

NSW INTRODUCES NEW COMMUNITY GAMING REGULATIONS – HOW THIS WILL IMPACT TRADE PROMOTION LOTTERIES?

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29 June 2020

In 2018, the NSW Government passed the *Community Gaming Act (NSW) 2018* which was designed to create a new framework to regulate lotteries and other games of chance in NSW. At the time, the Government flagged that new regulations would be drafted under the Act that would introduce changes that would have a substantial impact on the current lottery permit system. On Friday 26 June, 2020, the *Community Gaming Regulations (NSW) 2020* were finalised and given royal assent, these formally implement significant changes to promotions in NSW. They will come into force 1 July 2020. The NSW Department of Fair Trading is still to make a formal public announcement on this on their website, however this is expected on or before this takes effect and we will be monitoring this closely for any further guidance or implications.

What has changed?

From 1 July 2020, trade promotion lottery permits in NSW will be replaced by duration-based authorities.

What this means is that instead of a business having to apply for an individual permit each time it conducts a trade promotion lottery in NSW, businesses can now apply for an ongoing lottery authority that can run for either 1 year, 3 years or 5 years, depending on the fee paid. The initial fees for these are \$421.92 for a 1 year authority, \$632.88 for a 3 year authority, and \$843.84 for a 5 year authority. These fees will see CPI increases annually.

Once a business obtains an authority, it can run as many promotions as it likes under that authority whilst the authority is in force, in NSW. There is no maximum prize value or prize pool, the authority is based on duration only.

An authority will be required to conduct any trade promotion lottery in NSW with a total prize pool exceeding \$10,000. The terms and conditions for any promotion conducted under such an authority must be provided to the NSW Department at least 10 working days before the start date of the promotion.

Further, formal applications for amendments to a promotion are no longer required in NSW. Instead, if an authority holder needs to make any “substantial changes” to a promotion, which means, among other things, (i) a change to the prizes or the value of the prizes, (ii) a change in the date on which prize winners are to be determined or the method for determining prize winners, (iii) a change in the details of the authority holder, or (iv) a significant change in the number of tickets, the NSW Department simply needs to be notified of the changes, and all reasonable steps must be taken to also notify all entrants.

Winners are also no longer required to be advertised in NSW. The only advertising requirements specific to NSW are that the authority holder “take all reasonable steps” to ensure that the full terms and conditions are available, and to display the authority number, in relation to a promotion.

Lastly, record keeping requirements in NSW no longer apply to trade promotion lotteries (although the requirements of other States and Territories will still apply).

What has NOT changed?

Entry into a trade promotion lottery must still remain free.

Where an authority is required (i.e. promotions with a prize pool exceeding \$10,000), the draw must still be independently scrutinised.

An unclaimed prize draw 3 months after the original (or less where impractical due to the perishable nature of the prize) is also still required for any promotion requiring an authority.

The specific restriction in NSW regarding liquor prizes still remains in force, namely, no more than 20L of liquor with an alcohol content of 20% or less, and no more than 5L of liquor with an alcohol content of more than 20%, can be awarded in a single promotion to NSW residents.

Lastly, the requirements of all other relevant trade promotion lottery regulators in other States and Territories of Australia are still in force, including ACT and SA where individual permits are still required for promotions with prize pools exceeding \$3000 and \$5000 respectively. Each of these authorities, including the NSW department, are still policing their requirements and will be requiring compliance with lottery rules, which will still be enforceable even if a permit is no longer required. Other relevant laws such as consumer protection laws, fundraising, privacy and intellectual property laws will of course continue to apply.

If you would like further information on the above and how it impacts on your business or your client's business, please contact one of our experts below.

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