



Victoria Government Gazette

No. S 248 Thursday 16 July 2009
By Authority of Victorian Government Printer

FUNDRAISING REGISTRATION GUIDELINES

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Because this publication avoids the use of legal language, information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation.

The information contained in this publication is of a general nature only and should not be regarded as a substitute for a reference to the legislation or professional advice.

Published by Consumer Affairs Victoria, 121 Exhibition Street, Melbourne, Victoria 3000.

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Purpose of this guideline

This guideline provides information on registering and operating as a fundraiser in Victoria. It outlines elements of the Victorian **Fundraising Act 1998**, and in particular, how the Director of Consumer Affairs Victoria ('the Director') administers the legislation with respect to registering fundraisers.

Each state and territory in Australia has its own fundraising legislation and guidelines, and a fundraiser conducting a nationwide appeal must ensure that it meets the requirements in every state or territory in which it conducts fundraising.

Depending on the type of fundraising to be conducted you may also need to contact the relevant local council or police. For example, highway/street collections, doorknock appeals and donor acquisition in a public area.

This guideline provides practical advice for fundraisers who operate in Victoria on:

- who must register as a fundraiser
- how to go about registering or renewing registration, and
- the requirements for registration, including the Director's policy with respect to the imposition of conditions on fundraising registration.

1 About the Fundraising Act**1.1 Objectives of the Fundraising Act**

The objectives of regulating fundraising are to:

- promote transparency and public confidence in the fundraising industry and not-for-profit organisations that conduct fundraising
- protect members of the public who contribute money or benefits in response to fundraising activities, and
- protect the public interest in relation to fundraising.

These objectives are designed to ensure that donors are confident in giving, and recipients are better off as a result of donor generosity.

1.2 What does the Act cover?

The key provisions in the main Parts of the **Fundraising Act 1998** (the Act) are:

- Part 1 which defines fundraising (and other related terms), including setting out those activities that are not fundraising.
- Part 2 applies to anyone conducting or participating in fundraising – covering false statements while seeking donations, the requirement for collectors to wear identification badges and the handling and security of receptacles used to collect donations in public places. It deals with the disclosure requirements for commercial fundraisers and telemarketers.
- Part 3 outlines the requirements to register (or renew registration) as a fundraiser and those types of fundraisers who are exempt from these requirements. It outlines the information

required on an application for registration (or renewal) including the identification of beneficiaries. It empowers the Director to refuse to register a person as a fundraiser or decide to de-register a fundraiser, place conditions on registrations and maintain a public register of persons or bodies who conduct fundraising. It provides for decisions on registrations to be reviewed in the Victorian Civil and Administrative Tribunal (VCAT). Finally, it provides for the continuing obligations on fundraisers including record and accounts keeping, and specific obligations for commercial fundraisers.

- Part 4 covers the powers of the courts where the Act has been breached.
- Part 5 sets out action that can be taken by the Minister for Consumer Affairs or the Director to enforce the Act.

The **Fundraising Act 1998** is also a Consumer Act under Schedule 1 of the **Fair Trading Act 1999**. This means the enforcement powers under Part 11 of the **Fair Trading Act 1999** may also be applied in response to a breach of the **Fundraising Act 1998**.

1.3 What is considered fundraising?

Section 5 of the Act states that fundraising occurs when a person seeks or receives a benefit (monetary or otherwise) by representing that it is not being sought solely for profit or commercial benefit. This captures the idea that there is an element of giving involved.

The Act captures fundraising activities that are directed to the public. Such activities are not limited to not-for-profit organisations.

The types of activities that are fundraising include:

- doorknock appeals
- telemarketing
- traffic intersection/highway collections
- donations to clothing bins
- sale of goods at opportunity shops
- appeals run by commercial fundraisers
- public appeals to support a club, association or an environmental or community cause
- public appeals to support a cause or person or group of persons
- the selling of goods where portions of the sale price are donated to a charitable organisation or cause.

1.4 What is not considered fundraising?

Certain activities are not fundraising for the purposes of the Act. According to section 5(3), the Act does not cover soliciting or receiving money or other benefits for the following:

- raffles, lotteries or other gaming activities that are authorised or permitted under the **Gambling Regulation Act 2003** (Vic.)
- a patriotic fund within the meaning of the **Veterans Act 2005** (Vic.)
- becoming a member of an organisation (eg joining or membership fee)
- fundraising that takes place within an organisation and is targeted at past and present members and their relatives (rather than the general public), even if the fundraising is for a cause other than the organisation itself
- raising money (or other benefits) within the workplace for a purpose directly connected with an employee or the immediate family of an employee
- grants from a government body or corporation, partnership or trust that is permitted to donate money or benefits by its corporate documents
- in lieu of flowers being sent to a funeral or to a deceased person's family.

2 The requirement to register as a fundraiser

2.1 Who must register as a fundraiser?

Anyone wishing to conduct fundraising activities in Victoria is required to register with the Director at least 28 days before commencing the fundraising activity.

The obligation to register extends to commercial fundraisers. A commercial fundraiser is defined in section 3 of the Act as a person who is retained on a commercial basis by another person to administer all or part of the fundraising activities of the other person irrespective of whether they are an agent of the person. This obligation also extends to commercial fundraisers undertaking fundraising activities for an organisation that is exempt from the registration obligation. See section 2.2 of these guidelines for a list of organisations that are exempt from registration requirements.

Note: Section 6 of the Act states that a person is not considered to be conducting fundraising if they are an 'agent', and that commercial fundraisers are not agents under the Act.

2.2 Who does not have to register as a fundraiser?

Some fundraisers are exempt from the obligation to register. These are set out at section 16 and 16A of the Act, and are listed below:

- government schools, school councils or registered non-government schools and some kindergartens
- universities, TAFE colleges or other tertiary educational institutions
- public and denominational hospitals, public health services, state funded residential care services or other registered health agencies funded by the state government
- religious bodies with the authority to marry people
- registered political parties
- trade unions registered in Victoria
- federally registered associations of employees, associations of employers or enterprise associations
- any person or organisation that receives less than \$10,000 gross in a financial year from fundraising, is not paid for conducting the fundraising, and uses only unpaid volunteers
- licensed children's services that receive funding for a pre-school program from the Department of Education and Early Childhood Development
- the Anti-Cancer Council.

In addition, if your organisation undertakes only the activities outlined at section 1.4 of these guidelines – ie, activities that are not considered fundraising – you do not have to register as a fundraiser.

Box 1

Examples of fundraising where registration is required

- Goods or services being promoted or labelled for sale to the public on the basis that a certain percentage or dollar amount from the sales of the product will be given to a nominated beneficiary or charity. eg 'For every product sold, \$1.00 will be donated to the Anti Cancer Council'.
- People with collection tins soliciting donations on roads/highways (subject to Victoria Police permit). They are considered to be fundraising and require identification badges and secured, numbered and labelled collection tins.
- Television or radio stations that promote a competition, talent quest or reality TV programs, where the public is invited to vote for a particular contestant, with a percentage of the funds raised by the telephone billing process being donated to a nominated beneficiary or charity.

Examples of fundraising where registration is NOT required

- Radio stations that invite their listeners to send money or cheques to support bush fire relief or other causes, where the money/cheque is forwarded directly to the relevant relief organisation or nominated bank by the listeners. The station is acting as an agent not a fundraiser in these circumstances.
- Manufacturers or retailers of goods that promote themselves by stating that they are or will be supporting a particular charity. This is not considered to be fundraising.
- Organisations or clubs that decide to raise funds in order to send their members on an overseas tour. This type of financing is considered to be solely for the benefit of the organisation or club and is not considered to be fundraising.

2.3 Unregistered fundraising

It is an offence to conduct fundraising activities unless you are either registered or exempt. If you are not sure whether your organisation fits into one of the exempt categories listed in this section, you should contact Consumer Affairs Victoria on 1300 55 81 81 or seek legal advice.

3 The registration process**3.1 How do I apply for registration?**

Applications for fundraiser registration are available from Consumer Affairs Victoria:

- by printing from the Consumer Affairs Victoria website at www.consumer.vic.gov.au
- by visiting the Victorian Consumer and Business Centre, 113 Exhibition Street, Melbourne.

3.2 When must I register?

Anyone wishing to conduct fundraising activities in Victoria is required to register with the Director at least 28 days before commencing the fundraising activity.

If a fundraiser wishes to register less than 28 days before they intend to start fundraising, then they must set out the special circumstances that require urgent registration. An oversight by the fundraiser or an application on the basis of convenience will not be considered special circumstances warranting an urgent registration.

3.3 What is the registration period?

Under section 20 of the Act, registration remains current for a period of three years from the date of registration, unless the Director approves a longer registration period. The Director may approve a registration period of a maximum of five years.

3.3.1 Longer than three-year registration period

A longer registration period may assist in reducing the regulatory burden on fundraisers, particularly those who operate in more than one jurisdiction and are required to periodically renew registrations in each jurisdiction.

The approval of longer than three year registrations is at the discretion of the Director, and is considered on a case-by-case basis. Longer than three year registrations will only be approved where the Director has a high degree of confidence that the fundraising is, and will continue to be, in the public interest.

A key factor in considering longer term registrations is the record of compliance of the fundraiser with the requirements of the fundraising laws. To ensure a balance of public protection, the types of considerations the Director will take into account in considering applications for registration in excess of three years include:

- whether the fundraiser is operating in more than one jurisdiction
- the structure of the organisation (ie, the governance arrangements)
- the stability of the organisation, for example how well established and well known the fundraiser is

- whether the fundraiser is engaged in or proposing long term projects
- whether the fundraiser has clearly defined beneficiaries, and the proportion of funds raised that will go to the beneficiary over the registration period is reasonably predictable.

Fundraisers seeking longer registration periods should request a longer period when submitting their registration application (or registration renewal) form and set out their case against the points listed above, including projections of the proportion of funds they expect to distribute to the beneficiary over the course of their registration.

3.4 What information is required for registration?

The application for fundraiser registration requires the following information:

- The name of the fundraiser. Consumer Affairs Victoria will only register a legal entity as a fundraiser (ie an individual, an incorporated association, or a body corporate).
- The name and address of the public contact person for your organisation. You should identify the most appropriate person for members of the public and Consumer Affairs Victoria to contact about your fundraising activities.
- The name and address of the Appeal Manager(s) for your appeal. This person(s) will have managerial and/or financial control of your appeal.
- All fundraising proceeds must be deposited into an account used solely for that purpose, so you must supply the bank account details for accounts used to deposit proceeds.
- The type of proposed fundraising activity, for example, direct marketing, telemarketing, sponsored activities, merchandise sales, highway/roadside collections.
- The estimated proportion of gross appeal proceeds (ie before costs are taken out) expected to be available to be distributed to the identified beneficiaries. This can be expressed as a percentage averaged over all appeals and/or activities, during the period of registration. See section 3.4.1 below for an explanation of how to do this.
- The method proposed for the distribution for the proceeds of the fundraising. For example, distribution of money, goods or services.
- The individual beneficiary or specific group (sharing similar characteristics) that you are intending to raise money for. See section 3.4.2 below for more information on identifying beneficiaries.

If the money is to be distributed overseas, you should also include with your application a letter of verification from the local government, Embassy or Consulate in which the money will be distributed, the Australian Embassy in the country where the money is to be distributed or a letter from a recognised aid provider in the area (eg Red Cross, World Vision).

Where a commercial fundraiser or promoter is engaged to undertake the fundraising activities Consumer Affairs Victoria may seek a copy of the contract or written agreement.

3.4.1 Estimating the proportion of appeal proceeds to go to the beneficiary

Fundraisers are required to indicate the estimated proportion of gross appeal proceeds (ie before costs are taken out) expected to be available to be distributed to the identified beneficiaries. This can be expressed as a percentage averaged over all appeals and/or activities, during the period of registration. The following provides an example of how to estimate the proportion of appeal proceeds to go to the beneficiary over the registration period.

Box 2 – Example: estimating proportion of appeal proceeds over the registration period

A fundraiser has decided to operate a fundraising drive to raise money for its identified beneficiaries.

Year 1: In Year 1, the fundraiser will employ telemarketers to contact potential donors and determine whether they are interested in donating money. The fundraiser builds a database of potential donors. The fundraiser expects to incur costs of \$5,000 in Year 1, but does not expect to raise any money.

Year 2: In Year 2, the fundraiser will conduct a mail-out to identified donors at a cost of \$2,000. The fundraiser expects to receive donations of \$10,000 in Year 2. The fundraiser intends to apply \$7,000 to the payment of costs (from Year 1 and 2) and distribute the remaining \$3,000 to beneficiaries.

Year 3: In Year 3, the fundraiser will conduct two further mail outs to existing and potential donors and at a cost of \$4,000. In the third year, the fundraiser expects to receive donations of \$15,000. The fundraiser intends to apply \$4,000 to the payment of costs, and distribute the remaining \$11,000 to beneficiaries.

In this case, the gross proceeds estimated over the registration period are \$25,000. From this amount, \$11,000 will be absorbed by costs and the fundraiser intends that the remaining \$14,000 will be distributed to the beneficiary. The average gross appeal proceeds, expressed as a percentage, estimated to be distributed over the registration period is 56%.

Note: The formula used to arrive at the average is:

$$\frac{\text{Estimate of amount to be distributed to beneficiaries over registration period}}{\text{Estimate of funds raised over registration period}} \times 100$$

Note: Applicants for a longer than three years registration must calculate an estimate averaged over the length of the registration period. It is up to the fundraiser to determine, and explain, their means of calculating this, according to their mode of operation.

3.4.2 Identifying the beneficiary of fundraising

Section 5 of the **Fundraising Act 1998** states that fundraising involves a solicitation of money or a benefit on behalf of a person(s) or cause; and a representation that this solicitation is not solely for the profit or commercial benefit of the person(s) or cause. This captures the element of giving.

So that the public may have confidence in giving to fundraisers, it is important that the end beneficiary be very clearly identified. The Act requires that the beneficiary be clearly defined on the application for registration.

Section 18(g) of the Act sets out how the fundraiser must identify the beneficiary for the purposes of fundraiser registration – see the box below for more detail:

Box 3 – Requirements for identifying the beneficiary

Section 18(2)(g) specifies either –

- (i) the **name of every person** on whose behalf the person intends to conduct a fundraising appeal, or
- (ii) the **common features shared by the class of person** for whose benefit the person intends to conduct a fundraising appeal, or
- (iii) if any intended appeal is not to be conducted for the immediate direct benefit of one or more people, a **description of the thing or cause** for which the appeal is to be conducted.

The first level of detail (i) is preferred. The level of detail described at (ii) is acceptable when (i) is unobtainable; and the level of detail described at (iii) is acceptable where (ii) is unobtainable.

Example – generally identifying ‘orphaned and disadvantaged children’ as a ‘class’ of beneficiaries or a ‘cause’ is not sufficient. Rather, identifying a specific orphanage which cares for children, or specific programs for disadvantaged children in a particular locality or region would be more acceptable.

Where fundraisers can identify individual beneficiaries, the Act requires that the fundraiser provide a letter of consent from the beneficiary, along with the application for registration.

Where individual beneficiaries cannot be identified, the fundraiser may attach an additional page outlining the class of beneficiaries (ie the common characteristics that the group shares).

Consumer Affairs Victoria may ask for further information about the beneficiaries.

It is possible to name oneself as the beneficiary (though not as the sole beneficiary) however any applications of this nature will be strictly scrutinised to determine that the fundraising is in the public interest.

Commercial fundraisers that raise funds on behalf of other fundraisers (ie, the ‘principal fundraiser’), should name as a beneficiary each principal fundraiser they have an agreement with, and state the percentage of funds raised that will be distributed to each principal fundraiser.

3.5 How do I apply for renewal of my fundraising registration

Consumer Affairs Victoria sends out a renewal form approximately six weeks before the expiry of your registration. The form will be sent to the Victorian public address of the fundraiser. It is essential that you notify Consumer Affairs Victoria of any changes to this address. It is the responsibility of the fundraiser to renew its registration before the expiration of its current registration.

Applications for Fundraiser Renewal forms are available from Consumer Affairs Victoria:

- by printing from the Consumer Affairs Victoria website at www.consumer.vic.gov.au
- by visiting the Victorian Consumer & Business Centre, 113 Exhibition Street, Melbourne.

3.6 What is the registration process?

Following lodgement of the application for fundraiser registration, Consumer Affairs Victoria will write to the applicant within 21 days confirming the registration and outlining the registration date and individual registration number.

Should further information be required to complete the application for registration, Consumer Affairs Victoria will request this information by letter within the 21 day period.

Any incomplete applications (including the requisite supporting information) will be returned to the applicant and will not be processed until a completed application is received.

3.6.1 Conditions

Under the Act, the Director may impose conditions upon fundraiser registration at any time. A fundraiser will be informed in writing of the proposed conditions and will be given 14 days to make a submission in relation to the proposed conditions. Part 5 of these guidelines sets out more information on the policy in relation to imposition of conditions on registration.

3.7 What registration information is publicly available on the CAV website?

The Director is obliged under section 70A of the Act to maintain a register of all fundraisers registered in Victoria. This information is made available to the public on the Consumer Affairs Victoria website (www.consumer.vic.gov.au). Importantly, the register will provide details of the beneficiaries of the fundraising, the estimated proportion of the fundraising to be distributed to the beneficiaries over the period of registration and any conditions imposed on the registration.

The following indicates the range of details about a fundraiser that may appear on the Consumer Affairs Victoria website:

- name of the fundraiser
- registration number and date
- address and phone number of the fundraiser
- the name and contact details of the approved contact
- where applicable, the details of any commercial fundraisers working with the fundraiser
- the nominated beneficiary or beneficiaries
- details of the total amount of funds that the fundraiser has distributed to beneficiaries or the fundraiser's estimate of that amount
- details of the percentage of funds raised that the fundraiser has or will pass on to beneficiaries from current or past fundraising activities
- any conditions imposed on the registration of the fundraiser.

3.8 Obligation to notify of changes in circumstances

Once registered, fundraisers must only conduct fundraising appeals as detailed in their application. If any of the following changes of circumstances occur, the fundraiser must complete and lodge the 'Fundraising Change of Details' form prior to commencing further fundraising:

- a change to the name, address or contact person for the fundraiser
- a change to the appeal manager or key staff
- the fundraiser employs the services of a commercial fundraiser
- the addition of new beneficiaries
- anyone involved in the financial functions or management of the fundraising or associates has been charged with, found guilty or convicted of a disqualifying offence, become insolvent, under administration, or externally administered corporation.

Where the Director imposes conditions on a fundraiser, and a change of circumstance occurs that affects the ability of the fundraiser to comply with those conditions, the fundraiser must notify the Director within a reasonable time. See Part 5 for more information on conditions.

If the fundraiser has a longer than three years registration period, there are additional changes of circumstances that must be notified, as a condition of registration. These are set out at Section 5.5 – Additional conditions for longer than three years registrations.

The 'Fundraiser Change of Details' form and information about ongoing obligations under the Act and regulations are available:

- by printing from the Consumer Affairs Victoria website at www.consumer.vic.gov.au
- by visiting the Victorian Consumer and Business Centre 113 Exhibition Street Melbourne.

4 Registration may be refused in certain cases

4.1 Grounds for refusal of registration

Under section 19A of the Act, the Director must refuse registration when:

- the applicant or appeal manager is an insolvent under administration or an externally administered body corporate, is a represented person under the **Guardianship and Administration Act 1986** or has been found guilty of a disqualifying offence within the 10 years prior to applying
- within the 10 years immediately prior to the application, any person named in the application was an appeal manager for a fundraising appeal conducted by a person found guilty of a disqualifying offence within that period
- the applicant or appeal manager has been found guilty of an offence under the Fundraising Act during the 10 years prior to applying
- the Director has reasonable grounds to suspect that the person(s) conducting the fundraising will not comply with the Act; that the fundraising will not be conducted in good faith for the stated purpose; or would be contrary to the public interest.

Under section 19B of the Act, the Director may refuse registration when:

- the application for registration contains false or misleading information, significant omissions or incomplete or vague information
- the Director is of the opinion that the person named as the appeal manager is not a fit and proper person to be associated with a fundraising appeal
- the application is submitted less than 28 days before the fundraising is intended to commence
- any associate of the applicant is an insolvent under administration or an externally administered body corporate, has been found guilty of a disqualifying offence in the 10 years prior to the application, is not a fit and proper person, or was an appeal manager for someone found guilty of a disqualifying offence in the 10 years prior to the application.

4.1.1 Disqualifying offence

Section 3 of the Act defines a disqualifying offence as:

- any offence involving fraud, dishonesty, violence or drug trafficking that is punishable by imprisonment for three months or more for an individual or by a fine of \$10,000 or more for a corporation
- an offence under the **Fundraising Act 1998**.

4.1.2 Fit and proper person

The term ‘fit and proper’ in relation to office holders or directors conducting fundraising can include consideration of appropriate experience, skills, character, reputation, knowledge, conduct and demonstrated compliance.

4.1.3 Public interest

‘Public interest’ is not specifically defined in the Act but has been interpreted by the courts in a broad range of contexts. It must be assessed according to the particular circumstances. One example in which fundraising is deemed to be contrary to the public interest is provided for in Section 6B of the Act – that is, where the expenses payable in respect of undertaking fundraising in a particular period exceed a reasonable proportion of the total amount raised in that period (in other words, the amount spent on the cost of fundraising vs. the amount distributed to the beneficiaries).

The concept of ‘public interest’ with respect to fundraising requires that fundraisers operate according to community attitudes and expectations and that beneficiaries receive the optimum benefit from public donations. As such, the Act gives the Director the ability to exclude persons who pose potential risks to the public interest, where there are reasonable grounds to suspect that fundraising activity is contrary to the public interest.

5 Imposition of registration conditions on fundraisers

5.1 Registration conditions may be imposed

To promote public confidence in fundraising and protect the public interest, the Director can impose conditions upon the registration of fundraisers on a case-by-case basis at the time of registration, or at any time during the period of registration where there are grounds for concern. See section 5.3 below.

The Director may apply conditions to promote transparency where fundraisers disclose at the time of registration that less than 50% of proceeds raised will be distributed to beneficiaries. See section 5.4 below.

The fundraiser will be informed in writing of any proposed conditions and given 14 days to make a submission commenting on the proposed conditions if they so choose.

Conditions made at the time of registration may also be varied or removed by the Director during the period of registration.

Where a condition or conditions are applied to a fundraiser, these will appear on the public register of fundraisers. The Director's powers to impose conditions on registration are set out at sections 19C, 23 and 23A of the Act. A failure to comply with an imposed condition incurs a heavy penalty under section 25 of the **Fundraising Act 1998**.

5.2 General Condition

It is a condition of registration and renewal that a fundraiser provide, on an annual basis:

- an estimate of the gross proceeds expected to be raised from all fundraising activities to be conducted in the next 12 months
- an estimate of the percentage of these gross proceeds that will be distributed to the beneficiaries in the next 12 months
- the gross proceeds actually raised from all fundraising activities during the preceding 12 months
- the identity of all beneficiaries and the amounts each received
- confirmation and update of details on the Public Register (section 3.7).

Note that there is no strict rule to say that the estimated percentage of funds to be distributed to beneficiaries must exactly match what is actually distributed, but it is expected that your projection should be reasonably accurate, and as such demonstrate that you have provided a clear and honest guide for the donating public.

5.3 Case-by-case and special conditions

The Director may make a decision to impose registration conditions on a case-by-case basis, taking into account the public interest and all the circumstances.

An example of a condition that may be imposed in special circumstances is a requirement to distribute all, or a certain proportion of, the proceeds of fundraising by a specified time.

The Director may also decide to grant registration that might otherwise be refused by applying a special condition. For example, an employee of a fundraiser who was an insolvent could be registered as the fundraiser's contact person with the following condition:

'That [the employee], an insolvent under administration, does not carry out any of the responsibilities of an appeal manager and does not have access to either appeal proceeds or any of the [fundraiser's] bank accounts.'

5.4 Transparency conditions

To ensure transparency in fundraising, especially when only a small proportion of fundraising is intended to be distributed to beneficiaries, a public disclosure condition may be imposed at the time of registration. As a general rule, the disclosure condition will apply to those fundraisers who indicate that less than 50% of funds will be distributed to the beneficiaries (see 5.4.1 below).

In cases where the proportion of fundraising to be distributed is estimated at less than 35%, the Director will also seek information to determine whether the fundraising is in the public interest (see 5.4.2 below).

It should be noted that many factors can influence the proportion of fundraising distributed to beneficiaries. The Director will consider these factors, and does not apply a strict rule regarding distribution but emphasises two issues:

- first, it is important that donors can be made aware of this proportion and
- second, that it is generally desirable that as much of the donor's dollar as possible goes to the intended beneficiaries.

5.4.1 Public disclosure condition

Where the fundraiser estimates that less than 50% of fundraising proceeds will be distributed to beneficiaries, registration will be subject to the public disclosure condition, which will apply to all fundraising activities it conducts.

Taking the example of a fundraiser who estimates that 40% of funds raised will go to the nominated beneficiary, the terms of the disclosure condition are set out below:

- (a) identify prominently in all solicitations, either written or oral (or written and oral), to prospective donors that during the period of registration:

the fundraiser estimates that 40% of funds donated to the fundraiser will be distributed to beneficiaries

and

- (b) label clearly all products offered for sale with a statement that during the period of registration:

the fundraiser estimates that 40% of the total proceeds from the purchase price will be distributed to beneficiaries.

The percentage of proceeds can be averaged over all activities during the registration period. See section 3.4.1 for an example of averaging fundraising proceeds over the registration period.

The public disclosure condition is designed to ensure the public clearly understand that there is a limit on the proportion of their donation that will ultimately be given to the beneficiary. It is not designed to discourage fundraisers from distributing more than the estimated percentage, should they find they have an opportunity to do so. The expectation is that the maximum amount possible will be distributed to the beneficiary. It should be remembered that the actual amount that was distributed by the fundraiser during the registration period will be recorded on the public register of Victorian fundraisers.

5.4.2 'Show cause'

Where a fundraiser estimates that less than 35% of fundraising proceeds will be distributed to the beneficiaries the Director will request the fundraiser to 'show cause' why they should be registered. The registration will not proceed until the Director is satisfied that the proposed fundraising activity is in the public interest. See section 4.1.3 for a discussion of the meaning of 'public interest'.

Where a 'show cause' notice is issued, the following is an indication of the types of matters the Director may take into account. While this is not an exhaustive list, it provides some guidance on the types of issues a fundraiser may wish to address in a response to a 'show cause' notice:

- the nature and type of the appeal (for example, a fundraising dinner will have higher fundraising administration costs than a door-knock appeal)
- the reasonableness of the administration costs of the appeal/s
- the size of the appeal (for example, 35% of a large appeal may provide significant benefit to the beneficiaries)
- the maturity of the appeal (for example, a fundraising organisation in an establishment phase may have higher administration costs initially).

5.5 Additional conditions for longer than three years registration

All fundraisers are required to notify the Director of changes in circumstances, as outlined in section 3.8 of this guideline – Obligation to notify of changes in circumstances.

In addition, those fundraisers who have a registration period of longer than three years must notify the Director if any of the other details provided on the registration application change, ie:

- a change to the percentage of funds to be distributed to the beneficiary application
- a change to the bank account used to deposit
- fundraising proceeds (provide the new account details)
- a change to the type of fundraising activity or method of distributing the proceeds.

6 Appeal of a registration decision

6.1 Grounds for appeal

A fundraiser may apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of decisions under the Act made by the Director, or his delegates, including:

- refusal to register a person or organisation as a fundraiser
- imposition of conditions, or any particular condition, on the conduct of a fundraising appeal
- seeking further information from a person or organisation
- refusal to renew a person or organisation's registration as a fundraiser
- deregistration of a person or organisation as a fundraiser.

The fundraiser must apply to VCAT for the review of the decision within 28 days of being given written notice of the Director's decision. Advice on how to lodge an application with VCAT is available from the VCAT website at www.vcat.vic.gov.au

Consumer Affairs Victoria Victorian Consumer and Business Centre 113 Exhibition Street Melbourne 3000 Telephone 1300 55 81 81 (local call charge) Email consumer@justice.vic.gov.au Website www.consumer.vic.gov.au Regional offices are located in Ballarat, Bendigo, Berwick, Box Hill, Geelong, Morwell, Mildura, Wangaratta and Warrnambool.
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