

Fundraising

Role of the board

Legislation regulating fundraising is currently set at state and territory level and the approach of each jurisdiction varies. It is duplicative, inconsistent and complex and in this sense a program of national harmonisation is required. The following reports support that Australia should adopt a harmonised approach to fundraising legislation, to reduce the red tape burden for the NFP sector, but this has not yet occurred.

- Australian Institute of Company Directors, *Charitable Fundraising Review*, July 2016
- Deloitte Access Economics, *Australian Charities and Not-for-Profits Commission Cutting Red Tape: Options to Align State, Territory and Commonwealth Charity Regulation*, ACNC, February 2016
- Australian Government Productivity Commission, *Contribution of the Not-for-Profit Sector*, January 2010
- Further to this, there is no single definition of fundraising that is regulated by government. The following table provides a comparison of the current legal definitions used to define fundraising activities in the different states and territories:

State/territory	Definition of fundraising
New South Wales	<p>Fundraising appeal</p> <p>“... the soliciting or receiving by any person of any money, property or other benefit constitutes a fundraising appeal if... the person represents... a charitable purpose.”</p> <p>(s 5 <i>Charitable Fundraising Act 1991</i>)</p>
Queensland	<p>Appeal for support</p> <p>“used in relation to any purpose, means any invitation (expressed or implied, and whether made verbally, or by writing or conduct, or by any advertisement), to the public, which is designed to obtain money or articles for that purpose”</p> <p>(s 5 <i>Collections Act 1966</i>)</p>
South Australia	<p>South Australian law regulates “collectors” who engage in obtaining or attempting to obtain money or property for “charitable purpose”.</p>

State/territory	Definition of fundraising
Victoria	<p>Fundraising appeal</p> <p>“1. A fundraising appeal occurs if a person solicits or receives money or a benefit on the basis of a representation that the soliciting or receiving is not solely for the profit or commercial benefit of the person or any other person, cause or thing on whose behalf the person is soliciting or receiving the money or benefit.</p> <p>2. For the purposes of this section, it does not matter if—</p> <ol style="list-style-type: none"> a. the person who solicits or receives the money or benefit does not make the representation; b. the representation was direct or indirect; c. the majority of the money or benefit is not to be applied for the benefit of the person, cause or thing on whose behalf it is solicited or received;... “ <p>(s 5 <i>Fundraising Act 1998</i>)</p>
Western Australia	<p>Restriction on certain collections</p> <p>“1. No person shall —</p> <ol style="list-style-type: none"> a. collect or attempt to collect any money or goods for any charitable purpose; or b. obtain or attempt to obtain money by the sale of any disc, badge, token, flower or other device for any charitable purpose; or c. conduct any entertainment or function to which any charge for admission is made, or sell or attempt to sell any ticket for admission to any entertainment or function in any case where it is held out that any part of the proceeds of the entertainment or function are to be devoted (either wholly or partly) for any charitable purpose; or d. advertise, whether by way of poster, streamer, handbill, notice in any newspaper or any other means or hold out or represent in any manner that the whole or any part of the proceeds of any sports, races, fete, bazaar or other function will be paid into or applied for any charitable purpose,... “ <p>(s 6 <i>Charitable Collections Act 1946</i>)</p>
Tasmania	<p>Soliciting</p> <p>“... solicit means to seek a donation by a request communicated in person or –</p> <ol style="list-style-type: none"> a. by mail; or b. by facsimile transmission; or c. by telephone; or d. by e-mail; or e. by the internet; or f. by a document left on premises; or g. by any appeal through the media;... “ <p>(s 3 <i>Collections for Charities Act 2001</i>).</p>

Fundraising activities

One approach that might assist a better understanding of fundraising, is to define it through examples of what are fundraising activities and what are not.

Examples of fundraising activities include:

- raffles, bingo nights and sweepstakes;
- golf days, movie nights and trivia nights;
- fetes, carnivals, bazaars or shows;
- clothing bins;
- dinner dances, balls, socials or concerts;
- public auctions;
- door knock or telephone appeals;
- traffic intersection collections;
- sales through op shops;
- public appeals to support an organisation;
- events or challenges where participants raise sponsorship monies;
- monies raised via the sale of goods (for example, where 10 cents from every purchase is donated to a charitable organisation or cause).

Examples of activities that are not fundraising activities include:

- membership or joining fees;
- bequests;
- receiving grants or scholarship funding from a government entity or other funding body;
- receiving funding from a registered club if in line with their community contributions commitments;
- fees received for services provided by an organisation, such as the sale of goods and services, training or educational services, activities for members, child minding services;
- fundraising within an organisation's current or past membership base

Both sets of examples are general examples, and organisations will need to check with state/territory regulations to ensure they comply with relevant legislation.

Fundraising regulation

The following table (based on Deloitte Access Economics, *Australian Charities and Not-for-Profits Commission Cutting Red Tape: Options to Align State, Territory and Commonwealth Charity Regulation*, ACNC, February 2016, p 18) provides a comparison of fundraising regulatory requirements in each state and territory. There is currently no fundraising legislation in the Northern Territory.

What is not clear for the NFP sector is what happens if fundraising activities span across borders. The use of the internet for fundraising raises all sorts of boundary questions and its use is increasing all the time, via donations online or crowd sourcing via a website. If an NFP fundraises in more than one state or territory it must register in every jurisdiction in which it operates and comply with the requirements therein.

	Organisational requirements			Reporting requirements		
Collections Act 1966 (QLD)	Apply for registration to fundraise.	Advertise for objections & forward copy of advertisement to Office of Fair Trading. Wait one month for possible objections.	Respond to complaint and await outcome Up to 28 days for approval.	Provide audited financial statements to the chief executive.		No expiry date.
Charitable Collections Act 2003 (ACT)	Apply for a licence to collect.		Up to five business days for approval.	Provide director-general with report about collections.		Re-apply after < five years.
Charitable Fundraising Act 1991 (NSW)	Apply for authority to fundraise.	Submit supporting materials.	Up to 80 days for approval.	Maintain records of income and expenditure.	Periodic reporting to minister.	Audit reporting. Re-apply after two years.
Northern Territory	No fundraising legislation.					
Collections for Charitable Purposes Act 1939 (SA)	Apply for Collections for Charitable Purpose Licence.	Submit supporting documentation.	Up to 28 days for approval.	Provide audited financial accounts and fundraising income to minister.	Apply to amend, vary or cancel licence.	Re-apply after 1 year.
Collections for Charities Act 2001 (TAS)	Apply to solicit for a charitable purpose.		Up to five business days for approval.			No expiry date (on most).
Fundraising Act 1998 (VIC)	Apply for registration to conduct a fundraising appeal.	Provide further information	Up to 28 business days for approval.	Retain records relating to income and expenditure.		Re-apply after three years.
Charitable Collections Act 1945 (WA)	Apply for a charity licence.	Submit supporting documentation (national police clearance)	Up to one month for approval.	Submit financial statements to department annually at EOFY.		Re-apply after three years (up to five).

Cash handling

A big issue with fundraising is the unavoidable cash handling that will occur with certain types of activities. It can open the organisation up to fraud, internal and external criticism and even possibly a qualified audit report.

When conducting activities which involve cash handling, it's good practice for an organisation to put some internal controls in place. This is not only to protect against cash going missing but also to protect the people involved. It also shows that the organisation has thought about the issue and supports good governance practices.

Some controls will include:

- having at least two people involved whenever cash is being collected, handled or counted;
- using pre-printed receipt books with sequential numbering, ensuring each donation has a unique receipt;
- using pre-printed sequentially numbered raffle tickets;
- developing a policy that sets out requirements for cash handling.

If the organisation is audited, the auditor may provide a qualified audit report because they are unable to audit the cash handling activity. Alternatively, they may include a statement that they were unable to audit that part of the business and the cash audit only commences from when cash has been banked.

Resources

- Justice Connect, *Guide to Fundraising* [per jurisdiction], [not-for-profit law information hub], <http://www.nfplaw.org.au/fundraising>, (accessed 12 July 2016).
- M McGregor-Lowndes, T Flack, G Poole, S Marsden, *Defining and Accounting for Fundraising Income and Expenses, 2014*, The Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology.

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