpose for which the entrant's personal information is to be used is made clear to the entrant (if used for a purpose other than the lottery)

TRADE PROMOTION LOTTERIES IN NEW SOUTH WALES:

New South Wales requires businesses to apply for a Trade Promotion Authority if the total prize pool for a single trade promotion exceeds \$10,000 and is open to NSW residents (even if the operator lives outside of NSW). An authority can be issued for a period of either 1, 3 or 5 years. The authority can be used across multiple trade promotions for its duration. A gaming activity is not permitted if the prizes include prohibited weapons, firearms, cosmetic surgery ¹, or tobacco in any form. There are also limitations on the amount of alcohol that can be given away. Promoters must abide with State Regulations.

¹ Other procedures falling under Division 1A of Part 3 of the Poisons and Therapeutic Goods Act 1966.

If the gaming activity requires an authority, you must provide a copy of the gaming rules to NSW Fair Trading at least 10 working days before the proposed promotion takes place.

If the promotion requires an authority, any substantial changes to the rules must be reported to NSW Fair Trading through an online form.

TRADE PROMOTION LOTTERIES IN ACT:

Where the total value of the prize pool for a Trade Promotion Lottery in the ACT exceeds \$3,000 the organiser is required to apply for a permit.

A permit is not required where the promotion is a 'Private Lottery', meaning there is no external advertising and participation is restricted to members of the same work/association and where there is no external advertising of the promotion.

A permit is required if the promotion is conducted via a website hosted in the ACT or is advertised in the ACT (in addition to the advertising on the website. Promoters must abide with Territory Regulations.

TRADE PROMOTION LOTTERIES IN SOUTH AUSTRALIA:

Where the total value of the prize pool for a Trade Promotion Lottery in South Australia exceeds \$5,000 the organiser is required to apply for a competition permit. Promoters must abide with State Regulations.

Entry by post can't be more than the normal cost of postage and entry by phone can't exceed 55 cents (including GST) for landlines and 50 cents for mobile phones (plus mobile charges).²

If you are using instant scratch or break open tickets (where the number, letter or symbol is hidden) it is an instant prize trade promotion lottery and you must apply for a licence regardless of the prize amount.

A prize must not include cosmetic or medical procedures, tobacco products, firearms, ammunition or prohibited weapons.

If the prize is drawn electronically, you will also need an electronic drawing system approval number.

TRADE PROMOTION LOTTERIES IN NORTHERN TERRITORY:

In the Northern Territory, a business will not be required to apply for a Trade Promotion Lottery permit where they have acquired a permit for the same competition in another state or territory. If the business does not intend to run the competition outside of the Northern Territory, they will only be required to acquire a permit where the total prize value exceeds \$5,000.

Liquor must not be a principal prize, and a prize must not include firearms, weapons, ammunition, explosives or tobacco products. You must not award a prize to a person under 18 years that includes liquor or goods or services that are restricted by law to people over 18.

²Prices as stated <https://www.sa.gov.au/topics/business-and-trade/running-a-business/trade-promotions> - October 2021.

TRADE PROMOTION LOTTERIES IN WESTERN AUSTRALIA:

If the Trade Promotion Lottery complies with conditions prescribed under the regulations, then you are not required to apply for a permit to operate the competition. A business will be required to submit an application for a permit where it intends to conduct a Trade Promotion Lottery that does not comply with the prescribed provisions.

A prize in the lottery must not consist of or include cosmetic surgical or medical procedures.

PERMIT FEES (As at October 2021):

NSW Permit Fees:

Duration	Fixed Fee	Processing Fee	Total Fee	Total Fee if lodged online*
1 year	\$106	\$319	\$425	\$393
3 years	\$319	\$319	\$638	\$606
5 years	\$532	\$319	\$851	\$819

* Online applications attract a 10% processing fee discount

ACT Permit Fees:

Prize Value	Application Fee
Greater than \$3,000 and less than or equal to \$5,000	\$223
Greater than \$5,000 and less than or equal to \$10,000	\$326
Greater than \$10,000 and less than or equal to \$50,000	\$627
Greater than \$50,000 and less than or equal to \$100,000	\$896
Greater than \$100,000 and less than or equal to \$200,000	\$1,788
Greater than \$200,000	\$3,586
If an application is withdrawn prior to commencement of its assessment.	Original fee refunded less \$66
If an application is withdrawn or rejected following the commencement of its assessment.	Fee not refundable
Amendment fee: less than or equal to \$5,000	\$66
Amendment fee: greater than \$5,000	\$126

South Australia Permit Fees:

Prize Value	Standard Fee	Premium fee*
Instant prize only - \$0 to \$10,000	\$223.00	\$446.00
Major trade promotion only - \$5,001 to \$10,000	\$223.00	\$446.00
Both instant and major trade promotions - \$10,000 to \$50,000	\$818.00	\$1,638.00
\$50,000 to \$100,000	\$1,430.00	\$2,855.00
\$100,000 to \$200,000	\$2,453.00	\$4,904.00
More than \$200,000	\$4,498.00	\$8,997.00
Application for amendment of a major or instant prize trade promotion	\$73.50	

* Premium fees apply if you need the licence within 5 business days from when the application is received.

TERMS AND CONDITIONS OF ENTRY

The terms and conditions of entry should (at the very least) include the following information:

- The name of the Promoter (the business conducting the promotion);
- How entrants enter the promotion;
- Eligibility requirements for entrants;
- How winners will be selected (judging/ draw). If Game of skill – what is the judging criteria;
- Any restrictions on entry (i.e. can people enter more than once);
- Promotional period (when the promotion closes – don't forget to state the time in AEST to avoid confusion around daylight saving etc);
- A description and retail value of each of the prizes;
- If a game of chance: Draw details (time, date and place of draw);
- The order in which winners are selected (if there is more than one prize);
- How prize winners will be notified;
- Whether (and where) results will be published;
- When the second chance draw/ judging will take place;
- How you intend on using data collected (ensure this is in line with privacy and SPAM laws);
- If a Game of Skill, how the Promoter expects to use the entries;
- Whether additional/ ancillary costs are included or not;

SHORT TERMS

Often Terms and Conditions are included via a link and it is up to the Entrant to go and read them. Given that this is the case, it is important to put the most important terms up front and at the "call to enter."

This includes things like closing date, how to enter, entry requirements, eligibility, use of data, prize details, permit numbers etc.

What needs to be included in these short terms is often determined by your legal team. Make sure you get their sign off.

COMPLEX PROMOTIONS:

The following promotions require more thought and more stringent terms and conditions:

- Travel prizes;
- Motor Vehicle prizes;
- Promotions aimed at persons aged under 18;
- Promotions where prizes include alcohol;
- Promotions that include proof of purchase as an entry requirement;
- Promotions where the Promoter hopes to collect data to use for marketing purposes;
- Promotions that include winners participating in dangerous or adventurous activities;
- Promotions with 2 or more Co-Promoters;
- Games of Skill, with non-standard entry criteria (i.e.: more than "tell us in 25 words or less");
- Voting promotions;
- Promotions that involve social media platforms in the entry mechanism;
- Prizes that need to be redeemed by a particular date;
- Event based promotions

When preparing to conduct a promotion which involves any of the above mentioned prizes or methods of entry, make sure that your terms and conditions of entry are correctly worded to properly outline the promotion, the prizes, and the responsibilities of the entrants, the winners and the Promoter. If you fail to do this, the promotion can end up costing you more or could lead to a breach of regulations and/or privacy laws. Costs could be either monetary or negative PR for your brand and/or business.

The terms and conditions of entry must **adequately describe the prize and details of how it is to be awarded / redeemed.**

For example, a Travel Prize should outline (at least) the following:

- the number (and class) of flights; - the departure city; - the departure dates (if restricted);
- the type and value of tickets;
- the type of accommodation (including room type, number of nights, and name or rating of hotel);
- confirmation on what activities are included (and how they are being awarded);
- confirmation on whether transfers are included; and - the RRP value of each component.
- All flight associated taxes and surcharges i.e. energy surcharges must be included in the prize,

A prize winner should not need to put money towards redeeming the prize. Ancillary costs may be excluded but this must be clearly stated in the terms and conditions of entry.

DATA: YOUR OBLIGATIONS

When conducting a promotion, the Promoter will likely end up with a database of entries, which include personal information. The promotion (or intended marketing to that database at a later date) could also involve the sending of electronic communications. In Australia, the collection, use and disclosure of personal information is governed by the Privacy Act and Australian Privacy Principles. The sending of commercial electronic messages is governed by the Spam Act. It is important that when setting up the promotion, the Promoter uses the right wording to obtain the correct consent to use the data for marketing purposes. The Terms and Conditions of entry must also properly address the Promoters legal obligations in relation to Privacy and (if applicable) the Spam Act. Doing this will reduce the negative exposure your business may otherwise face if found to be in breach of these laws. A breach can lead to fines and/or other serious sanctions.

LAWS AND REGULATIONS

The above is just a guide. The laws and regulations for conducting trade promotions differ between states and territories. To be sure of compliance, check the laws of each individual state. The table below sets out the relevant laws and regulatory bodies for each state and territory.

State or Territory	Law	Regulator
New South Wales (NSW)	<ul style="list-style-type: none"> • <i>Lotteries and Art Union Act 1901</i> (NSW) • <i>Lotteries and Art Union Regulation 2014</i> (NSW) • <i>Licensing and Registration (Uniform Procedures) Act 2002</i> (NSW) 	<ul style="list-style-type: none"> • Department of Industry – Liquor and Gaming NSW • More information available here
Australian Capital Territory (ACT)	<ul style="list-style-type: none"> • <i>Lotteries Act 1964</i> (ACT) • <i>Gambling and Racing Control (Code of Practice) Regulation 2002</i> (ACT) 	<ul style="list-style-type: none"> • ACT Gambling and Racing Commission • Information sheet available here
South Australia (SA)	<ul style="list-style-type: none"> • <i>Lottery and Gaming Act 1936</i> (SA) • <i>Lottery and Gaming Regulations 2008</i> (SA) 	<ul style="list-style-type: none"> • Consumer and Business Services • Information sheet available here
Western Australia (WA)	<ul style="list-style-type: none"> • <i>Gaming and Wagering Commission Act 1987</i> (WA) • <i>Gaming and Wagering Commission Regulations 1988</i> (WA) 	<ul style="list-style-type: none"> • Department of Racing, Gaming and Liquor • Information sheet available here
Tasmania (TAS)	<ul style="list-style-type: none"> • <i>Gaming Control Act 1993</i> (TAS) • <i>Gaming Control Regulations 2004</i> (TAS) 	<ul style="list-style-type: none"> • Department of Treasury and Finance • Information sheet available here
Victoria (VIC)	<ul style="list-style-type: none"> • <i>The Gambling Regulation Act 2003</i> (VIC) • <i>Gambling Regulations 2005</i> (VIC) • <i>Gambling Regulation Amendment Regulations 2012</i> (VIC) 	<ul style="list-style-type: none"> • Victorian Commission for Gambling and Liquor Regulation • Further information available here
Queensland (QLD)	<ul style="list-style-type: none"> • <i>Charitable and Non-Profit Gaming Act 1999</i> (Qld) • <i>Charitable and Non-Profit Gaming Regulation 1999</i> (Qld) 	<ul style="list-style-type: none"> • Queensland Government – Business Queensland • Information sheet available here
Northern Territory (NT)	<ul style="list-style-type: none"> • <i>Gaming Control Act 2002</i> (NT) • <i>Gaming Control (Community Gaming) Regulations 2011</i> (NT) 	<ul style="list-style-type: none"> • Licensing NT • Information available here