

Review of Lotteries Regulation in South Australia

Following an extensive review of the *Lottery and Gaming Regulations 2008* (the Regulations), the Government wants to hear your views on proposed amendments.

1. Introduction

Lotteries are a common way for community organisations to raise funds and for businesses to promote their goods and services.

We want to make sure these activities are supported and remain viable, by finding the right balance between meeting community expectations around the conduct of lotteries without placing unnecessary regulatory burden on those who conduct them.

There are various types of lotteries that can be conducted, including major and minor lotteries, instant lotteries, bingo and trade promotions, each with their own rules and requirements that must be complied with.

In 2019, a review of the existing *Lottery and Gaming Act 1936* (the LGA) was undertaken, to simplify and modernise the regulation of lotteries in South Australia (SA). The outcome of this review involved establishing a framework that distinguishes between unlawful and lawful lottery activities and allows for the licensing of various lottery products and activities.

As a result, the lottery provisions from the LGA have now been incorporated into a new simplified *Lotteries Act 2019* (the Lotteries Act), which passed Parliament in December 2019.

The Lotteries Act better reflects contemporary needs and provides greater clarity and structure to the licensing framework for the conduct of lotteries and the supply of lottery products in SA.

Lotteries can be a significant fundraising activity for charities, with gross proceeds and prizes worth millions of dollars. Trade promotions are also a common activity to promote good and services on a regular basis, with large prize pools. It is important to ensure the Regulations provide an appropriate level of oversight and integrity measures.

It is also acknowledged that in many instances, lotteries are conducted by organisations with minimal resources and a heavy reliance on volunteers and small businesses promoting goods and services.

It is therefore essential that we strike the right balance to establish a framework that minimises operational costs and overall regulatory burden, whilst promoting and ensuring the integrity of how these activities are conducted. It is equally important that the rules for conducting lotteries are easy to understand and comply with.

The Government is inviting feedback on the proposed changes to inform the finalisation of the Regulations

that will support the commencement of the Lotteries Act in December this year. The Regulations seek to outline the relevant rules and requirements for each of the various lottery types.

2. Key changes already made

Key changes that have already been made to the regulatory framework for the conduct of lotteries in SA and that have been incorporated into the new Lotteries Act include:

- changing the terminology of lotteries that can be conducted without a licence from 'exempted lotteries' to '**permitted lotteries**';
- changing the terminology of lotteries that can only be conducted with a licence from 'authorised lotteries' to '**licensed lotteries**';
- allowing the Commissioner to exempt a lottery or class of lotteries from specified provisions of the Act;
- providing for the nomination of a person who will be responsible for complying with the requirements under the Act for applications made by unincorporated associations;
- allowing for the renewal of lottery licences;
- allowing the Commissioner to add, vary and revoke licence conditions; and
- introducing expiation fees for breaches of the Act.

3. Key changes proposed in the new Regulations

Definitions

Proposed changes to the definitions outlined in the Regulations include:

- **Approved purposes** - To make 'approved purposes' consistent with the *Associations Incorporation Act 1985*, it is proposed to amend the definition to include 'a purpose approved by the Commissioner'.
- **Face value** – It is proposed to introduce a definition of 'face value' to provide more clarity around this concept. Face value means '*the amount obtained by multiplying the total number of tickets available in the lottery by the individual ticket price*'.
- **Organisation** - It is proposed to change the terminology relating to eligibility for conducting lotteries (excluding trade promotions) to now refer to an **organisation**, rather than referring to an *association*. This removes prior confusion that an association is an incorporated association under the *Associations Incorporation Act 1985*. The new definition will mean that an incorporated association and corporation that does not return profit to members, will be an eligible organisation, and must meet and comply with the requirements under their respective registration regimes.

However, for an unincorporated association to be an organisation eligible to conduct a lottery, consistent with existing requirements, they must meet the following criteria:

- at least 10 members; and
- a management committee appointed or elected by members of the organisation; and
- a written constitution.

Organisations must not return profit to members.

- **Equal Chance of Winning** - Regulated lotteries are required to be conducted in a way that gives rise to all tickets having an equal chance of winning. For the purposes of the Regulations, lotteries will not be taken as giving rise to an equal chance of winning a prize, if the holder of the ticket is required to be present at a draw. It is proposed to exempt minor lotteries from this requirement in certain circumstances.

The draft Regulations make an allowance from this requirement for small raffles that are held at the same venue and day, provided information is disclosed to potential participants before purchasing tickets. An example of this would be a 'chook' or 'meat tray' raffle where tickets are sold and drawn on the same evening at the same place at which tickets are sold.

Minor lotteries

A minor lottery is a fundraiser conducted by an organisation where the total retail value of all prizes is \$5,000 or less. A licence is not required to run a minor lottery under the existing regulatory regime, and it is not proposed to change this position.

Nevertheless, a number of amendments are proposed to the rules relating to the conduct of minor lotteries including:

- **'Ticket bundling'** - Allowing for 'ticket bundling' to occur provided that this occurs in accordance with all other rules. Ticket bundling is where tickets are offered at a discount for purchasing a certain number of tickets. The rules that apply to bonus tickets will also apply to ticket bundles. Details of the ticket bundles must be provided to potential purchasers and the offer must apply throughout the whole period of the lottery.
- **Distribution of proceeds to the approved purpose** - Currently, the required distribution of gross proceeds to the approved purpose is a minimum 15%. It is proposed to increase this amount to a minimum of 20% of the gross proceeds, consistent with the proposed increase for other lotteries.
- **Printing of tickets** - Under the current rules, lottery tickets are required to have certain information printed on each ticket, unless tickets are to be sold and drawn on the same day or same place. It is proposed to amend this requirement so that tickets are not required to have prescribed information printed on each ticket, however, this information about the details of the lottery must otherwise be made available to the purchaser. This will provide some flexibility as to how this information can be made available, which may reduce costs associated with printing ticket books whilst ensuring participants still have access to the relevant information.
- **Electronic draws** - Where a lottery is to be drawn electronically, the system must draw numbers at random. While it is not proposed to require the electronic system to be approved, the information relating to the system must be provided to the Commissioner upon request.
- **'Ticket bundling'** – is where tickets are offered at a discount for purchasing a certain number of tickets. Allowing for ticket bundling to occur so long as the details of the offer are disclosed at time of purchase and made clear in the terms and conditions and so long as the offer does not change from what is specified on the licence during the course of the lottery. This also relates to the proposed definition of face value.
- **Prizes not less than 20% of the face value** – The value of all prizes in a major lottery must not be less than 20% of the total face of tickets in the lottery. This is not proposed to change, however proposed changes to 'ticket bundling' and the definition of 'face value' may change how calculations are made.
- **Advertising requirements** - It is proposed to require additional details to be provided in advertising for a major lottery, in addition to the licence number currently required. The details that must be included are:
 - the nature and value of prizes to be won;
 - how and where to get a copy of the full terms and conditions of the lottery;
 - the total number of tickets available in the lottery;
 - if a third party is promoting or conducting a lottery on behalf of the organisation, that fact.

- **Electronic draws** – The Regulations are currently silent on electronic draws for major lotteries. Where a lottery is drawn electronically, a random number generator must be used to ensure the winner or winners are drawn randomly. The system will not need to be approved, however the Commissioner may request information in relation to the system.
- **Publication of winners** – It is currently a requirement that the numbers of the prize winning tickets for each prize \$250 or more be published in a newspaper circulated through the State. It is proposed to amend this requirement to instead require that winners be published in a location specified in the terms and conditions of a lottery, or an appropriate place, such as where the lottery was advertised or promoted (for example, the website where tickets were made available for purchase). It is proposed to align this new publishing requirements for both major lotteries and trade promotions. The intent of this proposal is to reduce the cost of publishing in the newspaper for licence holders, whilst still ensuring transparency and accessibility of information is maintained.
- **Record keeping** – It is proposed to set out record keeping requirements in a clearer manner, including recording the details of the draw and the name and address of the person who witnessed or scrutineered the draw.

Minor Bingo Sessions

A minor bingo session is a fundraiser lottery, where a series of bingo games are played and the gross proceeds is not more than \$500. A licence is not required for a minor bingo session, however there are rules in relation to how bingo sessions are to be conducted.

Proposed changes to the rules for minor bingo include:

- **Gross proceeds** - It is proposed to amend the definition of a 'minor bingo session' to mean bingo played at a bingo session where the gross proceeds do not exceed \$1 000 (increased from \$500). This will reduce red-tape for smaller fundraising initiatives, however, the rules relating to minor bingo sessions will continue to apply.
- **Record keeping** - Rules relating to records have been amended to ensure adequate information is retained by operators for inspection as required by the Commissioner to monitor compliance with the Act. This includes the recording of winners of each game immediately after completion of the game and, within a reasonable time after the close of a session, a requirement to record the gross proceeds and distribution of funds.
- **Distribution of proceeds to the approved purpose** - Currently, the required distribution of gross proceeds to the approved purpose is a minimum 10% per session. It is proposed to increase this amount to a minimum of 20% of the gross proceeds, consistent with the proposed increase for other lotteries.

Major Bingo Sessions

A major bingo session is a fundraiser lottery, where a series of bingo games are played and the gross proceeds are more than \$500 (but not more than \$9 000). A licence is required before you can advertise or conduct a major bingo session and the rules on how bingo sessions are conducted must be followed.

Proposed changes to major bingo sessions include:

- **Gross proceeds** – It is proposed to amend the definition of a ‘major bingo session’ to mean bingo played at a bingo session where the gross proceeds of the session exceeds \$1 000 (increased from \$500). The limit per session of \$9 000 under the rules is not proposed to change.
- **Maximum number of sessions** – It is proposed to increase the maximum number sessions that can held per week from 3 per week to 6 per week. This allows greater fundraising flexibility, whilst retaining financial limits to maintain bingo as a low risk social activity.
- **Distribution of proceeds to the approved purpose** – Currently, the required distribution of gross proceeds to the approved purpose is a minimum 10% per session. It is proposed to increase this amount to a minimum of 20% of the gross proceeds, consistent with the proposed increase for other lotteries.
- **Duration of Licence** – Currently, the Regulations require major bingo licences to be issued for a period of at least 12 months, and as a result, most licences currently issued are for a 12 month period. To encourage longer-term licences, it is proposed to amend this requirement to allow for licences to be issued for up to 3 years. This amendment will also more easily allow licences to be issued for single events or short-term licences to be issued.
- **Reporting requirements** – Currently, licensees must provide financial statements to the Minister quarterly. It is proposed to change the reporting requirements from quarterly to annually, with the ability for the Commissioner to inspect records as required at any point during this period. Licensees are also expected to maintain current records following bingo sessions, which may be requested by the Commissioner as required in order to monitor compliance with the Act.
- **Audit requirements** – It is proposed to introduce audit requirements for major bingo sessions where the gross proceeds exceed \$50 000 annually (or in the reporting period if less than a year). This limit is consistent with the proposed audit threshold for instant lotteries. The proposed change in reporting frequency and the threshold seeks to balance the burden of the audit requirement, which is seen as an important measure taking into account the proceeds these activities can attract.

Instant Lotteries

An instant lottery is a fundraiser lottery that uses an instant scratch or ‘break-open’ tickets where the hidden number, letter or symbol reveals a prize. The total value of prizes cannot be more than \$5 000 and a licence is required before you can advertise or begin an instant lottery and certain rules must be followed.

The key proposed changes to instant lotteries include:

- **Duration of licence** - Similar to bingo licences, the term for which an instant lottery licence can be issued is proposed to be amended to up to 3 years. Whilst the current legislation requires a minimum duration of 12 months, operationally this has resulted in licences not being issued for a period longer than 12 months. To minimise the administrative burden of frequent applications, it is proposed to allow licences to be issued for a duration of up to 3 years, whilst maintaining annual reporting requirements throughout the duration of the licence.
- **Distribution of proceeds to approved purpose** - It is proposed to increase the prescribed minimum percentage of proceeds that must be applied to an approved purpose from 10% to 20%.
- **Record keeping** - It is proposed to set out in the rules, the minimum records that licence holders are required to maintain in relation to the lotteries conducted throughout the duration of a licence period. This information will need be made available to the Commissioner as required. The proposed information to be recorded at the close of each lottery is consistent with information required in financial statements and should assist operators in preparing the annual financial statement.

- **Financial statements** - It is proposed to require financial statements to be provided annually (or at the expiry of a licence if the licence is for a duration of less than a year), however an auditor will only be required where the total prize value for the reporting period is more than \$50 000 (annually). The intent of this proposal is to reduce costs and the regulatory burden for small, lower risk fundraising initiatives, while maintaining disclosure and accountability requirements for higher risk activities to ensure the proceeds are being distributed in accordance with the Regulations.
- **Display of certain information** - It is proposed to require any restrictions on entry (ie. persons under 18 years old) to be displayed on or near the place from which the tickets are sold.
- **Approved location** – It is proposed that a licence holder will only be able to sell tickets at a place or venue that is approved on the licence.

Sweepstakes and Calcutta sweepstakes

A sweepstake is a fundraiser lottery where participants are randomly drawn an entrant in a horse race, harness race or greyhound race. The gross proceeds in the lottery must be less than \$2 000.

A Calcutta sweepstake is a sweepstake where the winning chances are auctioned. The gross proceeds in the lottery are less than \$15,000 and the running costs are not more than 10% of the proceeds with remaining funds used in prizes.

It is proposed for sweepstakes lotteries, to amend:

- **Gross proceeds** - It is proposed to increase the maximum gross proceeds allowable for sweepstake lotteries from \$2 000 to \$5 000.

A licence is not currently required to conduct sweepstakes and Calcutta sweepstakes lotteries, however certain rules apply to the manner in which they are to be conducted. Only minor updates are proposed to the rules under these lotteries.

Card Jackpot Lotteries

Card jackpot lotteries vary in the way that they are conducted and are known by different names including 'flip the joker' and 'chase the ace'.

The lottery is played with rounds, consisting of a primary draw (by lot) where the drawn participant wins the right to select a card from a display board to determine if they are the winner of the major prize. The display board includes at least one winning card (the joker card or another pre-determined card specified). If the winning card is not selected, the losing card is removed or displayed face up on the game board and the process is repeated until the winning card is selected. This game is currently unlawful in SA, however, it is allowed in other jurisdictions in various different forms.

It is proposed to amend the Regulations to allow this type of game to be conducted as a fundraiser lottery with strict rules on how it is conducted. It is proposed to require that a maximum prize value be capped at \$5 000.

Proposed rules for card jackpot lotteries include:

- Administrative costs restricted to 10% and the proceeds to approved purpose/s must not be less than 20% of the gross proceeds of the lottery.
- The drawer must be undertaken in a fair and transparent manner.
- A new deck of cards must be used for each lottery and the cards must be secured at all times, with restricted access to the display board.
- A winner of a draw must be given a reasonable opportunity, no less than 15 minutes, to select a card

from the board.

- Terms and conditions must be displayed next to the board and available to participants.
- Records must be kept in relation to each of the draws, distribution of prizes and distribution of proceeds.

All proceeds go in prizes lotteries

An all proceeds go in prizes lottery requires all the gross proceeds to go in prizes (other than 2% for administration costs). A licence is not required for a lottery where all proceeds go in prizes.

- **Proceed amount** - It is proposed to increase the limit for all proceeds in prizes lotteries from \$2 000 to \$5 000. This brings the limit into line with other permitted lotteries. The whole gross proceeds must constitute prizes, other than a maximum 2% for administrative expense.

Minor Trade Promotions

A minor trade promotion is a lottery to promote goods or services. The winners must be determined by a drawing or by chance and the total prize value must be less than \$5 000. A licence is not required to conduct a minor trade promotion, however certain rules must be followed.

The key proposed changes to minor trade promotions include:

- **Advertising requirements** – It is proposed to simplify the requirements for advertising of these promotions by requiring minimum details be required with respect to all advertising of minor trade promotions, rather than just for certain types of advertising such as on television, radio or at the cinema.
- **Publication of winners** – It is proposed to simplify provisions relating to the publishing of winners. Under the current Regulations, a list of winners must be displayed in a prominent place in the premises at which the lottery was drawn. Operators are also required to publish the name and address of each winner of a prize which is more than \$250 in value, in either the newspaper; or if the lottery is only been advertised in a particular publication, in that publication; or if entry is only permitted on a particular website, on that website.

These two requirements have been considered together and are proposed to be replaced with one requirement to display or publish the list of drawn prizes and winners in a place that is appropriate having regard to where the lottery was promoted or conducted. For example, if the promotion was promoted through the trader's website, the winners will need to be published on that website.

- **Notification of winners** – It is proposed to reduce the timeframe within which to provide a winner with written notification that they have won a prize and how the prize is to be delivered or collected from 14 days to 7 days. Given the increased use of email, online platforms and smart phone usage, 7 days is reasonable to provide such notification.
- **Electronic draws** – It is proposed to modify the rule relating to using an electronic drawing. The system will no longer need to be approved, however it must be a random number generator and the Commissioner may request information in relation to the system.

Major Trade Promotions

A major trade promotion is a lottery to promote goods or services. The winners must be determined by a drawing or by chance and the total prize value must not be more than \$5 000, or prizes include instant prizes (regardless of total value). A licence is required to conduct a major trade promotion.

The key proposed changes to major trade promotions include:

- **Grounds for refusal** – It is proposed that a trade promotion conducted by a gambling provider may be refused if the promotion would not comply with the relevant Code of Practice under section 15 of the *Gambling Administration Act 2019*. The intent of this proposal is to streamline the current process by removing the second approval under the relevant code of practice.
- **Advertising requirements** – It is proposed to simplify the advertising requirements of major trade promotions to one set of requirements, instead of different requirements based on television, radio or cinema advertising. The following information is proposed for all advertising:
 - 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;
 - the date or dates for the drawing of the lottery.
- **Reporting and publication of winners** – It is proposed to remove the requirement that a licensee provide the Minister, within 14 days, of the name and address of each winner. Further, it is proposed to amend the requirements for publishing winners to require the name and postcode (not address) to be published at the place stated in the terms and conditions of the lottery, or a place that is appropriate to where the lottery was promoted or conducted. The requirement to publish a winner's address is proposed to be modified to provide greater privacy for participants.
- **Scrutineer** - The threshold limit for requiring a scrutineer to be present at the draw of a trade promotion lottery is proposed to be increased from a total value of all prizes in that particular draw from \$20 000 to \$30 000 (or as the Commissioner directs).
- **Reporting requirements** – It is proposed to amend the rules relating to record keeping have to clarify the information required to be kept. The details required to be retained in relation to participants in lottery must be retained, whether by retaining ticket butts, entry forms and other records relating to the conduct of the lottery or otherwise.
- **Electronic draws** – It is proposed to modify the rule relating to using an electronic drawing systems. The system will no longer need to be approved, however it must be a random number generator and the Commissioner may request information in relation to the system.

Trade Promotions (Instant Prize)

A trade promotion (instant prize) is a lottery to promote goods or services, where instant scratch or break open tickets are used to conceal a number, letter or symbol. A licence is required to conduct a trade promotion (instant prize).

The key proposed changes to instant prize trade promotions include:

- **Grounds for refusal** – It is proposed that a trade promotion conducted by a gambling provider, may be refused if the promotion would not comply with the relevant Code of Practice under section 15 of the *Gambling Administration Act 2019*. It is intended that this will remove the second approval under the relevant code of conduct to streamline the process.
- **Reporting and publication of winners** – It is proposed to remove the requirement for a licensee to provide the Minister, within 14 days, of the name and address of each winner of a prize more than \$250. Further, it is proposed to modify the requirements for publishing of winners to require the name and postcode (not address) to be published at the place stated in terms and conditions of the lottery, or a place that is appropriate to where the lottery was promoted or conducted and participants may reasonably expect to locate the information. The requirement to publish a winner's address has been removed to provide greater privacy for participants.
- **Records** – It is proposed to require a licensee to keep a record of (and retain for at least 3 months):
 - the lottery period; and
 - the details of the participants in the lottery (if relevant); and
 - the distribution of all prizes to the prize winners and the details of any unclaimed prizes and the manner in which they were dealt.

Suppliers of lottery products

- **Prescribed products** - Previously, the Act only required a supplier of instant lottery tickets to be licensed. Under the new regulatory framework, lottery products are prescribed. It is proposed to include bingo sheets as a prescribed lottery product, to close a regulatory gap where bingo operators are required to purchase bingo sheets from a licensed supplier, but it is not explicit that a person in the business of supplying bingo sheets is required to be licensed. This added flexibility will enable Government to be more responsive to emerging trends and products as required.
- **Vending machines** - It is also proposed to include vending machines that are designed to dispense instant lottery tickets as a prescribed lottery product. These products have evolved over the years and are now capable of greater technological and visual enhancements. By prescribing these machines, consistent with the tickets, the regulator can have better regulatory oversight of them.
- **Applications** – Currently, an application for a licence must be accompanied by a letter from the manager of an authorised deposit-taking institution (ADI). It is proposed to allow the Commissioner to instead require documents and information as required.
- **Conditions** – It is proposed to set out the conditions attached to the supply of lottery products on the licence. This may include conditions in relation to bingo sheets and instant ticket vending machines.

Miscellaneous proposed changes

- **Prohibition on entry** – It is proposed to introduce an offence provision which prohibits an organisation, person or member of a management committee from participating in a lottery conducted by the organisation or a person involved in conducting or promoting the lottery.
- **Cash prizes** – It is proposed to include a new regulation relating to the paying out of cash prizes. If a cash prize is more than \$1000, the winner must be offered the option to receive the payment by ADI deposit or cheque, and that this offer be made as soon as reasonably practicable after the winner is determined.

Prizes - It is proposed to remove the requirement to notify the Minister of any prize that remains unclaimed 3 months after drawing (or sold in the case of perishable prizes). It is proposed to make amendments to the requirements around keeping and preserving prizes. It is proposed that new requirement do not apply if the terms and conditions provide for how prizes will be dealt with.

- **Advertising** – It is proposed to remove the restriction on the hours in which fundraising lotteries can be advertised on television and radio (which excluded major lotteries). It is proposed that the advertising requirements be applied to all trade promotions, except where the provision only applies to fundraising lotteries.

It is proposed to allow the Commissioner to direct a person to stop, remove or change an advertisement that the Commissioner considers is in contravention of the regulation, with penalties introduced with failing to comply with a direction of the Commissioner.

- **Duties of auditor** – It is proposed to amend the audit requirements to ensure that proceeds have been deposited and applied in accordance with the Regulations, and to report any reasonable suspicion of irregularities or contraventions of the Act or Regulations.
- **Publication of financial statements** - It is proposed to provide greater transparency to the public by allowing the Commissioner to publish financial statements (or summary or extract) on the Consumer and Business Services website.
- **Registered Associations** – It is proposed to remove provisions relating to a registered associations (an association registered under the *Fair Work Act 1994*, the *Workplace Relations Act 1996* of the Commonwealth or an Act of another State or a Territory of the Commonwealth that corresponds to the *Fair Work Act 1994*).

These provisions allow net profits to be applied to a member for specific purposes, where this is otherwise not permitted.

The Act provides the Commissioner with the power to exempt a lottery or class of lottery from provisions in the Act, as well as the ability to waive compliance with the rules set out in the regulations. These provisions would allow for applications for a lottery for the above purposes to be considered and assessed on its merits.

4. Next steps

All interested parties are asked to provide feedback on this paper and the draft Regulations by **COB 27 August 2021** either by email to CBSReforms@sa.gov.au or by mail to:

Regulatory Services - Reform
Consumer and Business Services
GPO Box 1719
ADELAIDE SA 5001

Please note that submissions may be made publicly available. If you do not wish for your submission or any part of your submission to be made public, please mark your submission 'Confidential – Not for Publication' and provide your reasons for this.

Please also be aware that your submission may be subject to disclosure if someone requests it through the *Freedom of Information Act 1991*. If a copy of your submission is requested through this process and you have told us that you wish for your submission to be confidential, we will contact you and explain what is happening.