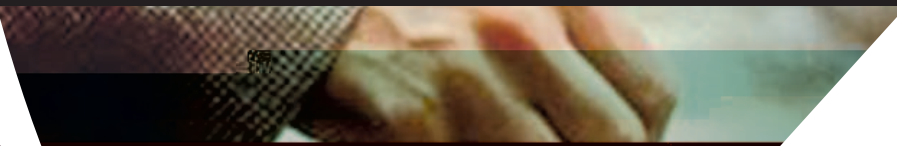


Review of the

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Consumer



“ The Review ”

The Minister for Consumer Affairs, John Lenders MP, announced a review of the *Fundraising Appeals Act 1998* on 26 February 2004. Mr Luke Donnellan, Member for Narre Warren North, is convening the review.

To determine the appropriateness of the current regulatory framework, the review will consider the operation of the *Fundraising Appeals Act 1998* (the Act), including the following terms of reference:

1. Opportunities for national harmonisation.
2. The objectives and coverage of the Act and whether the term “fundraising appeal” requires clarification.
3. The effectiveness of the registration process and whether it achieves the required balance between protecting the public and minimising the administrative burden on fundraising organisations.
4. The accountability provisions within the Act and whether they should be made more robust to ensure greater transparency.
5. The appropriateness of specifying a proportion of proceeds that should be passed on to the nominated beneficiary, or specifying what is a reasonable amount to be retained by an organisation for their operational costs.
6. The appropriateness of the nature and extent of current exemptions from the operation of the Act.

7. The consistency of the Act's reporting requirements with reporting requirements contained in other Victorian legislation.

8. The potential role of a code of practice for fundraisers as a means of promoting best practice within the industry.

This discussion paper sets out a range of issues identified as a result of both preliminary consultations and work undertaken within Government. Submissions are invited from the fundraising industry and from the community to help develop a system of regulation that meets community needs.

The fundraising industry and interested parties have until **30 September 2004** to make written submissions in response to the discussion paper. Submissions and further consultation will be used to develop an Interim Report. Given the importance of this review, stakeholder consultation will also follow the report's release. The Final report is due to be provided to the Minister before June 2005.

Submissions should be forwarded to:

Review of the Fundraising Appeals Act 1998

Consumer Affairs Victoria

GPO Box 123A

MELBOURNE VIC 3001

or

by email to fundraisingsubmissions@justice.vic.gov.au

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Section 1
Background
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Fundraising as a particular type of economic activity has a number of unique characteristics. In making a donation or buying a good the donor/purchaser is mostly unable to readily determine whether the monies provided is given to the beneficiary. Consequently there is scope or opportunity for misleading or even fraudulent practices. It is not easy for consumers to differentiate the honest from the fraudulent fundraising activity. To reduce this risk, Government addresses this market failure by imposing particular conditions on the industry. For example, an appeal collector must wear a badge to demonstrate legitimacy. These requirements are necessary because of the nature of fundraising "goods". However, while some intervention by Government is essential, the nature of the involvement in the industry is a key issue for the review.

At another level, the argument is made that Government has a role to support fundraising. It is an industry that achieves great social good and provides social welfare. Increasing transparency is a way of increasing community confidence in the industry and the level of funds raised. If the community is provided with information about, for example, the percentage of funds raised going to an identified beneficiary, confidence in the fundraiser is likely to be increased and giving or participation in fundraising activities is likely to increase.

However, if increased fundraising activity is associated with increased transparency the incentives should exist for such information to be provided by the fundraisers themselves.

Alternatively, fundraisers have an incentive to provide only a certain type of information. The community is likely to be more confident about the authenticity of the available information when some level of Government oversight occurs. The extent and level of this oversight is an issue for this review.

While it is Government's role to provide a supervisory framework

- requiring the maintenance of financial and other records to which the public can have access to promote public accountability for the funds raised
- maintaining a register of fundraisers to which the public can have access, and
- stipulating requirements about how collections are made (for example, in relation to the wearing of identification badges and the use of secure collection containers).

1.6 Outline and administration of the Act

The Act is administered by Consumer Affairs Victoria (CAV).

It is an offence to conduct a fundraising appeal unless registered or exempt. The term "fundraising appeal" is defined in Section 5 of the Act. Basically, a fundraising appeal occurs when a person seeks or receives a benefit (monetary or otherwise) by making a representation that the benefit is not being sought just for profit or commercial benefit. This captures the idea that there is an element of giving involved. Some activities are excluded:

- raffles, lotteries and other activities permitted under the *Gambling Regulation Act 2003*
- asking a person to become a member of an organisation
- asking for bequests
- memorial gifts
- giving to a patriotic fund
- fundraising in the workplace for the benefit of an employee or his or her close family
- sponsorships from government or commercial organisations, partnerships or trusts which are permitted to donate to charity, or
- a fundraising event that is internal to an organisation and targeted at past and present members and their families.

Activities that are covered by the term "fundraising appeal" 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 person,

or

- the selling of goods where portions of the sale price are donated to a charitable organisation or cause.

The Director of CAV is required to maintain a public register that lists all registered fundraisers. Annual renewal of registration is required for on-going fundraising activity. There are approximately 700 registered fundraisers (about 80 per cent are either incorporated associations or companies). The registration requirements apply to all fundraisers, whether not for profit or commercial. Commercial fundraisers charge for their services and can be retained by an organisation to undertake various aspects of fundraising. They may for example administer an entire appeal, or a particular event, or an aspect of an appeal, such as the telemarketing component of a larger appeal.

Some organisations are exempt from the need to register by either the Act itself or by Ministerial order. Exempt organisations are:

- a state school, council or registered school
- universities, TAFE colleges and other tertiary educational institutions
- hospitals and other registered funded agency under the *Health Services Act 1998*
- religious bodies with authority to conduct marriages
- registered political parties, registered trade unions and registered workplace relations or industrial relations organisations
- kindergartens and other licensed children's services that receive funding for a pre-school program
- the Anti Cancer Council, and
- not for profit organisations that receive less than \$10,000 gross in a financial year from fundraising and use only unpaid volunteers.

All organisations, exempt or registered, are required to comply with some provisions of the Act, such as those about the wearing of identification badges by collectors and the use of sealed containers for collection purposes.

“ Section 2 Issues ”

2

2.1 Meaning of fundraising appeal

A fundraising appeal occurs (section 5):

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.

From this broad meaning of “fundraising appeal” various activities are excluded such as soliciting a person to devise or bequeath any property.

The Act does not restrict the meaning of the term to appeals undertaken for charitable or community purposes. While most other jurisdictions define what is meant by “charity” or “charitable purpose” and sometimes what is meant by “community purpose”, this approach has not been adopted in Victoria. The review will consider whether the term “fundraising appeal” requires clarification.

Issue No 1

Is the term “fundraising appeal” the appropriate descriptor?

Should we instead talk about fundraising?

2.2 Registration/Exemption scheme

2.2.1 Registration and the register

Prior to the introduction of the registration scheme, an organisation wishing to fundraise was required to notify CAV each time it wanted to conduct an appeal. Sometimes, this meant notifying CAV multiple times each year. This was a cumbersome process seen by many small volunteer organisations as an unreasonable administrative burden.

The register has been a major change from previous practices. As it has been in operation for two years it is now time to assess its overall effectiveness.

Introduction of the registration scheme means that fundraisers are only required to renew their registration annually. Some updating between renewals could be required, for example, by adding a new beneficiary or appeal manager.

Introduction of the registration scheme also increased oversight of fundraisers and provided new enforcement measures. For example

- at the time of registration, fundraisers are required to advise CAV of the identity of their appeal managers

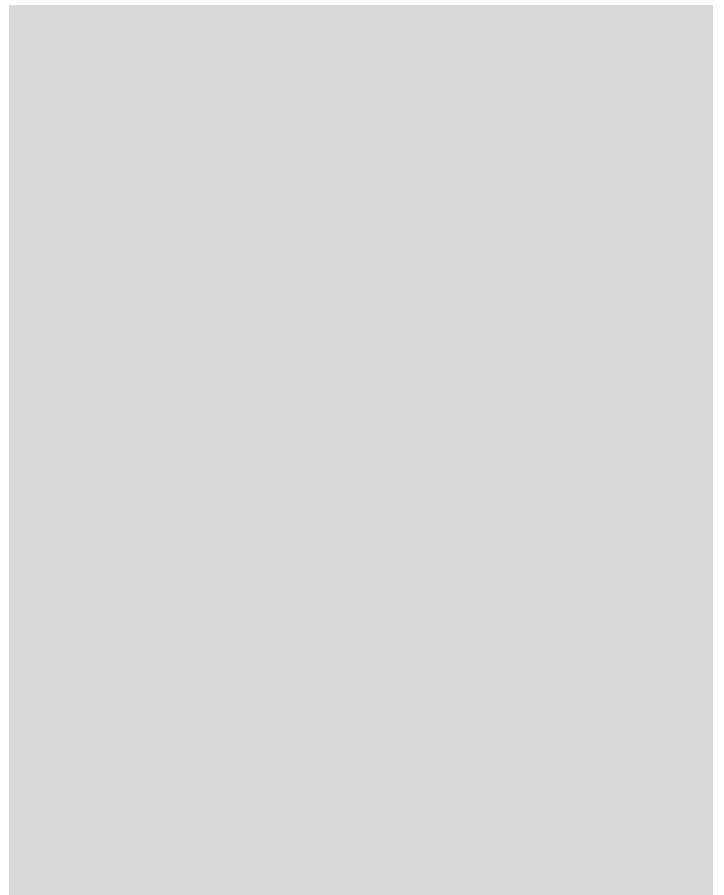
- consent to a police check for the fundraiser, associates of the fundraiser, or the appeal manager may be required
- registration can be refused because the fundraiser, appeal manager or associate is insolvent or is guilty of a disqualifying offence. Registration can also be refused in the public interest
- a condition can be attached to registration requiring the fundraiser to ensure that a specified percentage of appeal proceeds is distributed to the beneficiaries of the appeal (guidelines have been published to explain how the Director would determine whether administrative costs are excessive, and whether a condition should be imposed), and
- the Director of CAV can deregister a fundraiser if the Court has ordered that an appeal of the fundraiser be stopped or if the Director is satisfied that the conduct of an appeal should be stopped in the public interest.

The register is available to the public for inspection. In viewing the register, a consumer can currently find

- the name and contact details of each registered fundraiser, and
- the name of the beneficiaries, or the appeals, that are being conducted by each registered fundraiser.

CAV provides information on its website about fundraising, including information about

- the need to be registered
- how to go about making an application for



Issue No 6

Should commercial fundraisers always be required to be registered, regardless of whether or not they are acting as an agent?

Issue No 7

Should fundraisers be required to pay a registration fee and an annual renewal fee to contribute to the costs of administering the Act?

Issue No 8

Is adequate advice available from Consumer Affairs Victoria about who needs to register and how to go about applying?

2.2.2 Exemptions

Some organisations are exempt from the need to be registered, either by the Act or by Ministerial Order.

Exempt organisations are listed on page 4.

All exempt organisations must comply with some requirements of the Act such as those relating to the wearing of identification badges by collectors and the use of properly sealed collection containers.

An organisation exempt from registration by the Act itself is not required to comply with the account and record keeping requirements of the Act relating to

- banking
- the keeping of income and expenditure records for appeals

and the public disclosure of those records.

- the public disclosure of those records

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and raised less than \$10,000 (gross) in financial year from the public. This exemption is given to reduce the administrative burden on small charities.

While they are exempt from the need to register, they must comply with the requirements of the Act relating to the wearing of identification badges by collectors and the use of properly sealed collection containers.

A first step to reducing this disparity may be to provide one **form** of exemption only. Currently, an exemption from registration given by **the Act itself** cannot be changed or removed without legislative amendment, regardless of how the exempt organisation undertakes its fundraising or accounts for funds raised. This creates inflexibility.

Exemptions could be subject to specific and transparent conditions. For example

- exemption from registration could be subject to a sunset clause and some type of review could take place, every five years for example, to determine whether the reasons for exemption are still applicable, or
- all exemptions could be given on the condition that the exempt organisation meets certain minimum criteria relating to their fundraising activities.

Exempt organisations could be required to be subject to a mandatory code of practice as a condition of exemption. If a breach of this code occurs an organisation could lose its exempt status. The mandatory code of practice could give particular emphasis to transparency requirements so that there would be little difference between information provided by the exempt organisation (on their own website etc) and that which is provided by non-exempt organisations on the register.

It might also be appropriate to lift the level of exemptions for not for profit organisations that use unpaid volunteers from \$10,000 to \$50,000 and to consider exempting those organisations from some of the reporting requirements. The sum of \$10,000 may now be too low. Alternatively, an amount such as \$50,000 is likely to involve more than just a local community and include some significant individual donations/contributions. The mismanagement of \$50,000 would be a significant loss to the community.

Issue No 10

What requirements, if any, should apply to all fundraisers (exempt and non-exempt) in the interests of protecting the donating public, transparency and public confidence in fundraising?

Issue No 11

Should more oversight be provided within the Act for exempt organisations? If so, how would this best be achieved? Some options are to

- review exemptions on a five year basis
- make all exemptions conditional, including requiring exempt organisations to adopt a mandatory code of practice as a condition for obtaining exempt status
- withdraw exempt status for breaches of the code of practices or other regulatory requirements
- all of the above.

Issue No 12

Should the exemption from registration for not for profit organisations that use only unpaid volunteers be changed? These changes could:

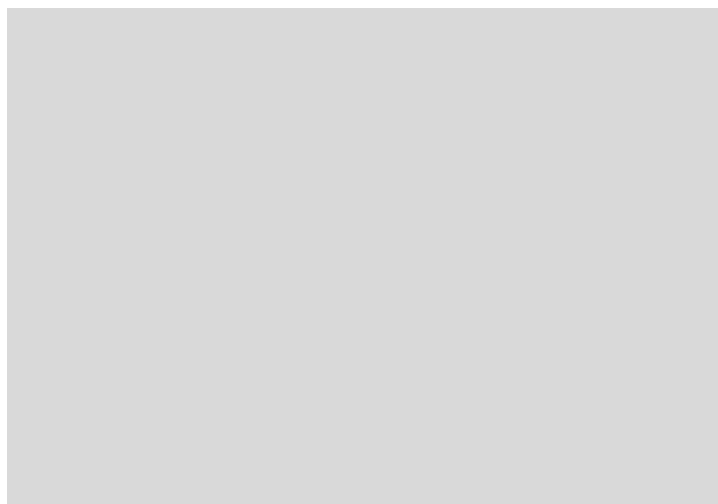
- apply to those organisations that raise less than \$50,000 in a financial year instead of \$10,000, and
- include exemption from some or all of the account and record keeping requirements of Part 3 of the Act.

Issue No 9

If exemptions from registration are permitted, what principles should be applied to determine which organisations should be exempt?

Many fundraising organisations that are required to be registered under the Act also need to report to the Victorian Government under other legislation, either because of the nature of the organisation itself or because of the other activities it undertakes.

For example, incorporated associations are required to report under the



The registration process assists the Government's scrutiny and monitoring of organisations conducting fundraising appeals. The account and record keeping requirements applying to registered fundraisers (and to some exempt fundraisers) allow members of the public to access information, including a summary of the financial accounts indicating the amount of funds raised and how they are used. To access these records, a person must make a written request to the fundraiser and pay a fee (currently \$20.00).

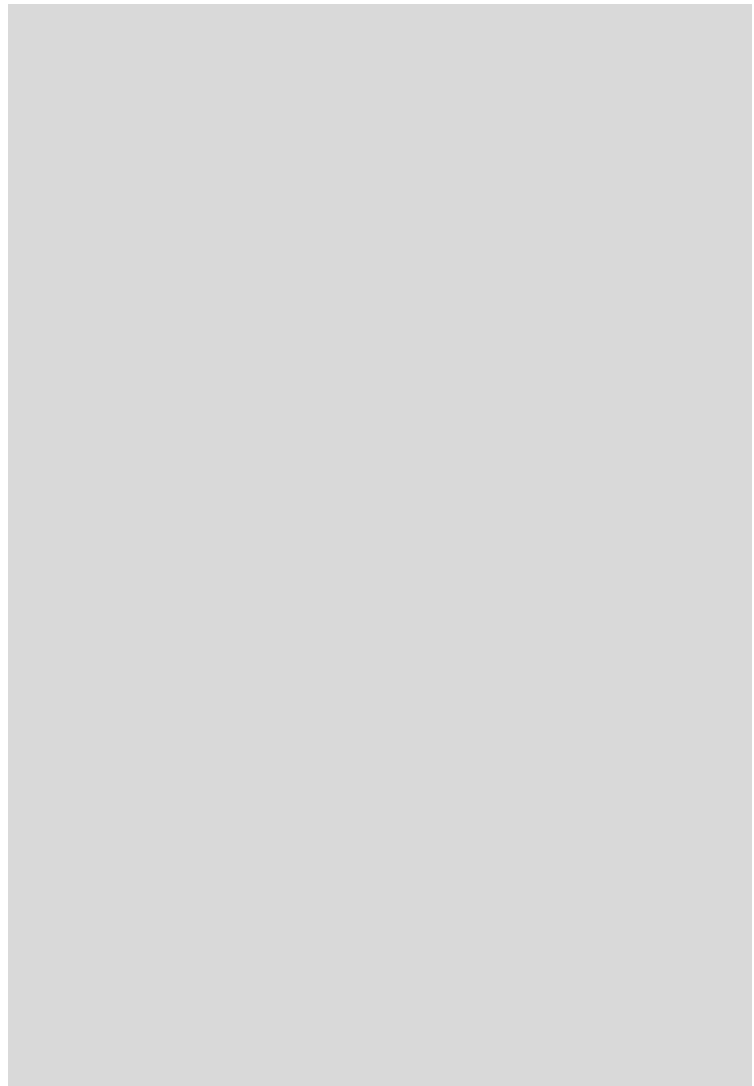
While the public inspection requirements are important to transparency and to the protection of public confidence in fundraising, alternatives that provide easier access to this information may be preferable. Despite the current registration regime and the Act's reporting requirements, public confidence in fundraising can easily be eroded. Adverse publicity of the actions of even a single fundraiser can have ramifications for the industry as a whole.

The review will consider whether any additional measures are required to further enhance transparency and improve public confidence in fundraising. It may be, for example, that greater transparency could be promoted by placing much more information (about the amount of funds raised, distributed and absorbed in administrative costs) on the register. Members of the public and the community have a right to be able to make an assessment of the efficiency and effectiveness of different fundraisers based upon sound data that is very accessible.

Transparency may also be improved by placing disclosure requirements on the sale of goods that are offered for sale on the basis of a representation that some of the proceeds will be given to a charity. Such sales are one of the ways that the commercialisation of fundraising is being increased.

The review will also consider the account and record keeping requirements of the Act. Under the Act, separate records must be kept for each appeal, or fundraising activity, that a fundraiser conducts. This means that when a fundraiser conducts a range of appeals for one beneficiary, records for each appeal have to be kept, including a separate record that provides a true and fair view of the income and expenditure of the appeal. The current record keeping requirements have been interpreted in a variety of ways. Clarification may be required. In addition, transparency may be improved by imposing different account and record keeping requirements.

The Act and the Fundraising Appeals Regulations 1999 (the Regulations) contain requirements about the labelling of clothing bins that are used by fundraisers in the conduct of a fundraising appeal. As a result of the previous review of the Act and the Regulations, the labelling requirements were amended to better inform the donating public about the result of the donations they were making to clothing bins. For example, the requirements for clothing bin labels were amended to require the label to include information about the total amount of funds raised by a fundraiser from its clothing bins and the percentage of those funds that was paid to another person or organisation for the work of collecting, processing and selling the donated clothing. In addition, use of the term "charity collection bin" was restricted to organisations that were endorsed as an income tax exempt charity by the Australian



2.5 Code of practice

Issue No 19

Should different account and record keeping requirements apply depending on:

- the amount raised by a fundraiser; and
- whether or not they are a commercial fundraiser or a not for profit organisation?

Issue No 20

What information could be provided to the public to help demonstrate the relative efficiency and effectiveness of a fundraising organisation?

Issue No 21

Should the Act specify a percentage of funds raised in the course of fundraising appeals undertaken for a beneficiary that must always be distributed to the named beneficiary?

Issue No 22

Have the additional requirements for the labelling of clothing collection bins:

- helped the donating public to make more informed decisions about the donation of clothing?
- increased the administrative burden placed on fundraisers?

Issue No 23

Should disclosure requirements including disclosure of a percentage amount apply to the sale of items that are offered for sale on the basis of a representation that some of the sale proceeds will be given to a beneficiary?

Issue No 24

Should the disclosure requirements outlined in Issue No 23 apply to other fundraising activities?

It is Government's role to determine (and this is usually done after extensive consultation) whether industry specific legislation is required to set basic standards of operation. The Act was enacted to protect the donating public from fraudulent and misleading fundraising practices. The Act establishes minimum standards that must be complied with by all industry participants and sets other standards that must be complied with by fundraisers unless exempt.

Industry participants can also have a direct role to play in determining standards of practice for an industry. Where an industry is already regulated by legislation that sets minimum standards, a code of practice can be developed to encourage participants to achieve "best practice" in their operation within the industry. Development of a code enables industry participants to directly influence how participants behave, above the minimum standards set by legislation. This in turn can influence how the industry as a whole is perceived by members of the public.

By establishing best practice for fundraisers, a code could be used by industry to promote greater transparency and public confidence in fundraising.

For a code of practice to be an effective means of overseeing industry participants and promoting best practice, it is important that the code has

- mechanisms to effectively monitor compliance
- sanctions for non compliance, and
- an appropriate complaints mechanism.

Issue No 25

Would the development of a code of practice by industry participants be an effective means of improving public confidence in fundraising?

Issue No 26

Given the diverse nature of fundraising organisations, could a code of practice have broad application across the industry as a whole and how could compliance with the code be monitored?

Issue No 27

What role should Consumer Affairs Victoria play in the development of a code of practice?

- The percentage of proceeds that can be allocated to administrative costs
- Commercial fundraising practices, and
- Minimum standards for collection containers.

As a consequence, any organisation wishing to fundraise in more than one state is faced with a plethora of statutory requirements affecting national fundraising. This is problematic for large organisations with a national presence, but may also impinge on the activities of local groups that may wish to link with interstate organisations with similar objectives to undertake a national campaign.

National harmonisation has been successfully implemented in other consumer related areas such as consumer credit and the licensing of travel agents. Promotion of national harmonisation can assist in the reduction of the administrative burden placed on organisations that operate across jurisdictions and can help to ensure that adequate and consistent consumer protection is provided Australia wide.

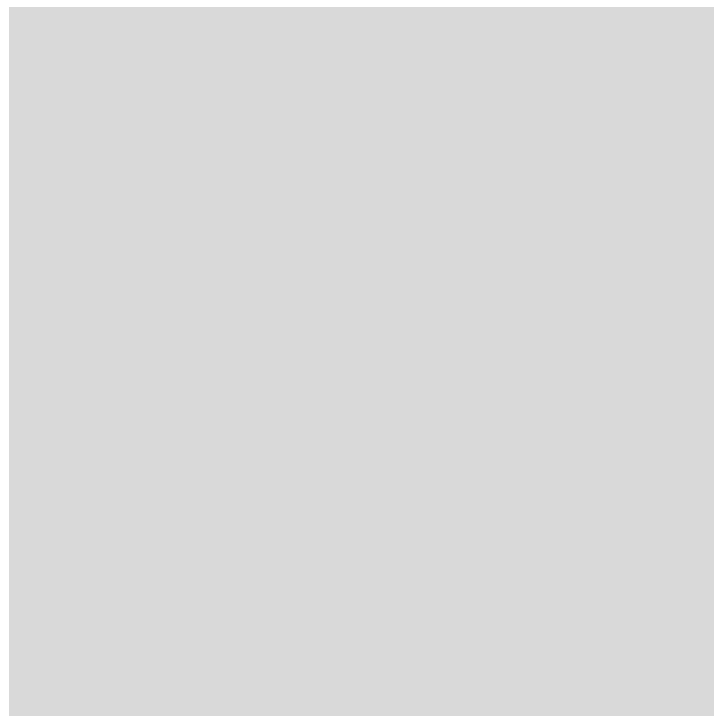
National harmonisation is a term which refers to the practice of adopting a consistent approach to the legislative requirements that apply in an area of activity across all Australian states and territories.

All the states and the ACT have legislation regulating fundraising. However, there is considerable variation between the jurisdictions both in terms of the range of fundraising activities covered and the regulatory methodology that is adopted.

Each jurisdiction has adopted a different view about what constitutes a fundraising appeal, what should be regulated and how this should be done. Further, some jurisdictions focus on fundraising for strictly charitable purposes whilst others regulate fundraising for more general purposes. In some states more than one piece of legislation must be complied with, depending upon the type of fundraising activities an organisation wants to undertake.

Each jurisdiction adopts its own approach to various aspects of the regulation of fundraising, including:

- Record keeping and reporting
- Registration/licensing requirements and procedures
- Exemptions
- Auditing requirements
- Public access to information about fundraisers and their activities



Issue No 31

Should the Victorian Government explore options for mutual recognition as a step towards national harmonisation?

Issue No 32

Would adherence to a national code of conduct be a sufficient condition for recognition of an interstate fundraiser in Victoria?

Issue No 33

Should registration on another state's register be sufficient condition for recognition in Victoria?

Issue No 34

Would the development of national accounting standards for the not for profit sector aid the development of a national approach to the regulation of fundraising?

2.7 Other issues

A number of issues have been identified in this paper as areas where changes may be required to increase the effectiveness of the Fundraising Appeals Act. However, there might be other matters that should be considered. Comments are invited on any other areas of the legislation that you believe are not working effectively.

Issue No 35

Are there any other aspects of the fundraising legislation that should be changed?

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