



McDonald's Australia Limited

ABN 43 008 496 928
21-29 Central Avenue
Thornleigh NSW 2120
PO Box 392
Pennant Hills NSW 2120

Phone: [REDACTED]
Fax: [REDACTED]
www.mcdonalds.com.au

18 May 2017

BY EMAIL: [REDACTED]

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

Dear Coordinating Officer

Review of the *Lotteries and Art Unions Act 1901 (NSW)*

We refer to the above review and thank you for the opportunity to make a submission on behalf of McDonald's Australia Limited ABN 43 008496 928 (**McDonald's**). Our submission is attached to this letter, but for ease of reference we have included the following executive summary.

Executive summary

McDonald's submits that the regulation of trade promotions and minor lotteries should be modernised in New South Wales.

The current regulation adds to the cost of doing business and does not take into account technological progress. Consumers do not substantially benefit from certain aspects of the current system of regulation, and in some cases consumers are disadvantaged. Contract law, criminal law, tort and the *Australian Consumer Law (ACL)* all protect business, consumers, and society at large, so the additional layer of regulation in this sector must be targeted, modern, and should not duplicate other laws.

The following submission sets out the specific concerns we have with the current regulatory regime and provides specific examples for your consideration. The following are the particularly concerning regulations within the *Lotteries and Art Unions Act 1901 (NSW)* (**Act**) which we submit should be repealed:

- (a) trade promotion lottery permit requirements under section 4B of the Act; and
- (b) excessive disclosure requirements under rules 23, 34 and similar sections of the *Lotteries and Art Unions Regulations 2014 (NSW)* (**Regulations**).

We further submit that if any disclosure requirements remain in the Act and Regulations, businesses should be able to make this information accessible via hyperlinks, directions to websites, scanning quick response (QR) codes, and other digital methods.

We recommend that Liquor & Gaming NSW encourage the minister to remove the above two issues from the Act and Regulations.

Thank you again for the opportunity to make submissions, and we look forward to working with you to make New South Wales an even better place to run a business.

If you have any questions about this submission, please contact Chris Grant at

[REDACTED].

Kind regards

Laura Keith
Director of Corporate Communications
McDonald's Australia Limited

Our detailed submissions are continued on the following page.

REVIEW OF THE *LOTTERIES AND ART UNIONS ACT 1901 (NSW)* – SUBMISSIONS

As set out in the executive summary, we submit that the *Lotteries and Arts Union Act 1901 (NSW)* (**Act**) and the *Lotteries and Art Unions Regulations 2014 (NSW)* (**Regulations**) should be reformed and modernised to remove permit requirements and ‘abbreviated terms and conditions’ requirements. Our grounds for these submissions are:

- (a) Adequate consumer protection laws already exist, and certain additional regulation of trade promotions, charitable fundraising and minor lotteries is not necessary.
- (b) Certain parts of the Act have outlived their purpose and have not kept up with technological change.
- (c) The Act in its current form makes it more costly and difficult to do business in New South Wales.

Further detail on each of these grounds is set out below.

Ground 1: Adequate laws already exist.

The objectives of the Act include ensuring that the community benefits from lotteries, preserving integrity and fairness, minimising harm, and maintaining accountability. In particular the Act concerns itself with potential fraud, misleading and deceptive conduct and breach of contract. Each of these things is already covered by other state or Commonwealth laws, and is enforced by other government agencies. There is no reason to double up on those pre-existing laws and the activities of those agencies.

A sample of the existing laws that already deal with matters covered by the Act and Regulations includes:

- (a) **Fraud:** This is already criminalised under New South Wales law and is enforced by numerous state government agencies, including the police.
- (b) **Misleading and deceptive conduct:** The *Australian Consumer Law (ACL)* makes it illegal to mislead or deceive consumers, as does state trade practices law. Those laws are enforced by the Australian Competition and Consumer Commission (**ACCC**) and NSW Fair Trading respectively.
- (c) **Breach of contract:** To the extent that promoters do not comply with the terms and conditions of their own competitions, contract law exists to protect consumers.
- (d) **Ethical advertising:** In addition to the above, the Advertising Standards Bureau (**ASB**) governs the self-regulation of advertising and marketing across Australia, and enforces strict standards on advertising to children, unethical advertising, and other forms of advertising which might offend common community standards of decency. Free TV Australia and other private regulatory bodies also have their own rules, for example, Free TV Australia’s rules on gambling advertising, which are available [here](#) and [here](#).

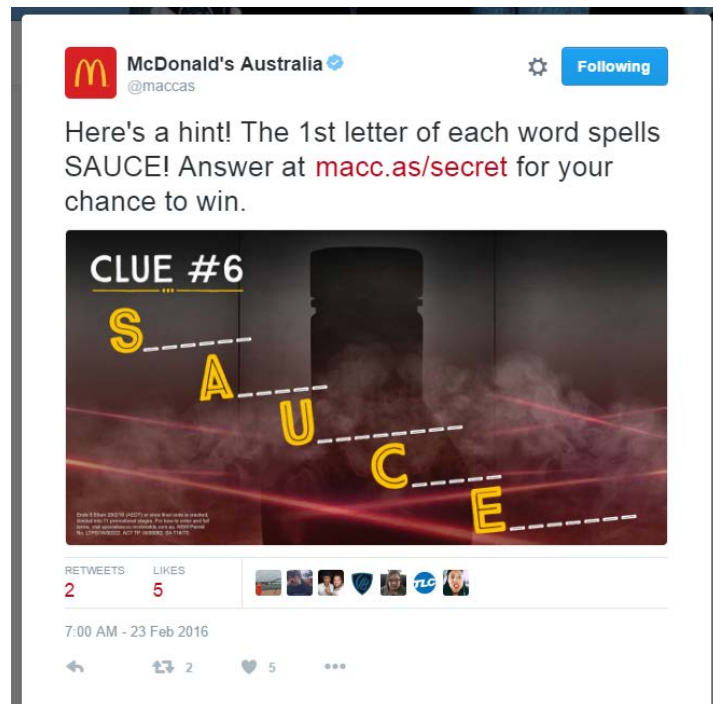
The permit and disclosure requirements of the Act and Regulations are effectively a duplication of the above laws, with NSW Liquor & Gaming forced to devote already limited resources to enforcement where those resources would be better spent on other activities. To the extent that the Act and Regulations impose new or additional rules, such as permit requirements, they are often unnecessary.

To the extent that they duplicate existing legal protections, we submit that the permit and disclosure requirements in the Act and Regulations should be repealed.

Ground 2: Keeping up with technology.

McDonald's uses a variety of platforms to promote our business. In particular we use mobile phone applications, social media platforms and websites. These present both opportunities and challenges: There are opportunities as platforms allow us to display more information in a more user friendly environment, but there are challenges as inflexible and prescriptive regulations do not allow for changing technology.

For social media platforms such as Snapchat it is impossible to provide all of the information required under rule 23 of the Regulations. The platform does not allow users to post substantial amounts of text, and users only expect to receive one or two lines of text in their 10 second "snaps". Likewise, Twitter limits users to 140 characters per "tweet", which means we are unable to provide all of the information required under the Regulations in our social media communications unless we include them in the image or video posted with the tweet (see example below where terms are included in small print on the image on Twitter).



The benefit of technology is that we can link users directly from our content to the terms and conditions for the promotion. The Act and Regulations are rules for a world where customers cannot interact with advertising, but the reality of new technology is that customers can access all of the information they need by clicking a link on their phone, so abbreviated terms and conditions are no longer useful.

The speed and pace of technology also creates new opportunities to respond to changing circumstances. Unfortunately for our marketing and social media teams, the Act and Regulations create some near impossible situations. Running short, sharp competitions that are reactive to current events is not possible when businesses must wait a week for a permit application to be processed. If time is of the essence, competitions must be run as games of skill so that permits are not required. By their nature, games of skill require a substantial amount more resources to judge large volumes of entries. In many cases businesses decide that not running a competition is the only option, because the rules make it too difficult. This puts New South Wales consumers at a disadvantage, as they miss the opportunity to participate in these events, where customers in other states are able to enjoy them. Removing the permit requirements under the Act and Regulations will allow us to react quickly and to roll out new promotions in hours, not days.

Often a competition will commence with a certain number of prizes, but mid-way through the competition we find that more prizes are being won than expected or fewer prizes are being won than expected. The Act and Regulations do not allow for new prizes to be added to competitions, or for us to increase the chances of winning. Technology allows us to improve

the odds of winning or increase the prize pool to accommodate lower or higher participation rates, but the Act and Regulations do not allow us to do this. In order to improve the consumer experience, the Act and Regulations should allow flexibility, provided that the changes do not disadvantage the consumer.

The issues with technology are not merely limited to new platforms. It is near impossible to comply with rule 23 of the Regulations on a standard 30 second television commercial or radio commercial. To meet the requirements under the Act and Regulations, 20 seconds of a 30 second radio commercial involves reading out terms and conditions. Free TV Australia's Commercials Advice Department (CAD) will not allow more than 5 words per second in any television advertising, which makes it extremely difficult to comply with both the Act and Regulations and CAD's requirements.

The current legal position makes it near impossible for businesses to comply. For illustrative purposes, an example advertisement for our *Little Wins* app is replicated, showing the full terms required to comply with the Act and Regulations (NSW Permit No. LTPS/16/03662). As you can see, the terms take up a substantial amount of space and do not positively contribute to the customer experience. While Facebook allows us to comply with the regulatory requirements, other platforms restrict the text that can be displayed.

Providing our customers a link to the terms so the information is accessible is a better alternative to the current situation, which requires that this information is included on the materials themselves (in this case on the Facebook post).

For businesses to survive in the 21st Century, we must adapt and embrace technological change, and we must speak to our customers through these platforms. New South Wales needs a legal framework that allows us to do this, and on that basis we recommend the repeal of the permit and disclosure requirements in the Act and Regulations.

McDonald's
15 July at 00:01 · Sport

Relive the glory of Sam Lloyd's match winning goal by downloading the Little Wins App and playing 'Sam Lloyd Matchwinner' for your chance to win from hundreds of AFL prizes up for grabs. Download the app here: <http://macc.as/aflittlewins>

Like Comment Share

Cavan Brady, Matt Emmerson and 1.1k others

20 shares

Write a comment...

McDonald's Starts 12:01AM (AEST) 16 May 2016 & ends 11:59PM (AEST) 1 October 2016 & divided into five (5) promotional stages ([12:01am AEST 18/05/2016 – 11:59pm AEST 31/05/2016], [12:01am AEST 01/06/2016 – 11:59pm AEST 30/06/2016], [12:01am AEST 01/07/2016 – 11:59pm AEST 31/07/2016], [12:01am AEST 01/08/2016 – 11:59pm AEST 31/08/2016], [12:01am AEST 01/09/2016 – 11:59pm AEST 30/09/2016] & five (5) corresponding draws. Open to Australian residents aged 14 years and over who are members or become members of the MyMacca's Club (MyMacca's Club) during the Promotional period in which they enter promotion. Under 18's require parent/legal guardian consent. To enter: download McDonald's Little Wins free app on compatible mobile device & follow prompts in manner required to activate the games and points functionality, select a favourite team and earn at least one point and play at least one mini game in the manner required on the application. One entry per account per promotional period, entries will NOT rollover. Draws: [12:00pm AEST 03/06/2016], [12:00pm AEST 04/07/2016], [12:00pm AEST 03/08/2016], [12:00pm AEST 05/09/2016], [12:00pm AEST 03/10/2016] at McDonald's Australia Ltd 21-29 Central Ave, Thornleigh NSW 2120. Prizes 320 x \$25 ShopAFL vouchers, 200 x \$30 x ShopAFL vouchers, 50 x \$35 ShopAFL vouchers, 440 x \$40 ShopAFL

In the alternative, we submit that the permit requirements under section 4B of the Act should be amended so that only large competitions (in excess of \$1 million) would require permits, and that permit numbers need not be displayed on packaging or other printed materials.

Ground 3: Cost of doing business.

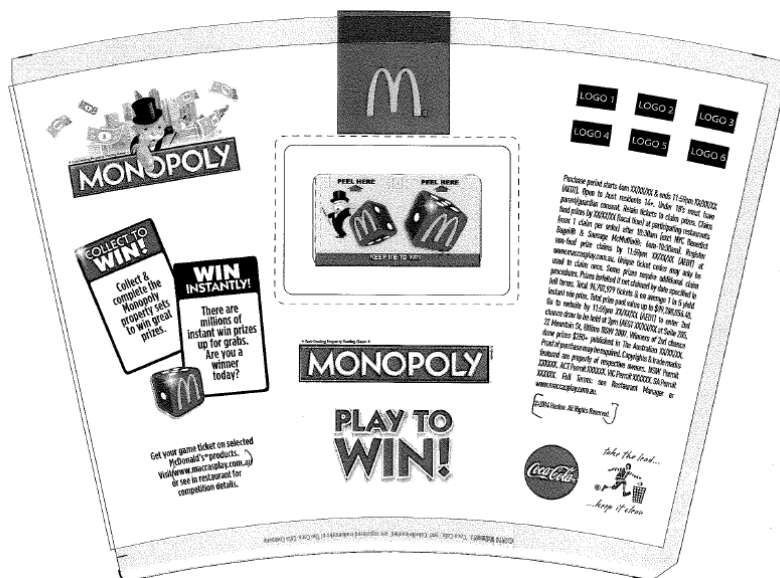
For the McDonald's business, the legal and compliance cost of dealing with the Act and Regulations is significant. Substantial amounts of money are spent each year on legal compliance and permit fees for the range of promotions that we operate each year. As trade promotion lotteries do not require licences in most other states and territories, we are able to flexibly operate in those jurisdictions.

The inflexible approach of the Act and Regulations makes New South Wales one of the most difficult jurisdictions in Australia to run trade promotions. As a consequence, we run fewer competitions and promotions for New South Wales customers, while Victorian, Queensland and Western Australian customers receive more opportunities to win prizes and participate in promotional activities. For example, our franchisees will often run 'business card lottery' promotions in Victoria, Tasmania, Queensland, the Northern Territory and Western Australia, but are far less likely to do this in New South Wales, the Australian Capital Territory or South Australia, where permits are required. Franchisees running time consuming businesses do not want to spend their time or their employees' time filling out permit applications, so they are less inclined to run these promotions in states that require permits.

Often competitions in New South Wales are reformulated as games of skill instead of games of chance, in order to escape the scope of the Act and Regulations. This increases the time required to operate the competition, as each entry must be judged, and raises the barrier of entry for each customer. It would be better for consumers if businesses offered more promotions with simple methods of entry. Repealing the existing requirements in the Act and Regulations would encourage this.

To illustrate some of the logistical and cost issues faced by business, we refer you to the Monopoly promotion that McDonald's operates in Australia each year. As part of that promotion we produce special packaging with tickets that customers peel to remove. The printing for this packaging commences several months before the promotion begins. Due to the requirements of New South Wales law, this packaging must include certain key terms and conditions for the competition such as the prize pool value, the permit number of the competition and the number of tickets.

Accordingly, McDonald's must finalise the terms and conditions for the competition several months in advance so we can obtain a permit and print the permit number on packaging. The following image is from a draft version of our 2014 Monopoly packaging; as you can see a large portion of the packaging is covered in terms and conditions:



Inevitably, between obtaining a permit and the competition commencing, our prize partners change valuations for prizes, or we have prize partners that pull out of the promotion. As new prizes are included and old prizes are removed, we are required to submit amendments to Liquor & Gaming NSW. Ideally we would not be required to submit these amendments, with substantial legal costs and government fees being incurred. The permit applications themselves also require us to incur substantial legal costs and government fees. All of these expenses mean fewer prizes can be included in the prize pool, so customers are worse off than if the Act and Regulations did not apply. Alternatively, removing the permit requirements and allowing information to be displayed at a web address or via a QR code would allow us to print packaging for competitions at the required times, while also giving our

business more flexibility to deal with changes to the competition in the months between printing the packaging and the competition commencing.

For these reasons, and to make business easier and less costly in New South Wales, we submit that all sections or rules in the Act and Regulations mandating the inclusion of specific terms on marketing materials should be repealed. In the alternative, we request that the permit and disclosure requirements are repealed or updated to reflect the reality of the digital world, so that links, QR codes and other digital access points can be used to direct consumer to the information they need, rather than the law requiring large amounts of disclosure directly on each item of marketing materials.