Guide to Fundraising (Tas)

Information for organisations undertaking fundraising activities in Tasmania

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What is fundraising?

What is fundraising?

Organisations that fundraise need to comply with laws about fundraising. These laws are different in each state and territory.

This fact sheet covers the laws relating to 'soliciting for a charitable purpose' in Tasmania only, including the *Collections for Charities Act 2001* (Tas) and the *Collections for Charities Regulations 2011* (Tas) (collectively, **Tasmania's fundraising law**).

When a person or organisations 'solicit for a charitable purpose' in Tasmania, they need to comply with requirements under Tasmania's fundraising law, including applying for a fundraising approval in many cases.

Soliciting for a charitable purpose

Soliciting for a charitable purpose can include:

- telephone appeals
- public auctions
- door knock appeals
- tin collections
- clothing bins
- public appeals
- online campaigns,

that collect money or goods or services to support clubs, associations, causes or people and a range of other activities that raise funds.

Fundraising activities in Tasmania are regulated by Consumer Building and Occupational Services (**CBOS**) and the Tasmanian Liquor and Gaming Commission.

Each Australian state and territory has its own rules relating to fundraising activities and there are differences across jurisdictions. Your organisation may need to comply with multiple fundraising laws (including registering as a fundraiser in multiple jurisdictions) if it intends to fundraise in more than one state or territory.

For further information, a link to the relevant state and territory government agencies is provided in the resources section at the end of this guide.

Approval to solicit for a charitable purpose

Approval to solicit for a charitable purpose

This section covers:

- do we need to obtain approval to undertake fundraising activities?
- how do we obtain approval to engage in fundraising activities?
- what are some other relevant permissions and laws to consider when engaging in fundraising activities?
- what are our obligations after obtaining approval and when engaging in regulated fundraising activities?

It's important to understand the fundraising approval process well in advance of your fundraising activities.

Getting approvals right from the start can prevent issues further down the track.

Is approval to solicit for a charitable purpose required for our fundraising activities?

Tasmania's fundraising law regulates, in particular, 'soliciting for charitable purposes'. This does not cover all fundraising activities.

Some activities may not be considered to be soliciting, and some fundraising activities are undertaken for a non-charitable purpose, such as raising money for a sport club or to help a small business get started (for example, through a Kickstarter campaign).

Some types of activities and organisations are also specifically exempt from fundraising approval (discussed below).

Are our fundraising activities 'soliciting' under Tasmania's fundraising law?



Soliciting

'Soliciting' means seeking a donation by a request communicated in person or by mail, fax, telephone, email, documents left on premises, through the internet or any appeals through the media (newspaper, radio or television).

Under Tasmania's fundraising law, certain activities are **not** considered 'soliciting' (even if they are targeted at the general public and promoted for a charitable purpose) and therefore do not require approval.

These include:

- requests for renewal of membership
- appeals by an organisation to its members
- appeals within premises that are used by a club
- appeals within premises that are used by a religious organisation
- an appeal to a Commonwealth, State or local authority

- appeals to adherents or any other person who has attended a religious service held by a religious organisation
- the sale of goods or services
- raffles
- · for a prescribed organisation or an organisation of a prescribed class, or
- activities subject to the Gaming Control Act 1993 (Tas)



Caution

If your organisation is not required to register as a fundraiser, but is holding a raffle or lottery or other gaming activity, these activities are regulated under the *Gaming Control Act 1993* (Tas). Your organisation may still need to comply with certain rules under this Act, including obtaining a permit to conduct such activities from the Tasmanian Department of Treasury and Finance. For more information on obligations for holding a raffle or lottery, see the Tasmanian Department of Treasury and Finance website.

Are we soliciting for a charitable purpose?



Charitable purpose

'Charitable purpose' includes:

- a benevolent, philanthropic or patriotic purpose, and
- any purpose for the protection of the environment or the welfare of animals



Note

The definition of charity at a federal level (which is the definition used to assess whether an organisation is eligible to register as a charity with the Australian Charities and Not-forprofits Commission), is a different definition. Read more about the federal definition on <u>our</u> <u>charity webpage</u>.

Under Tasmania's fundraising law, it is unclear whether the activity must be conducted solely for a charitable purpose, or whether approval is still required if it is being done only in part for this purpose. For example, you may be raising money for a number of causes, some of which are charitable and some of which are not.

If you or your organisation are in this position, you should seek approval, or seek advice from a lawyer about whether approval is required.

Does the person or organisation need an approval to undertake regulated fundraising activities?

If a person or organisation's fundraising activities meet the definition of soliciting for a charitable purpose and are not exempt activities, they may need to obtain approval to fundraise for a charitable purpose, **unless** they fall into an exempt category or the activities are not regulated.

An organisation that intends to fundraise for a charitable purpose will need to obtain approval to do so in Tasmania, unless the organisation falls into one of the following **exempt categories**:

an incorporated association based in Tasmania

- a corporation whose principal office is located in Tasmania, or
- an approved organisation or a member of a class of approved organisations (approval is given by the Governor)

Therefore, an organisation will need to apply for approval to fundraise for charitable purposes in Tasmania if:

- it is incorporated outside Tasmania (also see our note below regarding co-operatives)
- it is a company under the Corporations Act with a principal office located outside of Tasmania, and it is an unincorporated group or association in Tasmania.

Caution

The application of Tasmania's fundraising law is unclear regarding the following categories of organisations:

- incorporated groups that are incorporated as a structure other than an incorporated association or a company (such as co-operatives), and
- unincorporated groups and structures, (such as charitable trusts and public ancillary funds) where these groups or structures are based outside of Tasmania.

If your organisation falls into one of these categories and you wish to fundraise for a charitable purpose in Tasmania, we recommend that you seek legal advice about whether you can solicit for charitable purposes in Tasmania and what approvals are required.

Individuals will also need an approval to fundraise for charitable purposes unless they are doing so on behalf of an organisation that has an approval or is exempt from the requirement to gain an approval.

Any person wishing to solicit for a charitable purpose not 'on behalf' of a charitable organisation that is approved or exempt from approval, will need approval from CBOS to do so.

Failure to obtain the appropriate approval may leave an organisation or individual exposed to penalties of up to \$8,600 (at the time of publication).

How do we obtain approval to solicit for a charitable purpose?

If you need to obtain approval to solicit for a charitable purpose, you need to apply to CBOS for approval before you start fundraising.

There is no fee payable and there is a separate form for each class of applicant:

- Application to collect charitable donations organisations or corporations outside Tasmania (Form 1) for organisations and corporations incorporated outside of Tasmania
- Application to collect charitable donations Non-incorporated association or community group in Tasmania (Form 2) – for non-incorporated groups or associations located in Tasmania, and
- Application to collect charitable donations Individual applicant (Form 3) for individuals

Completed forms can be lodged with CBOS by post, fax or email. In certain circumstances, National Police Checks will need to be lodged with these forms.



Related resource

Application forms are available online on the CBOS website.

Note

As mentioned above, it's unclear whether incorporated groups outside of the traditional incorporated structure or unincorporated groups based outside of Tasmania, are contemplated by Tasmania's fundraising laws. As at October 2020, there are no publically available forms to complete for approval relating to these types of organisations.

What are some other relevant permissions and laws to consider when fundraising?

Extra permissions needed

Depending on the activity, you may require some other permissions to fundraise and you may need to approach other organisations to get these permissions in addition to approval from CBOS. For example, anyone soliciting donations on a public street must also apply for a permit from Tasmania Police.

- Door knock appeals you will require a permit from Tasmania Police to conduct this activity. You may
 also need permission or an additional permit from the local council of the area in which the door knock is
 to be conducted.
- Street collections you will require a separate permit from Tasmania Police to conduct this activity. You may also require permission or an additional permit from the local council of the area in which you are collecting.
- Large event taking place outdoors You should consider whether you need to contact other authorities such as the local council or the Tasmania Police to obtain permission and additional permits.
- Running lotteries or raffles in Tasmania there are laws specifically relating to gambling activities. For more information, see the <u>Tasmanian Liquor and Gaming Commission website</u>.

Other laws

- Australian Consumer Law (ACL) It's also important to consider the ACL when fundraising, particularly when fundraising involves the sale of goods or services (like merchandise or event tickets). The ACL prohibits conduct in:
 - trade or commerce that is misleading or deceptive, and
 - prevents fundraisers from making false or misleading representations in relation to the sale of goods and services as part of a fundraising campaign

For more information, see our guide to the laws of advertising and your community organisation.

- The <u>Telecommunications (Telemarketing and Research Calls) Industry Standard 2017</u>, published by the Australian Communications and Media Authority, which sets out rules relating to fundraising telemarketing, including information to be provided in calls, timing of calls, caller identification and termination of calls (for more information, see the full Standard at www.acma.gov.au).
- Privacy laws (state and federal), which set out requirements relevant to the collection, use and disclosure of 'personal information' in connection with fundraising activities (for more information, see our privacy guides and privacy compliance manual on our <u>privacy webpage</u>.
- Work, health and safety (WHS) laws, laws, which set out obligations around protecting the health, safety and welfare of employees and other persons who are at, or come into contact with a 'workplace' (for more information, see our WHS Guides).

There are also a range of self-regulatory codes that fundraisers can sign up to that provide further requirements as well as guidance on properly conducting fundraising activities.

More information on self-regulation is available on our fundraising webpage.

What are our obligations after obtaining approval to solicit for a charitable purpose?

General fundraising obligations

After you or your organisation has obtained approved from CBOS (or if you or your organisation is exempt from the requirement to obtain approval and is soliciting for a charitable purpose), you must meet certain obligations including:

- ensuring that fundraising campaigns are truthful, that no misrepresentations are made, and complying with requirements around adding licence, permit or registration numbers to advertising materials, packaging or communications
- ensuring that high standards of governance and risk management are applied to any campaign, including considering whether people involved in administering the campaign are suitably qualified and of proper character (you may like to consider screening volunteers and staff – see our <u>webpage on</u> <u>background checks</u>), and whether appropriate safety measures have been taken to protect staff and volunteers involved
- meeting specific requirements for involving children in fundraising and ensuring appropriate risk management for child protection
- ensuring all those authorised to collect on your behalf are aware of particular obligations applicable to the fundraising activities (as outlined below)
- providing people participating in an organisation's campaign with an identification badge including a unique identifying number, and keep records of collector identity and identifying numbers (see specific requirements below)
- properly accounting for funds received through fundraising activities, which may include issuing receipts (especially where donations are received in cash), and putting funds raised into a dedicated bank account
- ensuring appropriate safeguards are in place for managing cash donations in regards to collection, storage and emptying of collection tins, boxes or envelopes
- if applicable, meeting reporting requirements for funds raised within the required time (see ' financial and reporting obligations' below)
- · applying funds to the intended beneficiaries or purposes for which they were raised
- conducting the fundraising activities in accordance with the conditions placed on any approval that has been received, and
- complying with directions given by any regulator (for example, providing certain information or documentation relating to the fundraising activities), if and when a written notice is given

What are our obligations while soliciting for a charitable purpose?

Even if you (or your organisation) are exempt from the requirement to obtain approval from CBOS, if you are running a regulating fundraising appeal you still have certain obligations when undertaking the fundraising activities, which include:

- street collections must only take place between 9am and 8pm (between 1 November and 31 January), 9am and 7pm (between 1 February and 30 April), 9am and 5pm (1 May and 31 August), 9am and 7pm (between 1 September and 31 October) on the days allocated under the street collections permit
- collectors must wear identification badges with their name, name of the approved fundraiser and location its principle office and purpose of the donation
- in the case of telephone fundraising, calls must only be made between 9am and 8pm and the caller must properly state their name, the name of the approved fundraiser and the location of its principal office
- children taking part in collections must be adequately supervised (children under 12 years of age must be under immediate control of an adult, children aged between 12 and 15 must be under the supervision of an adult)
- not soliciting, in writing or through any electronic media or advertisement, unless the material used in the fundraising properly states the purpose for seeking the donation, the name of the approved fundraiser, the address of the principal office and a contact telephone number for the approved fundraiser
- not permitting an agent, contractor, officer or employee of that organisation to receive any benefit which is clearly excessive if that benefit is taken at all from funds raised through fundraising, and

 not permitting an agent, contractor, officer or employee to engage in any activity which contravenes Tasmania's fundraising laws

Failure to comply with these obligations may expose an organisation or individual to penalties of up to \$17,200 or 6 months imprisonment.

Financial and reporting obligations

Currently, there are no standard financial and reporting requirements for organisations fundraising in Tasmania. However, CBOS may compel an organisation to report in certain circumstances and attach certain reporting conditions to an approval of a fundraiser.

For example, the regulator has indicated that:

- for organisations based outside of Tasmania, there are no annual reporting requirements, but the conditions attached to the fundraising approval may require that they provide details of all donations received, and
- for unincorporated associations in Tasmania and individuals, the regulator will require a financial statement to be lodged annually detailing donations received



Related resources

There are several situations where community organisations may be required to report to government, in addition to in relation to its fundraising obligations, such as annual reporting and to meet notification requirements (for example, change of directors or officers).

Depending on its structure, your organisation may need to report to:

- the ACNC (for charity annual reporting)
- the Australian Tax Office (in relation to tax), or
- the Australian Securities and Investments Commission (for organisations that are structured as Companies Limited by Guarantee)

For more information about various reporting obligations, go to our webpage on reporting.

Fundraising and tax

Fundraising and tax

Some not-for-profit organisations may be entitled to certain tax concessions in relation to their fundraising.

In many cases, a not-for-profit organisation must be registered with the ACNC in order to be classified as a charitable organisation that is eligible to apply for tax concessions. The ATO determines whether registered charitable organisations are entitled to access tax concessions. The ACNC link in the resources section at the end of this guide provides further information on registering as a charity.

What are some of the tax concessions available?

GST

A not-for-profit organisation is required to register for goods and services tax (**GST**) when its annual turnover is \$150,000 or more, but can choose to voluntarily register if its turnover is less. If your organisation is registered for GST, or is required to be registered, it may be required to pay GST on any goods or services sold (supplied) as part of its fundraising events. These amounts must then be remitted to the ATO.

An organisation registered for GST can choose to treat all sales made in connection with fundraising events as 'input taxed'. This means that its sales will not be subject to GST. However, the choice to treat the sales as 'input taxed' must be made before any sales take place. Additionally, the organisation will not be able to claim 'input tax credits' for the costs incurred in making the sales (ie. the GST component that was paid by the organisation in initially acquiring the supplies).

For more information about GST concessions that may be available to your organisation, see our <u>tax</u> <u>webpage</u>. Further information is also available on the ATO website.

We recommend your organisation talk to a specialist about GST.

Income Tax

An organisation operating as a charity must be endorsed by the ATO to be exempt from income tax. Unless it is exempt from income tax, an organisation may be required to pay income tax on money received as part of its fundraising activities. An organisation exempt from paying income tax will still have income tax obligations with respect to any employees (income tax is often paid to the ATO through the Pay As You Go system).

For more information about income tax generally and whether your organisation is exempt, see our <u>tax</u> <u>webpage</u>.

Tax deductible donations

Your organisation can only offer 'tax deductible donations' (for example, claiming to the public that donations over \$2 are tax deductible') if it has been endorsed by the ATO as a deductible gift recipient (**DGR**) or if it has been listed by name in tax legislation as a DGR.

Unless your organisation has received DGR status, members of the public who donate to your fundraising activity are not entitled to claim a tax deduction on their donations to you and you cannot provide a tax deductible receipt.

For more information about DGR status and tax deductible donations see the <u>ATO website</u> or visit our <u>DGR</u> <u>webpage</u>.

Note

It is important that your organisation can identify whether a donor or contributor might be entitled to a tax deduction so that you can accurately inform a potential donor and appropriate receipts can be provided.

Interstate and online fundraising

Interstate and online fundraising

This section covers:

- interstate fundraising, and
- fundraising online

Interstate fundraising

The information in this guide covers the laws on fundraising in Tasmania only.

Each Australian state and territory has its own rules on charitable collections and fundraising activities, including different registration systems, exemptions and general requirements.

If your fundraising will be conducted in more than one state or territory, or aimed at residents from another state or territory, then you will need to ensure that you are complying with the requirements in each of the relevant states or territories. This includes applying for a fundraising authority where necessary or ensuring you have a 'presence', (an address, within the state or territory).

Related Not-for-profit Law resource

Our 'Guide to fundraising laws in Australia' on our <u>fundraising webpage</u> provides information to help organisations and people undertaking fundraising activities understand the requirements of the different regimes and assess whether they require additional permits in other states or territories.

The table below sets out the relevant departments in each state or territory and an overview of their general requirements for registration, approval or licencing with respect to fundraising activities. There are fundraising guides available for each jurisdiction on our <u>fundraising webpage</u>.



Note

The Northern Territory does not have laws on general fundraising activities.

State or territory	Body	Definition of 'fundraising'	Requirements for registration
New South Wales	NSW Fair Trading	Soliciting or receiving money, property or some other benefit with the representation that it will go in whole or part to a charitable purpose.	Any person or organisation that fundraises in NSW must apply for an 'authority to fundraise' licence or enter an arrangement with a holder of a licence to fundraise on that holder's behalf, unless exempt.
Victoria	Consumer Affairs Victoria (CAV)	Soliciting or receiving money or some other benefit with the representation that it is not solely for the profit or commercial benefit	A person or organisation that fundraises in Victoria must register as a fundraiser by submitting an application to

		of that person or any other person.	CAV, unless exempt. If registered with the ACNC, a charity will only need to notify CAV of its intention to fundraise in Victoria in order to be considered a registered fundraiser, (ie. it will not need to apply separately to CAV).
	Consumer and Business Services (CBS)	Collecting or attempting to collect money or property, wholly or partly for a 'charitable purpose'.	Any person or organisation that fundraises in SA must apply for a licence or obtain authority from a holder of a licence to fundraise on that holder's behalf, unless exempt. ACNC- registered charities that have notified CBS of their intention to fundraise in SA are automatically licenced.
	QLD Office of Fair Trading	Any appeals for support for a charitable and/or community purpose.	Any person or organisation that fundraises in QLD must be registered as a charity (under QLD fundraising law), have a sanction to fundraise for a charitable or community purpose or an authority to fundraise on behalf of a registered charity, unless exempt.
	Consumer, Building and Occupational Services	Any appeal for goods, services or donations for a charitable purpose.	Any person or organisation based outside Tasmania that fundraises in Tasmania, or an unincorporated Tasmanian body, must apply for approval to fundraise from the Commissioner for Corporate Affairs.
Australia			
	Department of Mines, Industry Regulation and Safety, Consumer Protection Division	Collecting money or goods from the public for a charitable purpose.	Any organisation that fundraises in WA must obtain a licence or authority to fundraise on behalf of a holder of an existing licence, unless exempt. Individuals and unincorporated groups must also obtain an authority to fundraise on behalf of an existing licence holder.

Caution

If your organisation is using raffles, lotteries or other gaming activities to fundraise, there may be other laws and obligations that apply in each state or territory. We recommend you seek advice as to each state or territory's particular laws as early in the planning process as possible, as the rules and approvals required can often be different in each jurisdiction and may affect how you decide to run your fundraising activity.



Related Not-for-profit Law resource

Not-for-profit Law supports a new framework for a nationally consistent approach to charitable fundraising regulation. For more information about our position, go to our <u>Law</u> and Policy Reform page.

Online fundraising

Organisations often use or obtain assistance from online fundraising websites to raise money for their cause. These websites may help your organisation in fundraising, from guiding you on setting up a fundraising website to acting as a portal to securely receive donation funds on your behalf.

Your organisation might use the internet or electronic communications to undertake fundraising activities such as:

- through a website or charity portal that may direct donations from shopping or other third party websites
- by updating or sending out fundraising appeals by email or SMS
- · by adding podcasts, wikis and blogs to your fundraising activities, or
- by using social networking to fundraise, such as Facebook, Twitter or YouTube

New technologies create new challenges for fundraising regulation and may require careful consideration and assessment of the risks and benefits before use. For example:

- nuisance and spam there is potential for nuisance or spam to be created when using the internet or electronic communications for fundraising activities and they are overused. For example, it is against the law to send mass emails to people if they have not agreed to it under the Spam Act 2003 (Cth)
- privacy and data protection issues to enable the sending of mass communications to potential donors (for example, SMS, emails) and the collection, storage and use of people's information may subject your organisation to compliance with privacy laws where such information is considered 'personal information' (for example, name, address, telephone numbers, email addresses)
- **reputational issues and fraud** the public may find it difficult to verify the identity of fundraisers operating on the internet. Others may claim to be affiliated with or collect funds on your organisation's behalf fraudulently
- compliance with state and territory laws and laws in other jurisdictions when donations are
 received online, the person donating may be from another state or territory (or even outside Australia).
 By creating your own online donations service you may need to be aware of the laws of other states and
 territories. The laws governing this area can be quite unclear.

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Caution

Where you fundraise on the internet and receive funds from persons in different states and territories in Australia, you may need to comply with the fundraising laws in those jurisdictions, including potentially applying for multiple fundraising permits or registrations.

A strategy to manage this tricky issue may be to choose a limited number of states and territories for your campaign, making clear on your campaign materials which states and territories the campaign relates to, and requiring donors to confirm they are in those states and territories before making a donation. That way, you only need to comply with fundraising regulation in the states and territories listed.

💽 🛛 Tips

Tips – if your organisation fundraises online

If your organisation does fundraise online we recommend you take the following precautions:

- seek advice on each state and territory's requirements on online fundraising to see whether your organisation requires a licence or authority
- use a safe and trusted third party website through which to organise your donations
- ensure your online fundraising website has clear information on how the funds raised will be used
- ensure your online fundraising website is secure to protect personal information such as credit card details, and



Tips - if your organisation uses third party online fundraising sites to promote or conduct your fundraising activities

It's worth checking:

- if those third party sites charge any fees, as some charge a percentage of any donations
- what payment systems are in place for your donors and security
- what payment options are available and commissions payable for credit card facilities
- how, and how quickly, you receive the money from the third party, and
- reviews of such online fundraising sites to see whether they have a good track history or whether donors have complained about them



Related resource

For guidelines on how to fundraise online ethically see the <u>Fundraising Institute of</u> <u>Australia's Standards</u> on 'Electronic Fundraising' and 'Social Media Fundraising'. 19

Resources

Related Not-for-profit Law resources

The <u>Not-for-profit Law website</u> contains many fact sheets on different topics. The following topics contain further relevant information:

Running the organisation

This page contains resources to assist those running not-for-profit organisations to understand and comply with legal requirements.

Fundraising and Events

This page contains resources on the main legal issues when seeking funds or holding events, including in other states and territories.

Communications and Advertising

This section offers information on advertising and promotions and social media, such as Facebook and Twitter.

Registering as a charity

This page provides information on how to register as a charity and what is involved.

Tax

This page includes information about accessing tax concessions, including Deductible Gift Recipient endorsement.

Legislation

- Collections for Charities Act 2001 (Tas)
- Collections for Charities Regulations 2011 (Tas)
- Gaming Control Act 1993 (Tas)
- Police Offences Act 1935 (Tas)
- Australian Charities and Not-for-profits Commission Act 2012 (Cth)

Other related resources

Tasmania - Consumer, Building and Occupational Services (CBOS)

- Consumer, Building and Occupational Services- Charities
- Consumer, Building and Occupational Services Publications and Forms

Australian Charities and Not-for-profits Commission (ACNC)

- Australian Charities and Not-for-profits Commission Charity Tax Concessions
- Australian Charities and Not-for-profits Commission Registration

Australian Charities and Not-for-profits Commission – Ongoing Obligations to the <u>ACNC</u>

Provides an overview of all present, and future obligations of registered charities and not-for-profits

Australian Taxation Office (ATO)

Australian Taxation Office – Gifts and Fundraising

Fundraising bodies of other States and Territories

- New South Wales, New South Wales Office of Fair Trading Charitable Fundraising
- Consumer Affairs Victoria What is a Fundraiser?
- South Australian Office of Liquor and Gambling Commissioner Fundraising
- Queensland, Queensland Government Charities and Fundraising
- Western Australia Department of Commerce, Charitable Collections Section Charities
- Australian Capital Territory Office of Regulatory Services Charitable Collections

Other useful links

Fundraising Institute of Australia - FIA Code

