



Justice
Liquor &
Gaming NSW

Review of the Lotteries and Art Unions Act 1901

Discussion paper

1. About this paper

This paper provides details about the review of the *Lotteries and Art Unions Act 1901*, and has been prepared to assist you in contributing to this review.

This paper outlines the terms of reference for the review, the features of current regulatory arrangements, key facts and figures about the sector and its regulation, alternative options for regulation, and key issues for your comment.

2. About our review

The *Lotteries and Art Unions Act 1901* (the Act) administers community lotteries and trade promotions in NSW. On 13 October 2014, the NSW Government entered into a Memorandum of Understanding (MoU) with ClubsNSW, entitled *Resilient Clubs, Resilient Communities*. The MoU commits the parties to, among other things, open consultation for a roots and branch modernisation of the Act to ensure clubs, charities and church groups have a flexible and contemporary regulatory framework.

The Review will:

- a. In the context of the evolving modern fundraising landscape, consider whether community gaming and lottery activities should continue to be regulated, and if so, determine the best approach for regulating these activities.
- b. In actioning (a) above, the review will consider:
 - the appropriate balance between facilitating community gaming and lottery activities, and minimising the risk of harm associated with those activities.
 - whether the regulatory objects of the Act remain valid, and if so, whether the existing regulatory framework adequately meets those objectives.
 - best practices and arrangements in place in other jurisdictions for regulating community gaming and lottery activities.
 - potential opportunities to reduce the regulatory burden on providers of community gaming and lottery activities, while ensuring the integrity and probity of those activities.
 - government initiatives designed to enhance the regulation of trade and commercial activities.
- c. Consider how the regulatory approach can best facilitate a level playing field for the provision of community gaming activities by charity-based providers and registered clubs.
- d. Investigate any other relevant matters.

Next Steps

Liquor & Gaming NSW (L&GNSW) will assess the stakeholder feedback provided in response to this discussion paper, and use it to inform the development of an improved regulatory model for the conduct of community lotteries and trade promotions.

3. How to make a public submission

Liquor & Gaming NSW is seeking public submissions until **Friday 26 August**. Submissions can be made in the following ways:

1. By email to lotteries.review@justice.nsw.gov.au
2. Via the Have Your Say website www.haveyoursay.nsw.gov.au
3. By post to:

The Coordinating Officer
Lotteries and Art Unions Act Review
Liquor & Gaming NSW
GPO Box 7060
SYDNEY NSW 2001

This is a public review. Submissions may be published on the Liquor & Gaming NSW website after the closing date, unless you make a specific request for your submission to be kept confidential. Claims of confidentiality will be considered on a case by case basis.

4. Overview of current regulation

The principal object of the Act is to ensure that, on balance, the State and the community as a whole benefit from community lotteries and trade promotions. This balance is to be achieved by authorising these activities subject to a regulatory regime that protects players and the community by:

- a. restricting who may conduct and benefit from lottery activities
- b. ensuring the integrity and fairness of lottery activities
- c. ensuring the probity of those involved in the conduct of lottery activities
- d. minimising the potential for harm from lottery activities.

Section 2 of the Act also sets out more specific objects that the Act aims to achieve, including to:

- a. set and maintain appropriate standards and levels of accountability for the conduct of lottery activities
- b. ensure that the public obtains reasonable net benefits from the conduct of lottery activities
- c. ensure that lottery activities are not exploited for personal gain by those conducting the activities
- d. maintain and protect the integrity of lottery activities
- e. assist the ongoing viability of organisations conducting lottery activities that have developed in the public interest and contribute positively to the community
- f. ensure that the proceeds and profits of lottery activities are applied to the particular purposes, or go to the persons or organisations, in accordance with representations made during the conduct of the lottery activities.

As provisions authorising new activities have been added to the existing structure over time, the Act lacks clarity and logical flow in terms of the activities that are permitted, and in what context. For certain community lotteries and trade promotions, the authorising provisions can only be found by cross referencing against other provisions in the Act or the regulations. The Lotteries and Art Unions Regulation 2014 prescribes important matters for the operation of community lotteries such as prize limits, methods of entry and record keeping. This creates significant confusion for organisations that wish to conduct community lotteries and trade promotions, many of which are not-for-profit organisations.

The conduct of some activities is also supplemented by standard permit conditions contained in an annexure to the lottery permit. These additional conditions are not contained within the Act or the regulations but constitute additional requirements that must be complied with by organisations. Detailed fact sheets have been developed to assist organisations operating community lotteries and trade promotions in understanding the requirements of the legislation. A copy of the permit conditions and factsheets can be obtained from the L&GNSW website at www.liquorandgaming.justice.nsw.gov.au.

The broad structure of the Act reflects the object of safeguarding the integrity of lottery activities by authorising the conduct of specified activities in limited circumstances only. Section 3 of the Act imposes a blanket prohibition on selling or disposing of money or property by way of chance regardless of the value of the prize. Division 2 of the Act allows exceptions to the prohibition. As a result, some community lotteries and trade promotions are permitted so long as they accord with the Act, its regulations and (where applicable) conditions attached to the authorising permit.

In summary, community lotteries and trade promotions are generally authorised as one of the following:

- a fundraising activity for community benefit other than for private gain (that is, to raise funds for charities and not-for-profit organisations), subject to reasonable expenses.
- as social entertainment, provided all the gross proceeds for the sale of participatory rights are payable to participants in the form of prizes subject to deduction for reasonable expenses, but disallowing commissions.
- as a combination of social entertainment and fundraising (to raise funds for charities and not-for-profit organisations).
- promotional activity, provided entry to the lottery is free of any fee or charge (however, club promotional raffles and club bingo tickets can be purchased).

The Act seeks to strike a balance between facilitating community gaming and lottery activities for the benefit of the community, and minimising the risk of harm associated with those activities.

Regardless of whether the objects of the Act remain valid, it is clear that the Act requires modernisation to create a more accessible and clear regulatory framework for community organisations and businesses that are required to comply with it.

5. Key facts and figures

Community lotteries and trade promotions regulated by the Act are conducted widely throughout NSW each year. These types of community lotteries and trade promotions are different to those operated by NSW Lotteries and Keno. Common forms of these include: art unions, housie, club bingo, gratuitous lotteries, raffles and trade promotions.

Lotteries and art unions are an important source of funds for charities and not-for-profit organisations in NSW. According to the Australian Charities and Not-for-Profits Commission (ACNC) Charity Register, there are over 18,500 registered charities in NSW.¹ Persons or organisations wishing to fundraise for a charitable purpose in NSW must apply for a charitable fundraising authority with NSW Fair Trading.²

Trade promotions are widely used as a marketing tool by both not-for-profit and commercial organisations. Any business operating in Australia may apply for a permit to run a trade promotion in NSW.

During the two year period from 1 January 2014 to 31 December 2015, L&GNSW received over 27,000 applications and renewals for permits to conduct community lotteries and trade promotions in NSW. This included over 23,000 trade promotions and 260 art unions.

¹ ACNC *Cutting Red Tape: Options to align state, territory and Commonwealth charity regulation, Final Report* 23 February 2016 p.7.

² NSW Office of Liquor, Gaming and Racing *Regulatory Impact Statement: Lotteries and Art Unions Regulation* 2014 May 2014.

Organisers conducting community lotteries and trade promotions, and the organisations benefiting from such lotteries, have an interest in ensuring that they are run, and are seen to be run, in a manner that is fair and free from fraud and corruption. A loss of public confidence in the conduct of community lotteries and trade promotions would likely result in reduced community participation and lower ticket sales, with consequential impacts on fundraising and other related activities.

6. Other approaches to regulation

The terms of reference require the review to consider options for regulating community lotteries in NSW.

The available options include maintaining a legislated regulatory framework, developing a system of co-regulation and allowing industry to develop and implement a self-regulatory regime. Co-regulation generally involves a partnership between industry and government, where regulatory arrangements are developed and accompanied by legislative provisions enabling those arrangements to be enforced. Self-regulation refers to a situation in which industry participants formulate their own voluntary rules and codes of conduct, and are solely responsible for enforcing those rules.

In the gaming context, appropriate controls must be in place to ensure adequate harm minimisation measures are developed, implemented and adhered to. If the integrity of community lotteries and trade promotions were to be undermined or called into question there may be significant repercussions for the industry, unfair outcomes for individual players and a general lack of public confidence in the integrity of the sector.

Mandatory minimum standards in a legislated framework are required to ensure the integrity and probity of community lotteries and trade promotions for organisers and participants. In the absence of a well organised industry body with universal membership to act as a co-regulator, government remains best placed to determine regulatory controls and investigate complaints about community lotteries and trade promotions.

In addition, government oversight provides the broader community with comfort that robust probity and integrity frameworks are in place. Between 1 July 2015 and 31 June 2016, 99 complaints were received by L&GNSW regarding the conduct of certain community lotteries and trade promotions. Given the disparate nature of the organisations that operate community lotteries and trade promotions, it is not clear what organisation would investigate and act on these complaints in the absence of a government regulator.

Furthermore, government provides a number of different services in one central location. Operators can apply for and renew permits, seek advice on their obligations under the law and respond to issues and concerns raised in relation to the activities they conduct. Members of the general public can lodge complaints and seek advice as to their rights and responsibilities. Having this one-stop-shop benefits organisers and the community by providing a hub where information relating to community lotteries and trade promotions can be obtained. Again, given the disparate nature of organisations operating in this sector, it is not clear where responsibility for this aspect of regulation would fall were government to vacate the space.

Therefore, moving forward, a principles-based regime enshrined in legislation appears to be the best way to achieve the regulatory oversight required to ensure that community lotteries and trade promotions continue to be conducted for the benefit of participating organisations and the general public.

7. Suggested regulatory framework

The preferred option of L&GNSW is to move from the existing, overly prescriptive legislative framework, to a principles based approach to regulation. Such an approach will result in a significant reduction in red tape for industry and the not-for-profit sector and a more accessible regulatory regime for both industry and the community. Maintaining effective and proportional government oversight will ensure that community lotteries and trade promotions continue to be conducted and scrutinised in the public interest.

Principles to guide the regulatory framework

This review has identified the need to modernise the existing drafting of the Act to create a more accessible and clear regulatory framework for the community organisations and businesses that are required to comply with it. The review proposes a principles-based approach, with the amended legislation to be based upon the following guiding principles:

- persons conducting community gaming under the Act must ensure the games are conducted in the public interest and operated with fairness and integrity, regardless of whether a licence or permit is required to conduct the activity.
- only high-risk activities will be required to obtain a permit or licence.
- individuals must not receive any personal benefit from conducting community lotteries or trade promotions.
- trade promotions with a prize value less than \$10,000 will no longer require a permit

Queensland, New Zealand and Victoria have already adopted a regulatory structure of this nature. Although these schemes differ in terms of the manner in which they operate, they are comparatively easy to understand and have straightforward requirements. High level summaries of the regulatory frameworks for Queensland, New Zealand and Victoria have been included below.

Queensland

The various activities regulated by the *Charitable and Non-Profit Gaming Act 1999* are grouped into four categories. The key differences between the Queensland framework and the existing NSW regime are that:

- Queensland separates community lotteries into three categories by limit of gross proceeds and a fourth category for trade promotions;
- there are no permits required for community lotteries unless the gross proceeds are more than \$50,000. No permits are required for trade promotions;
- the conditions for the rules of the games are included in the regulatory scheme, there are no additional conditions attached to each different type of permit.

	Category 1	Category 2	Category 3	Category 4
Types of Games	<ul style="list-style-type: none"> ▪ Raffles and art unions ▪ Sweeps ▪ Calcutta sweeps ▪ Football doubles ▪ Lucky door prizes ▪ Bingo 	Same as Category 1	<ul style="list-style-type: none"> ▪ Raffles ▪ Art unions 	Draws conducted to promote goods and services with the winner determined by chance.
Limit of gross proceeds	Gross proceeds are less than \$2,000.	More than \$2,000 and less than \$50,000.	More than \$50,000.	Must be free entry.
Who can conduct	<p>Associations (four or more individuals).</p> <p>Individuals – all proceeds must be returned to players.</p>	<p>Eligible non-profit associations.</p> <p>Clubs that are eligible associations.</p>	Eligible incorporated non-profit associations.	Only for the benefit of promoting goods and services.
Total value of prizes	Must be at least 20% of estimated gross proceeds.	Must be at least 20% of estimated gross proceeds.	Must be at least 20% of estimated gross proceeds.	No prerequisite
Licence required	<u>No</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
Licence Requirements	Must comply with relevant game requirements as well as the Act, the Regulation and Non-Profit Gaming Rule 2010.	Must comply with relevant game requirements as well as the Act, the Regulation and Non-Profit Gaming Rule 2010.	Must comply with relevant game requirements as well as the Act, the Regulation and Non-Profit Gaming Rule 2010.	Must comply with relevant game requirements as well as the Act, the Regulation and Non-Profit Gaming Rule 2010.

New Zealand

New Zealand's *Gambling Act 2003* (the NZ Act) establishes a similar tiered structure. The key differences between the NZ framework and the existing NSW regime are that:

- there is no categorisation of the individual form of games;
- the classes are distinguished by the level of risk involved;
- no specific provisions for trade promotions which are included within the structure as part of category 3;
- NZ does not require permits or licences for these types of community lotteries unless they are deemed licensed gambling or activities involving gaming machines.

	Class 1 (Low, stake, low risk)	Class 2	Class 3 (Licensed Gambling)	Class 4 (High risk, high turnover)
Types of Games	Must not utilise or involve a gaming machine.	Must not utilise or involve a gaming machine.	Larger scale lotteries Housie Instant games Prize competitions Games of chance Must not utilise or involve a gaming machine.	Any activity involving a gaming machine outside a casino.
Limit of gross proceeds	Must not exceed \$500.	No more than \$25,000. Proceeds must be applied to authorised purpose (i.e. charitable or non-commercial)	Conducted for the purpose for raising money for an authorised purpose (i.e. charitable or non-commercial)	Conducted to raise money for an authorised purpose.
Who can conduct	Individuals and societies that provide all proceeds to the winners or an authorised purpose.	Only societies. Person conducting the gambling must not be paid.	Only societies. If run regularly, must be a corporate society.	Only by corporate societies.
Total value of prizes	Must not exceed \$500.	No more than \$5,000 in one session.	No more than \$5,000 in one session.	No prerequisite
Licence required	<u>No</u>	<u>No</u>	<u>Yes</u>	<u>Yes</u>
Licence Requirements	Must comply with relevant game rules.	Must comply with relevant game rules.	Financially viable, minimise costs, maximise return to community and comply with relevant rules.	Significant government regulatory framework.

Victoria

The *Gambling Regulation Act 2003* (the Victorian Act) establishes a structure where gambling is classified by the type of game. The key differences between the Victorian framework and the existing NSW regime are that:

- organisations conducting community lotteries must be registered as declared with the Victorian Commission for Gambling and Liquor Regulation (VCGLR);
- trade promotions do not require a permit or licence;
- bingo, fundraising events, lucky envelopes and raffles with a prize more than \$5,000 require a permit or licence.

	Bingo	Fundraising Events	Lucky Envelopes	Trade Promotion	Raffles
Types of Games	Bingo	Casino type games that normally entitle a person to obtain play money or chips to participate.	Pre-determined lotteries.	Draws conducted to promote goods and services with the winner determined by chance.	Raffles
Limit of gross proceeds	Dependent upon whether it's a part of a rolling jackpot.	Nil	Nil	Must be free entry and any ancillary fee must not exceed \$1.	Nil
Who can conduct	Organisations declared (registered). Bingo operator must have a bingo operator's licence.	Organisations declared (registered).	Organisations declared (registered).	Organisations (business or declared community and charitable).	Organisations declared (registered) as a community or charitable organisation.
Total value of prizes	No less than 20 per cent of the gross receipts. If seven consecutive days, not less than 50 per cent and not more than 90 per cent.	No limit	The series of lucky envelopes cannot be more than \$5,000.	No limit	No limit
Licence required	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>If prize more than \$5,000.</u>
Licence Requirements	Comply with Bingo Rules.	Permit subject to conditions in Regulation that may be amended.	Permit subject to conditions in Regulation that may be amended.	Must comply with conditions in Gambling Regulation.	Must comply with conditions in Gambling Regulation.

Proposed NSW model

This model represents a simplified and modern approach to regulating community lotteries, based upon the approach taken in other jurisdictions. The proposed model will:

- contain two categories differentiated by the limit of gross proceeds as well as a separate category for trade promotions.
- not require a permit or licence to conduct low risk and low stake community lotteries.
- require organisations conducting trade promotions to obtain a permit when the prize is over \$10,000 in any 12 month period.
- set the benchmark for a licence or permit being required for community lotteries at \$25,000; determined as appropriate given the variances in other jurisdictions and the level of risk.
- ensure compliance with the requirements of the Act, the Regulation and any rules for these activities in order to maintain integrity and public confidence.

	Category 1	Category 2	Trade Promotions
Types of Games	<ul style="list-style-type: none"> ▪ Raffles and art unions ▪ Sweeps ▪ Calcutta sweeps ▪ Football doubles ▪ Lucky door prizes ▪ Bingo ▪ Chocolate wheels ▪ Housie ▪ Football doubles 	Same as Category 1.	Draws conducted to promote goods and services with the winner determined by chance.
Limit of gross proceeds	Less than \$25,000	More than \$25,000	Must be free entry.
Who can conduct	Associations/businesses and Individuals.	Associations and businesses only.	Associations and businesses only.
Total value of prizes	At least 20% of estimated gross proceeds.	At least 20% of estimated gross proceeds.	No limit
Licence required	<u>No</u>	<u>Yes</u>	<u>Yes, if total prize value exceeds \$10,000 in any 12 month period.</u>
Pre-registration of organisation with regulator	No	No	No
Requirements	<p>Must ensure that the games are conducted in the public interest and operated with fairness and integrity.</p> <p>Must comply with requirements in the Act, Regulations and relevant rules.</p> <p>Individual must not receive any benefit for conducting the games.</p>	<p>Must ensure that the games are conducted in the public interest and operated with fairness and integrity.</p> <p>Must comply with requirements in the Act, Regulations and relevant rules.</p>	<p>Must ensure that the games are conducted in the public interest and operated with fairness and integrity.</p> <p>Must comply with requirements in the Act, Regulations and relevant rules.</p>

The proposed model is consistent with the NSW Government's strategic vision for the state. *NSW: Making it Happen* outlines key priorities for NSW and 12 key "Premier's Priorities". One of these priorities is to improve the ease of doing business in NSW, under which the Government will focus on reducing or removing barriers, costs and complexities that hamper commercial activities and make regulatory obligations easier for business to understand and comply with.

The simplification of the community lotteries and trade promotions framework will remove the requirement for organisations to apply for a permit for low risk community lotteries and trade promotions. The streamlining of community lotteries will provide greater clarity to organisations facilitating and fostering business and industry opportunities in NSW. These initiatives support the Government's commitment to make it easier to start and operate a business in NSW by reducing red tape.

However, there are financial costs associated with removing the requirement for organisations and businesses to apply for a permit to conduct a trade promotion when the total prize value is \$10,000 or less in any 12 month period. In addition, the application fees received for trade promotions assist L&GNSW to monitor the operation of the activities and ensure they are conducted with integrity and in the public interest. As a result, the impact on revenue requires further consideration by government. Consideration of this issue will be informed by feedback received from stakeholders in relation to the proposed model.

8. Options for compliance

The current regulatory framework provides for criminal prohibitions and associated sanctions for offences relating to community lotteries and trade promotions. The Compliance Operations Branch within L&GNSW has a dedicated team of appointed investigators to conduct probity and integrity checks on the operation of community lotteries and trade promotions. The regulatory approach set out in L&GNSW's Compliance and Enforcement Policy recognises that prosecuting will not always be the most appropriate means of dealing with potential offences. Where it appears that a breach has occurred inadvertently, it may be more appropriate for L&GNSW to engage directly with the relevant operator and ensure they properly understand their obligations under the legislation and provide education to participants in the sector.

Criminal prohibitions and associated sanctions

The criminalisation of particular conduct under the Act does not necessarily mean that a purported breach will automatically result in L&GNSW prosecuting an individual or organisation. L&GNSW acknowledges that the majority of industry participants in the fundraising sector strive to run their activities responsibly and will comply with their obligations. The Act contains a range of criminal prohibitions that are designed to deter fraudulent or negligent activities, ensure proper records are kept, protect minors from harm, and ensure lottery activities are conducted in accordance with community expectations. These protections may need to be maintained regardless of the regulatory structure.

For more deliberate or repeated misconduct, commencing criminal proceedings through the courts may be a more suitable option. However, the introduction of civil penalties might also provide a similar impact at lower cost and with greater flexibility in the types of court orders that can be made.

Civil Penalties

Civil penalties are a form of alternative punitive sanctions outside of the criminal legal process in the regulatory environment. The current Act does not provide for a civil penalty regime for breaches. Civil penalty regimes are designed to act as a deterrent for non-compliance and provide affected parties and the community with restitution in relation to the breach. A civil penalty sanction may be in the form of a monetary penalty, an injunction, banning order, licence revocation and orders of reparation and compensation.

Civil penalties are separate from the criminal legal system. As the sanctions are outside criminal procedures, the burden of proof is the civil standard of the “balance of probabilities”. The financial burden of the civil penalty will be commensurate with the level of wrong doing; the more significant the wrong doing, the larger the financial penalty that will be incurred. Civil penalties also allow concurrent disciplinary and compensatory orders to be made in the proceedings, rather than being made separately as occurs for offences which are both criminal and regulatory.

The advantages of a civil penalty regime also include the diverse range of damages available to the regulator and the ability for third parties to seek remedies for damages in civil proceedings.

9. Other relevant issues

Liquor and Gaming NSW has recently received correspondence from stakeholders regarding the Lotteries and Art Unions Regulation 2014. Concerns raised in this correspondence relate to, among other things, the sell price for club bingo tickets, the use of bingo as a method of entry into trade promotions, and prize limits for a number of community lotteries. These issues will be considered as part of this review, along with any other relevant issues raised by stakeholders.

10. Key issues for stakeholder comment

We would appreciate your views on the following issues. However, you should also feel free to raise any other issues you believe are relevant to this review.

1. Do the objects of the Act as set out in section 2 remain valid?
2. Does the proposed model at page 10 represent a sensible approach, or, is there another approach that might be more suitable for regulating community gaming and lottery activities in NSW?
3. Does the proposed model adequately address the risk of harm to the community arising from community lotteries and trade promotions?
4. What measures could be taken to reduce the regulatory burden placed on providers of community lotteries and trade promotions activities, without sacrificing the integrity and probity of those activities?
5. Are there any additional services or service improvements that Government could provide to assist organisations and businesses conducting lottery activities and trade promotion lotteries to understand and meet their regulatory obligations?
6. Should consideration be given to a civil penalty regime? If so, which of the current criminal offences, if any, should be addressed via civil penalties?
7. Are there any other matters that should be considered in this review of the Act and regulations?

