

## Fact sheet

# Art Unions

This fact sheet outlines the applicable requirements and best practice of an art union lottery.

### What is an art union?

An art union is a lottery where the total value of prizes exceeds \$30,000. Prizes are distributed by a draw of tickets or marbles from a barrel or other receptacle, or by an electronic device (often called a random number generator).

If the total retail value of prizes is \$30,000 or less, please refer to the 'Raffles' fact sheet at [fairtrading.nsw.gov.au](http://fairtrading.nsw.gov.au).

### Who can benefit from holding an art union?

An art union can only be conducted to raise funds for a non-profit organisation.

A non-profit organisation is a body of persons which is not formed for private gain – e.g. charities, sporting clubs, social clubs, registered clubs, political parties, trade unions and incorporated associations.

### Is a permit required?

Yes. An art union cannot be conducted unless we have issued a permit under the *Lotteries and Art Unions Act 1901*.

If an art union is conducted to raise funds for a charity, an authority under the *Charitable Fundraising Act 1991* may be required. If you are unsure, please contact NSW Fair Trading at [lottery.enquiries@finance.nsw.gov.au](mailto:lottery.enquiries@finance.nsw.gov.au).

### How is a permit obtained?

A permit is obtained by completing and lodging the Art Unions application form. Find the 'Games of chance – art union' application form at [fairtrading.nsw.gov.au](http://fairtrading.nsw.gov.au).

If the art union is also to be conducted outside NSW, then you should contact the regulatory agency in the other jurisdiction(s) for information about their local requirements.

### Who can apply for a permit?

Anyone representing a not-for-profit organisation can apply for a permit. However, the application must be signed by a nominee (director, member of the management committee, or an employee) of the not-for-profit organisation.

### Can an early-bird draw be conducted with an art union?

Yes – if the total value of prizes is capped at \$30,000. Money prizes are prohibited as an early bird prize. A separate permit for the early bird component is not required.

### What documentation must be lodged with the application?

Include with the application form:

- ▲ a specimen ticket
- ▲ invoices that describe each prize and specify the retail value and cost of prizes
- ▲ if a prize is real estate (e.g. house and/or land), include the additional information listed in Table A
- ▲ a statement describing any proposed salary, wage, bonus, commission or other remuneration, and

expenses payable to the promoter, manager or any other person

- ▲ the proposed financial budget
- ▲ information on any early-bird draw component of the art union.

**Table A**

## Real Property Prices

The following information must be submitted where the prizes are real property prizes:

- ▲ independent written valuation by a licensed valuer
- ▲ details of any covenants, easements etc. to which the title to the land may be subject.

The following additional information must be submitted where the prize is a house:

- ▲ proforma invoices for any furnishings, fittings, etc. not included in the valuation, setting out both the normal retail value and the actual net cost
- ▲ a building certificate under the *Environmental Planning and Assessment Act 1979*
- ▲ a Certificate under section 131 (a) of the *Home Building Act 1989*.

Where the house is not complete at the time approval is sought:

- ▲ plans and specifications of the house and any other improvements
- ▲ a copy of the contract with the builder.

Note: the house and any other improvements must be completed not less than 4 weeks before the draw to enable an inspection to be carried out if necessary. All legal expenses, stamp duty, fees, etc. must be met from the funds of the art union.

A permit may be issued for the conduct of the art union, but no tickets are to be sold until a Certificate of Title, showing full and unencumbered title is held in the name of the organisation, has been produced and approval has been given for the sale of the tickets.

## How long can an art union be conducted?

We recommend that an art union be commenced and completed within six months.

The date, place and time of the drawing for the prizes, as printed on the face of each ticket, cannot be altered without written approval from us. Supply us with detail about the proposed new arrangements, and reasons why the alteration is wanted.

## What is the maximum value of prizes?

The total retail value of prizes must exceed \$30,000. There is no maximum limit.

## Can prizes be money?

Yes – but the total amount of money prizes (excluding spending money) cannot exceed \$30,000.

If a money prize exceeds \$2,000, the organisers must pay to the prize winner the amount as exceeds \$2,000 by a crossed cheque payable to the prize winner or, if the prize winner so requests, by electronic funds transfer (EFT) to an account nominated by the prize winner.

## What prizes are allowed?

Prizes may consist of or include anything except a prohibited prize. Prizes can be goods, wares, merchandise, services, vouchers for goods or services that are not redeemable for money, tickets for admission to entertainment, and tickets (with spending money) for tours or journeys.

Spending money can be given as part of a travel prize e.g. tour or journey provided the spending money does not exceed \$30,000 and does not exceed 20% of the total value of the travel prize.

## What prizes are prohibited?

The following are prohibited prizes:

- ▲ money prizes over \$30,000
- ▲ tobacco products
- ▲ firearms or ammunition
- ▲ prohibited weapons

- ▲ cosmetic surgery or other procedure designed to improve personal appearance
- ▲ liquor prizes – more than 20L of liquor with alcohol content not exceeding 20% by volume or more than 5L of liquor with alcohol content exceeding 20% by volume.

### Quick facts

- ▲ Conducted for the purpose of raising funds for a non-profit organisation
- ▲ A permit is required
- ▲ Total retail value of prizes must exceed \$30,000
- ▲ Total value of money prizes capped at \$30,000
- ▲ Spending money with a travel prize capped at 20% of the value of the prize
- ▲ Expenses (including prizes) capped at 70% of the gross proceeds

### Can I substitute a prize?

You can only substitute a prize if we approve of that. We will only give approval if satisfied that the prize has been lost, destroyed or for any other reason cannot be allotted or distributed. The substituted prize must be substantially similar to the original prize, and not less than its value.

If the substituted prize is more than \$100,000 art union organizers are required to notify all entrants of the prize substitution and be given the opportunity of a refund.

### Taking care of the prizes

Each prize must be carefully preserved until the winner has taken possession.

If a prize comprises real estate, the art union organisers must pay all taxes and other outgoings; maintain the property in good order and condition; and keep the property insured against loss or

damage until the date the prize is transferred to the prize winner.

Any rents and profits received by organisers after payment of rates, taxes, etc. must be added to the income of the art union.

### What expenses can be incurred?

Reasonable expenses can include:

- ▲ purchase of the prize or prizes
- ▲ purchase of the tickets
- ▲ hiring or operating any device used as a draw receptacle
- ▲ renting premises for the art union
- ▲ advertising and promoting the art union, including postage, telephone, lists of names
- ▲ auditing the art union accounts, other records and processes
- ▲ salaries, wages or commission payable to organisers.

Remuneration or a commission is allowed, but can only be paid to a person for services rendered in connection with the art union if there is a written agreement between that person and the benefiting organisation.

The agreement must specify the service to be rendered; the remuneration or commission to be provided; and the period of the agreement.

If the benefiting organisation holds a fundraising authority under the *Charitable Fundraising Act 1991*, the agreement must specify other requirements as stipulated by condition 17 imposed on that organisation's fundraising authority. If unsure, please check with NSW Fair Trading.

A commission must not be paid to a person for selling tickets unless the name and contact details of the purchaser of the ticket have been legibly written on the ticket-but (or recorded in the computer-generated drawing docket).

## What are the maximum allowable expenses?

Total allowable expenses (including the cost of the prizes in an art union) must not exceed 70% of the gross proceeds of the art union.

## How much should the benefiting organisation receive?

The benefiting organisation should receive at least 30% of the gross proceeds of an art union.

If the art union does not achieve the required minimum of 30% profit, the art union organisers must apply to us for approval to accept the percentage achieved. The application must specify the unusual or unexpected circumstances that resulted in the <30% outcome.

## Is there a maximum price per ticket?

No. Whatever price is considered reasonable can be charged. However, when deciding the selling price of tickets, raffle organisers must weigh up the potential number of tickets that can be sold and the requirement to achieve a profit of 30% or more.

The selling price must be applied consistently to all tickets sold.

No ticket should be sold except for the advertised value of the ticket, or for some other consideration which is equivalent to the value.

It is acceptable to sell tickets at a discount, but only if this is fully disclosed in all information made available to purchasers, and is offered to all purchasers consistently.

## Is there a maximum number of tickets that can be sold?

No.

## What is the format of tickets?

Tickets must consist of three portions – a purchaser's portion, drawing docket and ticket butt. However, if computer-generated tickets are used, a ticket-butt and drawing docket are not required if the computer

records for a ticket contain the same information as the purchaser's portion of the ticket. Ticket butts must be numbered consecutively in the same series as the ticket.

Ticket butts must also contain space for the name and contact details of the purchaser to be written.

The purchaser's portion of the ticket must include:

- ▲ the name of the art union
- ▲ the name of the benefiting organisation
- ▲ the price of the ticket
- ▲ details of the prizes and their recommended retail value
- ▲ the place, date and time of the draw
- ▲ details of the way in which the results of the draw will be publicised
- ▲ the number of tickets in the art union
- ▲ the name and address of the promoter
- ▲ the number of the permit we issue for the art union
- ▲ the serial number of the ticket
- ▲ the total number of tickets in the art union.

Tickets cannot be printed until we have issued a permit for the art union.

## How should ticket sales be managed?

An art union must be conducted fairly. A procedure must be adopted which ensures that tickets are secure, distributed on a purely random basis, and are not able to be manipulated.

Organisers cannot send tickets to any person except with the prior consent of the person, even if the person is a member of the organisation conducting the art union. This applies even if the person is to purchase the ticket or is to act as agent for the sale of the tickets.

Organisers can send letters, notices, etc. to people asking them to buy tickets in an art union. However, tickets should not be included with letters, notices, etc. unless the recipient has consented beforehand.

If organisers intend to sell tickets in a street or public place in a local government area, written permission

from the local council may be required. Check with the local council.

Persons selling tickets must at point of sale record the name and contact details of the purchaser legibly on the ticket butt (or, if it is a computer-generated ticket, record these details in the computer database).

Tickets in an art union containing liquor prizes must not be sold by or to a person under 18 years of age. Also, a person under 18 cannot give or collect a liquor prize.

### How should an art union be advertised or promoted?

In advertising and promotion materials, purchasers must be informed:

- ▲ of the price of the ticket
- ▲ of the name of the organisation for whose benefit the art union is being conducted
- ▲ of details of the prizes and their recommended retail value
- ▲ of the place, date and time of the draw
- ▲ how prize winners will be notified
- ▲ how the results of the draw will be publicised.

It is acceptable for this information to be provided on the ticket, and not elsewhere.

Tickets and any advertising or promotional material used in conjunction with the art union must give a detailed description of the prizes.

This should include the following:

**Machinery or electrical appliances** – the make, model and accessories.

**Motor vehicles** – the make, model, accessories, and whether registration and on-road costs are included.

**Travel** – the number of persons entitled to take advantage of the travel prize, what is included (e.g. air fares, transfers, other transport, duration, accommodation standard, meals); restrictions on when the travel must be taken; and whether spending money is included.

### Are there advertising restrictions?

Yes. An art union organiser must not publish, or cause to be published, any lottery advertising that:

- ▲ encourages a breach of the law
- ▲ depicts children participating in an art union
- ▲ is false, misleading or deceptive
- ▲ suggests that winning will be a definite outcome of entering or participating in an art union
- ▲ suggests that entering or participating in an art union will definitely improve a person's financial prospects
- ▲ is not conducted in accordance with decency, dignity and good taste.

'Publish' includes disseminate in any way, whether by oral, visual, written or other means e.g. cinema, video, radio, television or the internet.

Advertising or other publicity must not state or imply that the art union is 'endorsed' by the Government or by any government agency.

### How should the draw be conducted?

The draw must take place in Australia.

Every person who has purchased a ticket in an art union must have a fair and equal chance of winning every prize in the art union when drawn.

Art union organisers cannot impose a condition requiring a ticket-holder to be present at the draw to claim a prize in the art union.

All prizes must be distributed by the drawing of ticket butts or numbered marbles from a barrel or other suitable container. The receptacle should be large enough to allow all butts or marbles to be included and mixed freely.

An electronic drawing machine may be used, if the program used to draw the numbers is in fact random, and every number entered into the draw has a fair and equal chance of being drawn. If unsure, contact the supplier.

If more than one prize is offered, the major prize should be the first drawn. Then the other prizes

should be drawn in descending order according to number and value.

Sellers of tickets must return to the organisers all ticket butts (or appropriate computer-generated document) relating to tickets sold by them, the proceeds of sales, and all unsold tickets issued to them before the date fixed for the draw of the prizes or at any earlier date that the organisers may require.

If a ticket is not included in the draw, the organisers must use best endeavours to refund the price to the ticket owner within 7 days after the draw is held.

The draw should be conducted at the place, date and time shown in any information provided to purchasers. If a ticket purchaser or other person wants to attend the draw, the organisers should facilitate this.

### Can the draw be postponed?

Yes, if ticket sales are low and we approve the postponement. If we approve a postponement request, organisers must advertise the new draw date, time and place, so that ticket purchasers are fully informed. The notice should give reason(s) for the postponed draw.

The draw must be made by a person who has been approved by us. That person cannot be an organiser of the art union.

### Using a computerised system for the draw?

A mechanical or electronic device must not be used for the purpose of the draw unless the device has been approved by a suitably qualified, independent person.

A suitably qualified, independent person would be someone with knowledge of the technology used to develop the draw system. A person would be considered to be appropriately qualified where they are able to, on the basis of knowledge and experience, make an objective assessment of a computerised draw system used to determine the

winner of a lottery and certify the integrity of that system with reference to the following criteria:

- ▲ control and security features (login, passwords)
- ▲ operating procedures
- ▲ whether the system is tamper-proof
- ▲ whether all entrants have an equal chance of winning
- ▲ technical data and promotional material
- ▲ whether a hard-copy of the prize winners' list is provided.

By way of example, the knowledge and experience considered appropriate may be the equivalent of three years full-time experience working as a developer with the code or platform used to develop the application or knowledge and experience working with a similar code or platform.

Evidence of approval must be kept by the Art Union organisers and provided to NSW Fair Trading on request. It does not need to be included in your application.

### How should the results of the draw be notified?

Organisers should notify prize winners within two days of the draw. Organisers must also make a public announcement by print or electronic media within seven days of the draw.

### What if a prize is unclaimed?

If despite every reasonable effort organisers cannot contact a prize winner, the organisers must retain the prize for three months after the draw.

However, if a prize is perishable (e.g. a tray of meat or other perishable food), the prize can be sold or otherwise disposed of in a way that will immediately bring a reasonable price. The money realised (after deducting the reasonable costs of sale or disposal) must be held in trust for the winner of the prize.

At the end of three months if the prize remains unclaimed, organisers should send us a letter setting out full details of the steps taken to contact the winner

and to deliver the prize, and seeking permission to sell the prize.

After receiving written approval from us, the prize must be sold and the proceeds of sale deposited to the organisation that the art union was conducted for.

### What records must be kept?

Proper and prudent records must exist. This means keeping all receipts, invoices and other records concerning costs and outgoings, and payments received as payments for tickets.

The organisers must also keep a record of:

- ▲ the total amount of money received from the sale of tickets
- ▲ the total value of the prizes
- ▲ the number of tickets printed, obtained or generated (including serial numbers)
- ▲ the number of tickets sold or distributed for sale (including serial numbers)
- ▲ the name and address of each person to whom tickets were distributed for sale, together with the number of tickets issued and the serial numbers
- ▲ the names and contact details of all persons who applied for a ticket
- ▲ the names and contact details of all persons who bought tickets (as shown on the ticket butts or computer records)
- ▲ the names and contact details of the prize winners, together with the details of their prizes
- ▲ the number of tickets unsold (including their serial numbers).

Organisers must deposit all money received into an account at a financial institution that belongs to the benefiting organisation. This should occur as soon as practicable, preferably within two days after it is received.

If the benefiting organisation holds a fundraising authority under the *Charitable Fundraising Act 1991*, additional record-keeping requirements may apply.

Check with NSW Fair Trading at

[lottery.enquiries@finance.nsw.gov.au](mailto:lottery.enquiries@finance.nsw.gov.au), if unsure.

### How long must records be kept?

Ticket butts, draw documents and corresponding computer-generated documents must be kept for at least three months after the date of the draw at which winners are determined.

Unsold tickets must be retained for at least three years after the date of the draw.

### Is a financial return required?

Art union organisers must send us an audited statement of income and expenditure, a balance sheet, and a statutory declaration within two months from the date of the draw. The organisers must also send us a receipt from the benefiting organisation of the art union for the net proceeds derived from the art union.

We supply a sample statement of income and expenditure and balance sheet and the statutory declaration when we issue a permit to the art union organisers.

### Who is responsible?

The promoter or organisers are responsible for the proper management and conduct of an art union.

A subcommittee can be elected from within the benefiting organisation to be the organising committee. Alternatively, the benefiting organisation can authorise persons outside the organisation to conduct the art union on its behalf. Where a committee or outside people conduct the art union, the management committee of the benefiting organisation should satisfy itself as to the good standing and competence of the organisers.

The benefiting organisation should introduce adequate controls to oversee the organisers, including:

- ▲ insisting on reports
- ▲ ratifying all expenses and prizes awarded
- ▲ having full access to records and registers
- ▲ ensuring financial records are audited

- ▲ exercising proper internal controls over the purchase, sale and safekeeping of tickets including unsold tickets.

### Can the records be inspected?

Yes, by our authorised officers or police officers.

### Do penalties apply?

Yes. There are penalties for conducting an art union contrary to requirements, including:

- ▲ failing to award the winner the prize
- ▲ conducting the art union fraudulently
- ▲ misappropriating funds or prizes
- ▲ making false statements
- ▲ failing to keep books and records
- ▲ awarding prohibited prizes
- ▲ unlawful advertising
- ▲ hindering or obstructing authorised officers or police.

### For further information

This guide is designed to provide accurate and authoritative information in regard to the subject matter covered, and with the understanding that NSW Fair Trading part of NSW Department of Finance, Services and Innovation, is not passing legal opinion or other professional advice. If you require a more detailed understanding of the legislation, it is recommended that you contact a specialist adviser.

The law governing the conduct of this lottery or game of chance is the *Lotteries and Art Unions Act 1901* and the *Lotteries and Art Unions Regulation 2014*. Online access to the legislation is available at [legislation.nsw.gov.au](http://legislation.nsw.gov.au)