

25 August 2016

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

Email only to:



Dear Madam/Sir,

Submission on the Lotteries and Art Unions Act Review

Thank you for the opportunity to provide a submission on the review of the *Lotteries and Art Unions Act 1901*.

Capricorn Society Limited does not claim confidentiality in any part of this submission.

Submission summary

In summary, Capricorn submits as follows:

1. Capricorn is supportive of the proposed model for regulating trade promotions as set out in the Review of the *Lotteries and Art Unions Act 1901*.
2. Capricorn submits that the Review is an opportunity to take further steps than those proposed and more closely align NSW with the trade promotion regulation applied by other states, in particular Queensland and Victoria.
3. In the alternative to point 2 above, Capricorn submits that the proposed model would be improved by increasing the proposed limit for requiring a licence for a trade promotion from \$10,000 to \$20,000.

Each of these three points is expanded on below.

Background

By way of background, Capricorn is a member based organisation proudly operating since 1974 on cooperative principles to support over 17,000 member businesses within the automotive industry throughout Australia and New Zealand.

We provide access to a network of over 2,200 preferred suppliers from which our Members can purchase the goods and services they need to run their businesses, using a Capricorn provided trade account. Last financial year our Members purchased over \$1.5 billion of goods and services through Capricorn.

We also provide our Members with broad range of other services complementary to their businesses, including risk protection and general insurance services, equipment finance, trade shows, events and travel services.

We often conducts trade promotions across Australia, either by ourselves or in conjunction with our preferred suppliers, to promote to our Members a particular event or service.

Capricorn is supportive of the proposed model

We support the endeavours of Liquor & Gaming NSW to review and implement changes to develop an improved regulatory model for the conduct of community lotteries and trade promotions.

We are generally supportive of the proposed model for regulating trade promotions as set out in the Review of the *Lotteries and Art Unions Act 1901* and see it as an improvement on the current manner in which trade promotions are regulated within NSW.

The changes, while welcomed, will however continue to mean that Capricorn (and others that conduct national trade promotions) will have to deal with coordinating and managing trade promotions across different states and territories applying different conditions and/or licence requirements.

This coordination and management comes at the cost of additional direct expenses, such as licence fees and tailoring of promotional materials, and indirect expenses in terms of administration time and reduced flexibility in the management of promotional campaigns that the trade promotion is associated with.

This is despite there being no distinguishing features of either the trade promotion or the consumers in various states and territories that, to Capricorn's knowledge or experience, justifies the differing regulations.

Opportunity for alignment

So, whilst Capricorn is supportive of the proposed model, Capricorn submits that the review is an opportunity to take further steps than those proposed and more closely align NSW with the regulation applied to trade promotions by other states and territories in Australia and New Zealand.

Capricorn's preference would be that NSW adopt the approach towards trade promotions conducted in Queensland and Victoria. As you will be aware, those states require no permit for trade promotions, as long as they are conducted in

accordance with applicable state legislation. In Capricorn's opinion this provides an appropriate level of regulation to the conducting of the trade promotion without necessitating licencing.

In support of the above point, Capricorn considers that Australia already has a strong level of oversight of the promotional activities that businesses may conduct – both at a federal level through ASIC and ACCC and at a state and territory level through consumer protection agencies such as the NSW Fair Trading Office.

In many regards Capricorn considers that these bodies already provide an appropriate level of oversight for trade promotions. This is because the harm of any misconduct in relation to a trade promotion is not in respect of any "gaming" element but in respect of the misrepresentation and deception of a businesses trading activities to unfairly compete or generate sales – as may happen with *any* promotional activity that the business may conduct, be it a trade promotion or marketing campaign, sale, giveaway or limited offer.

Increase to the proposed \$10,000 threshold

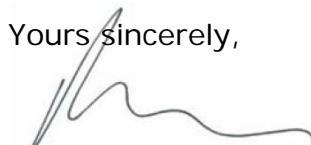
As a further alternative, if the proposed model for regulating trade promotions is to be adopted, Capricorn submits that the \$10,000 limit should be increased to \$20,000 (either in all circumstances or for trade promotions run in more than one state or territory).

Capricorn considers \$10,000 to be a relatively low amount, having regards to the prize pools commonly associated with even moderate national trade promotions.

Capricorn is conscious that the substance of regulatory and licensing schemes established under acts such as the *Lotteries and Art Unions Act 1901* are only infrequently reviewed. The proposed \$10,000 will likely diminish significantly in real terms before the Act is reviewed again, so any threshold set now needs to set at a level that will remain relevant going forward.

Capricorn would be willing to discuss or elaborate on any of the above points if it would be of assistance.

Yours sincerely,



Bradley Gannon

General Counsel and Company Secretary