

No-draw lotteries

What is a no-draw lottery?

A no-draw lottery is a lottery in which the tickets contain a hidden symbol or a number of hidden symbols, which can be exposed by removing or scratching a covering of paper or other opaque material. They may be called a break-open or scratch lottery.

Who may benefit from the conduct of a no-draw lottery?

A no-draw lottery may only be conducted to raise funds for the benefit of a non-profit organisation.

A non-profit organisation is a body of persons which is not formed for private gain, and includes charities, social clubs, registered clubs, political parties and trade unions.

Is a permit required?

No-draw lotteries may be conducted without a permit. However, you must comply with the requirements of the *Lotteries and Art Unions Act 1901*.

If a no-draw lottery is conducted for raising funds for a charity, an authority under the *Charitable Fundraising Act 1991* may be required. If you are unsure, please contact us at: lottery.enquiries@finance.nsw.gov.au

What is the maximum value of prizes?

The total value of prizes cannot exceed \$5,000.

What types of prizes may be offered?

Prizes may consist of or include anything except a prohibited prize.

Prizes can be money, goods, wares, merchandise, services, vouchers for goods or services that are not redeemable for money, tickets for admission to any entertainment and tickets (with any spending money) for tours or journeys.

Spending money can be given as part of a travel prize - eg: a tour or journey - provided the total value does not exceed 20% of the total value of the travel prize.

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Quick facts

- Conducted for the purpose of raising funds for a non-profit organisation.
- No permit required.
- Cost to enter cannot exceed \$2.00.
- Total value of prizes capped at \$7,000.
- Spending money with a travel prize capped at 20% of the value of the prize.
- Not more than 3,000 tickets may be produced in each series.
- Expenses capped at 60% of the gross proceeds.

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Health regulations

The offer of perishable items such as green groceries, meat and fish as prizes is regulated under the *Food Act 2003*.

Such prizes must satisfy the same requirements that apply to food sold through normal retail outlets. These include:

- the manner of handling and packaging the food
- the manner of labelling packages of food
- the temperature at which food must be kept.

Contact NSW Health for more information.

Fish prizes must also comply with the *Fisheries Management Act 1994* and the *Fisheries Act 1935*. A special permit is required.

Contact the Department of Primary Industries for more information.

What types of prizes are prohibited?

The following are prohibited prizes:

- prizes over \$7,000,
- tobacco products in any form,
- firearms or ammunition,
- prohibited weapons,
- cosmetic surgery or other procedure designed to improve personal appearance; and
- liquor prizes - more than 20 litres of liquor with an alcohol content not exceeding 20% by volume or more than 20 litres of liquor with an alcohol content exceeding 20% by volume

Tickets for liquor prizes cannot be sold by or to a person under 18. Also a person under 18 cannot give or collect a liquor prize.

What expenses may be incurred?

You may incur reasonable expenses for:

- the purchase of the prize or prizes
- the purchase of the tickets
- hiring or operating any device used
- renting premises
- advertising and promoting the lottery, including postage, telephone, lists of names
- auditing
- salaries, wages and commission.

The total allowable expenses (including the cost of the prizes) must not be more than 60% of the gross proceeds.

Payment of commission and remuneration

You cannot pay any commission or remuneration to a person for services rendered in connection with the no-draw lottery unless there is a written agreement between that person and the benefiting organisation. The agreement must specify:

- the service to be rendered
- the remuneration to be provided
- the period of the agreement.

If the benefiting organisation is an authority holder under the *Charitable Fundraising Act 1991*, the agreement must specify other requirements. You should refer to Authority Condition 20.

How much should the benefiting organisation receive?

The profit from the no-draw lottery must be at least 40% of the gross proceeds.

If the no-draw lottery does not achieve the required minimum of 40% profit, you must apply to us in writing for approval to accept the reduced

percentage. The application must explain the unusual and unexpected circumstances which resulted in the unfavourable outcome.

Is there a maximum price per ticket?

Yes. The charge for a ticket cannot exceed \$2.00.

The sale price must be consistently applied to all tickets sold. No ticket may be disposed of except for the advertised value of the ticket or for some other consideration, which is equivalent to the value. You may sell tickets at a discount, but only if this facility is fully disclosed in all information.

Are there a maximum number of tickets that may be sold?

Yes. Not more than 3,000 tickets are to be produced, used or offered for sale in the no-draw lottery.

What is required of the ticket?

The tickets or cards of each lottery must be numbered consecutively. Each series of tickets or cards must be distinguished from each other series by a unique series number or symbol.

The tickets and cards must be produced so that the symbol or symbols that may confer a prize cannot be detected without removing the opaque material that covers them.

Each ticket or card must specify:

- the price to be paid, and
- the name of the organisation for whose benefit the lottery is being conducted.

No-draw lottery cards must have space for the names, and contact details of participants to be recorded on the cards.

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How should you advertise the no-draw lottery?

You must use your best endeavours to ensure that the following information is available to potential participants:

- details of the prizes and their value
- details of how prizes may be claimed by the winners or how the prizewinners will be notified and the way in which the results will be publicised
- the rules under which persons may participate in the lottery.

This information may be printed on the no-draw lottery ticket or card.

How should ticket sales be managed?

You cannot send no-draw tickets to any person except with their prior consent, even if the person is a member of your organisation. This applies regardless of whether the person is to purchase the ticket or is to act as agent for the sale of the tickets. You can send letters, notices, etc., to people asking them to buy tickets in the lottery; however, you must not include tickets with the letter, notice, etc.

If you intend to sell no-draw tickets in a street or public place in a local government area, you may require written permission from the local council. You should contact your local council for more information.

No-draw lotteries must be conducted fairly. A procedure must be adopted which ensures that all tickets and cards are secure; are distributed on a purely random basis; and are not capable of manipulation.

Take suitable measures to ensure that there is adequate control over the issue of tickets or cards to selling agents; the receipt of money; and the receipt of unsold tickets or cards.

Not more than one no-draw lottery is to be conducted by or on behalf of the benefiting organisation at the one time. Another no-draw lottery may be conducted when all the tickets in the current lottery are sold; or are withdrawn from sale; or are partly sold with the remainder having been withdrawn from sale.

Coin-operated dispensing machines cannot be used for the sale of no-draw lottery tickets or cards.

What happens if there is an error in the printing of the tickets or cards?

A participant is not to be deprived of an entitlement to a prize merely because of a flaw in the production of the tickets or cards.

For example, you may not refuse to hand over a prize just because tickets or cards produced for a lottery include more prize winning symbols than intended.

This applies even though the pool of prizes or money set aside for the purchase of prizes has been exhausted or is insufficient to provide the relevant prize.

The cost of supplying additional prizes is to be met by the organisers of the lottery, and is not to be met from the receipts of the lottery unless the lottery is conducted by the benefiting organisation.

Liability may be limited by insurance or by contract with the printer of the tickets or cards.

Are there any advertising restrictions?

Yes. You must not publish, or cause to be published, any lottery advertising that:

- encourages a breach of the law, or
- depicts children participating in a lottery activity, or

- is false, misleading or deceptive, or
- suggests that winning will be a definite outcome of entering or participating in the lottery activity, or
- suggests that entering or participating in the lottery activity will definitely improve a person's financial prospects, or
- is not conducted in accordance with decency, dignity and good taste.

You must not enter into or extend the duration of a contract or arrangement for the publication of any lottery advertising that does any of these things.

In this context, publish includes disseminate in any way, whether by oral, visual, written or other means (for example, dissemination by means of cinema, video, radio, television or the Internet).

You must not state or imply in any information or publicity that the lottery is authorised or approved by the Government or by any government agency.

How should I notify the results and arrange for the prize to be given to the prizewinner?

You must give participants on the ticket or card or by some other means details of:

- how prizes may be claimed, or
- how the prizewinners will be notified and of the way in which the results will be publicised.

If participants are not able to determine whether they have won a prize, you must use your best endeavours to inform each prize winner within two days after the result of the lottery is decided.

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Where a money prize exceeds \$2,000, the organiser must pay to the prizewinner the amount as exceeds \$2,000 by means of a crossed cheque payable to the prizewinner, or if the prizewinner so requests, by means of electronic transfer of funds to an account nominated by the prizewinner.

What if a prize is unclaimed?

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

However, if a prize is perishable (e.g. a meat tray), it may be sold or disposed of in a way that you consider will 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.

If a prize remains unclaimed at the end of three months, you should send a letter to the Department setting out full details of the steps which you took to contact the winner and have the prize delivered, and seeking permission to sell the prize.

When you receive written approval, the prize is to be sold and the proceeds of the sale paid into the funds of the organisation in aid of which the lottery was held.

Banking the proceeds

You must ensure that all money received is paid into an account at a bank, building society or credit union being an account belonging to the benefiting organisation as soon as practicable, preferably within two business days after it is received.

At least two persons must be signatories to the account, one of whom is to be a member of the governing body or management committee of the benefiting organisation.

What records do you need to keep?

You must keep all receipts, invoices and other records concerning costs and outgoings, and payments received and donations.

Any record keeping requirement imposed by the *Charitable Fundraising Act 1991* is in addition to those required to be kept by the *Lotteries and Art Unions Act 1901*.

You must also keep a record of:

- the total amount of money received
- the total value of the prizes
- the total number of no-draw lottery tickets or cards produced or acquired for the lottery (including their serial number and unique series number or symbol)
- the total number of no-draw lottery tickets or cards distributed and the total number sold (including their serial number and unique series number or symbol)
- the name and address of each agent to whom no-draw lottery tickets or cards have been distributed, together with the number of tickets or cards issued to the agent (including their serial number and unique series number or symbol)
- the names and addresses of all prizewinners together with details of their prizes
- the number of tickets remaining unsold (including their serial number and unique series number or symbol).

How long are records required to be kept?

You must retain all records, all unsold tickets and all accounts and other documents, and all computer records for seven years. Unsold tickets must be retained for at least three years after the date of the draw. Any ticket-butts or corresponding computer-generated documents need only be maintained for three months after the date of the draw.

Are financial statements or returns required?

You are not required to submit a return to us unless specifically requested. However, the organisation in whose benefit the no-draw lottery is conducted must ensure that the organisation's financial statements detail the gross proceeds and expenses of the lottery.

Who is responsible?

The promoter or organisers are jointly and individually responsible for the proper conduct of the no-draw lottery.

A subcommittee may be elected from within the benefiting organisation to be the organising committee. Alternatively, the benefiting organisation may authorise persons outside the organisation to conduct the lottery for them. The management committee of the benefiting organisation should satisfy itself about the good standing and competence of the persons organising the lottery.

The benefiting organisation should introduce adequate controls to oversight the organisers, including insisting on reports, ratifying all expenses and prizes awarded, having full access to records and registers, and ensuring financial records are audited.

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Are the records subject to inspection?

Yes. All records are subject to inspection by our authorised officers or police.

Are there any penalties?

Yes. There is a range of penalties for conducting a no-draw lottery contrary to requirements, including:

- failing to award the winner the prize
- conducting the lottery 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.

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 www.legislation.nsw.gov.au