



# Update

Superannuation & Financial Services

April 2010

## Member Competitions - not so simple

It has become increasingly popular for Trustees of superannuation funds to use member competitions as part of the Fund's marketing strategy. While this can be an effective way to promote the Fund, Trustees must be mindful that there are sole purpose issues concerning this activity and also State legislation to be complied with.

### SOLE PURPOSE TEST

The sole purpose test under section 62 of the *Superannuation Industry (Supervision) Act 1993 (SIS)* requires regulated superannuation funds to be maintained for the purpose of providing benefits for members or their dependants in retirement or on the death of the member.

#### *Determining if an activity complies with the sole purpose test*

For an activity to comply with the sole purpose test there must be a reasonable, direct and transparent connection between a particular Fund feature or Trustee action, and the purposes specified in section 62 of SIS.

APRA Superannuation Circular No. III.A.4 – *The Sole Purpose Test* confirms that the test is sufficiently broad to include normal activities of a superannuation fund Trustee. It is now generally accepted that one of those "normal activities" is promotion of the Fund and marketing to existing and potential members. However, how that marketing is funded does require care.

Consideration needs to be given to how the cost of running the competition and providing the prize will be financed to ensure the sole purpose test is not inadvertently breached. There must be a direct link between the expenditure and the retirement savings objective of the Fund.

### STATE LEGISLATION

In addition to ensuring that a competition does not breach the sole purpose test, Trustees must be mindful of the State legislation which controls this type of activity.

Each State and Territory imposes its own licensing requirements concerning competitions which are referred to as "trade promotions". These trade promotions are conducted by businesses to promote their goods and services and contain an element of chance in determining winners.

#### *"game of chance"*

Whether a trade promotion requires a permit depends on whether it is a "game of chance". A game of chance will include random selections or draws, and participants will have no control over the outcome.

The total prize value also affects whether a permit is required.

#### *"game of skill"*

Where a competition involves a test of knowledge or skill as the sole determining factor, it is a "game of skill" and a trade promotion permit is not necessary. However, the promotion is still subject to Trade Practices and Fair Trading legislation. Consequently it is strongly recommended whenever a game of skill is being conducted that:

- the terms and conditions are drafted carefully;
- the value of the prize is described accurately; and
- the draw takes place at the time and location shown in the terms and conditions.

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Generally, each State and Territory has its own Lottery legislation and Gaming Authority which administers the legislation. The legislation is generally supported by regulations in addition to Guidelines issued by the relevant body from time to time.

The following is a summary of these requirements:

State / Territory	Requirements
NSW & ACT	Permit must be obtained if a promotion involves residents in those jurisdictions.
SA	Permits are required if the total prize pool exceeds \$500.00.
VIC	Permits are required if the total prize pool exceeds \$5,000.00.
TAS, WA & QLD	No permits are required, but in QLD and WA the trade promotion must comply with certain conditions, including entry being free, the terms and conditions being readily available to all participants and gaming records being kept for a period of 5 years (QLD) and 12 months (WA).
NT	Permits are required if the total prize value of the trade promotion lottery exceeds \$5,000.00, but if a permit has been issued by another Australian State or Territory, the NT will accept this and require no further approval or permit.

Where a promotional competition is conducted in a particular State or Territory only the requirements of that State or Territory need to be considered. If there is any uncertainty about whether participants reside outside of that State or Territory then the terms and conditions of the competition, and any promotional material associated with it, should exclude external residents. Otherwise it would be necessary to comply with the legal requirements of all the States in which the participants reside.

### AUTHORS:



**Jenny Willcocks**  
Partner, Melbourne  
Superannuation & Financial Services  
T: +61 3 9321 9909  
E: [jenny.willcocks@holdingredlich.com.au](mailto:jenny.willcocks@holdingredlich.com.au)



**Dan Pearce**  
Partner,  
Corporate & Commercial  
T: +61 3 9321 9841  
E: [dan.pearce@holdingredlich.com.au](mailto:dan.pearce@holdingredlich.com.au)

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