

Tasmania  
Not-for-profit Law  
Guide

# Guide to Fundraising

Information for Tasmanian community  
organisations

January 2016

# Contents

What is fundraising?	3
Fundraising generally	4
Approval to solicit for a charitable purpose	5
1. Is approval to solicit for a charitable purpose required for our fundraising activities?	6
1.1 Are our fundraising activities 'soliciting' under Tasmania's fundraising law?	6
1.2 Are we soliciting for a charitable purpose?	7
1.3 Does the person or organisation need an approval to undertake regulated fundraising activities?	8
1.4 How do we obtain approval to solicit for a charitable purpose?	9
1.5 What are some other relevant permissions and laws to consider when fundraising?	9
1.6 What are our obligations after obtaining approval to solicit for a charitable purpose?	10
Obligations after registration	10
What are our obligations when 'fundraising'?	10
Fundraising & tax	11
What are some of the tax concessions available?	12
GST	12
Income Tax	12
Tax deductible donations	12
Interstate fundraising	15
Online fundraising	16
Resources	19
Related Not-for-profit Law Resources	19
Legislation	19
Extra Resources	19



# What is fundraising?

# Fundraising generally

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

This fact sheet covers the laws on fundraising in Tasmania only, including the *Collections for Charities Act 2001* (Tas) and the *Collections for Charities Regulations 2001* (Tas) (**Tasmania's fundraising law**).

When organisations undertake fundraising activities in Tasmania, they need to comply with requirements for fundraisers, including applying for a fundraising approval in many cases.

Fundraising requirements are regulated in Tasmania by Consumer Affairs and Fair Trading (**CAFT**).

When we talk about fundraising activities, we mean activities like telephone appeals, public auctions, doorknock appeals, tin collections, clothing bins, public appeals, online campaigns etc, that collect money or goods and services to support clubs, associations, causes or people.

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 jurisdiction's fundraising laws (including registering as a fundraiser in multiple jurisdictions) if it intends to undertake fundraising activities in more than one State or Territory. A link to the relevant State and Territory government agency is provided in the Resources section below for you to obtain further information.



**Approval to solicit for a  
charitable purpose**



# Obtaining 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? and
  - what are our obligations after obtaining approval to engage in 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.

## 1. 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 (eg. through a Kickstarter campaign).

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

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

"Soliciting" means seeking a donation by a request made 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
- 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. Under the *Collections for Charities Regulations 2001* (Tas), soliciting by a religious organisation (by way of an appeal to its adherents or any other person who has attended a religious service held by that organisation) does not require approval, and
- activities subject to the *Gaming Control Act 1993* (Tas).

### CAUTION

Though there is no need for your organisation to register as a fundraiser if it is holding a raffle or lottery or other gaming activity, these activities are regulated under the *Gambling Regulation 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 Raffles and Minor Gaming fact sheet at [www.nfplaw.org.au/fundraising](http://www.nfplaw.org.au/fundraising) or the Tasmanian Department of Treasury and Finance website.



## 1.2 Are we soliciting for a 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-for Profit Commission), is different to ‘charitable purpose’ under Tasmania’s fundraising law. Read more about the federal definition on the Information Hub Charities page at [www.nfplaw.org.au/charity](http://www.nfplaw.org.au/charity).



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.

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

If an organisation's fundraising activities meet the definition of soliciting for a charitable purpose and are not exempt activities, organisations and individuals 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 of 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 a 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 individual 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 CAFT to do so.

Failure to obtain the appropriate approval may leave an organisation or individual exposed to penalties of up to \$7,700 (we note that prosecution for failing to obtain approval is uncommon in Tasmania).



## 1.4 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 CAFT for approval before you start fundraising. There is no fee payable and there is a separate form for each class of applicant:

- **Form 1** – for organisations and corporations incorporated outside of Tasmania
- **Form 2** – for unincorporated groups or associations located in Tasmania, and
- **Form 3** – for individuals.

### FURTHER READING

Application forms are available online on the [CAFT website](#).

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

### NOTE

As mentioned above, it is 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 January 2016, there are no publically available forms to complete for approval, specially relating to these types of organisations.



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

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

Fundraising activities which require additional permissions include:

- **Door knock appeals** - you will require a 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 the door knock is to be conducted.
- **Street collections** - you will require a 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 Police to obtain permission and additional permits.
- **Running lotteries and/or raffles** – in Tasmania there are laws specifically relating to gambling activities. For more information, see the [Tasmanian Gaming Commission](#) website.
- **Australian Consumer Law** - It's also important to consider the Australian Consumer Law when fundraising, particularly when fundraising involves the sale of goods or services (like merchandise or event tickets). For more information, see the Australian Consumer Law page on the Information Hub at [www.nfplaw.org.au/comms](http://www.nfplaw.org.au/comms).

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

### Obligations after registration

After you or your organisation has been approved by the CAFT, you must meet certain obligations including:

- conducting the fundraising appeal in accordance with the conditions of the approval granted by CAFT, and
- complying with directions given by the Commissioner of CAFT, the Governor or a Magistrate (for example, ceasing to solicit when a prohibition is in place).

### What are our obligations when ‘fundraising’?

Even if you (or your organisation) are exempt from registration, if you are running a fundraising appeal which is not an exempt activity you must meet certain general obligations, which include:

- ensuring that any money raised is given to or used for the charitable purpose for which the fundraising occurred
- collectors must wear identification badges or in the case of telephone fundraising, properly state their name, the organisation they are representing and the State or Territory where their organisation’s principal office is located
- adult supervision of minors who are soliciting for a charitable purpose
- not soliciting, in person or by telephone, at any residential location before 9.00am or after 8.00pm or sunset (whichever is the earlier) on any day
- 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 organisation, the address of the principal office of the organisation and a contact telephone number for the organisation
- not making false, misleading or deceptive statements or engaging in any misleading or deceptive conduct, including falsely representing the purpose for seeking the donation, or representing that the person or organisation has a sponsorship, approval or affiliation where that is not true, and
- 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.

Failure to comply with these obligations may expose an organisation or individual to penalties of up to \$15,400 or 6 months imprisonment. Again, we note that prosecution under Tasmania’s fundraising law is uncommon.



# Fundraising & tax

# Fundraising & tax

Some not-for-profit organisations may be entitled to certain tax concessions in relation to their fundraising. The Australian Taxation Office (ATO) and the Australian Charities and Not-for-Profits Commission (ACNC) have produced a summary of tax laws and how they apply to fundraisers, which can be found in the Resources section below.

In many cases, a not-for-profit organisation must be registered with the ACNC to be classified as a registered charitable organisation that is able 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 below 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 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. GST collected must then be provided to the ATO.

An organisation registered for GST can choose to treat all supplies made in connection with fundraising events as 'input taxed'. This means that its sales will not be subject to GST. However, 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 Information Hub tax page at [www.nfplaw.org.au/tax](http://www.nfplaw.org.au/tax).

### 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 the tax page at [www.nfplaw.org.au/tax](http://www.nfplaw.org.au/tax).

### 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). For more information about DGR endorsement and tax deductible donations see the ATO Resources page below or visit the DGR page on the Information Hub at [www.nfplaw.org.au/DGR](http://www.nfplaw.org.au/DGR).

#### 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.

Unless your organisation has been endorsed as DGR, 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.



# Interstate and online fundraising

# Interstate and online fundraising

## Interstate fundraising

The information in this fact sheet covers the laws on fundraising in Tasmania only. Each Australian State and Territory has its own rules on fundraising activities, including different registration systems.

If your fundraising appeal will be conducted in more than one State or Territory, or aimed at residents from another State or Territory, then you will need to make sure that you are complying with each of the other State or Territories' obligations. This includes applying for a fundraising authority where necessary or ensuring you have a 'presence' (i.e. an address, within the State or Territory).

Below is a table outlining the relevant departments within each State or Territory and an overview of their general requirements for registration. There are fundraising guides available on the Information Hub for each jurisdiction at [www.nfplaw.org.au/fundraising](http://www.nfplaw.org.au/fundraising). Further information is also available via the links in the Resources section below.

State	Body	Definition of 'fundraising'	Requirements for registration
<b>New South Wales</b>	NSW Fair Trading	Raising 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 conducts fundraising for a charitable purpose must apply for an 'authority to fundraise' licence, unless exempt.
<b>Victoria</b>	Consumer Affairs Victoria	Soliciting or receiving money or some other benefit with the representation that it is not solely for the profit or commercial benefit of that person or any other person.	A person who wishes to apply to register as a fundraiser must submit an application to CAV at least 28 days before the date she or he intends to start conducting any fundraising appeal.
<b>South Australia</b>	Office of Liquor and Gambling Commissioner	Collecting money or goods, or conducting entertainment for a charitable purpose. Includes fundraising lotteries.	Any person or organisation that conducts fundraising must apply for a licence, unless exempt.
<b>Queensland</b>	Department of Justice and Attorney-General, Queensland	Any fundraising for a charitable or community purpose.	Any organisation that publicly fundraises in Queensland for a charity must register, unless exempt.
<b>Tasmania</b>	Consumer Affairs and Fair Trading	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 from the Commissioner for Corporate Affairs.

<b>Western Australia</b>	Department of Commerce, Consumer Protection Division	Collection of money or goods from the public for a charitable purpose.	Any person or organisation that conducts a collection for a charitable purpose must obtain a licence, unless exempt.
<b>Australian Capital Territory</b>	Office of Regulatory Services, ACT Department of Justice and Community Safety	Collection of money or goods for charitable purposes.	An organisation collecting for charitable purposes must apply to the Office of Regulatory Services for a licence, unless exempt.

## NOTE

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



## 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.



## RELATED RESOURCES

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 the Law and Policy Reform page at [www.nfplaw.org.au](http://www.nfplaw.org.au).



# Online fundraising

Organisations often use or obtain assistance from online fundraising websites to raise money for their cause. These online websites may help your organisation in fundraising, from guiding you on setting up a website for fundraising 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, if they are over used. 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 (eg. SMS, emails) and the collection, storage and use of such information of individuals may subject your organisation to compliance with privacy laws where such information is considered 'personal information' (eg. 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.

## CAUTION

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



## TIPS

If your organisation does fundraise online there are precautions we recommend you take, including:

- seeking advice on each State and Territory's requirements on online fundraising to see whether your organisation requires a licence or authority
- using a safe and trusted third party website through which to organise your donations
- ensuring your online fundraising website has clear information on how the funds raised will be used
- ensuring your online fundraising website is secure, to protect personal information such as credit card details, and
- keeping a clear account of the funds collected.

If you use third party online fundraising sites to promote or conduct your fundraising activities, it is worth checking:

- if those third party sites charge any fees, as some charge/retain a percentage of any donations
- the payment systems 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 and whether they have a good track history or whether donors have complained about them.



## FURTHER READING

For information on how to set up online fundraising see the Department of Communications link in the Resources section below. For a guideline as to how to fundraise online ethically see the Fundraising Institute of Australia's Standards on 'Electronic Fundraising' and 'Social Media Fundraising' in the Resources section below.



# Resources

---

## Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub contains many fact sheets on different topics. It can be accessed at [www.nfplaw.org.au](http://www.nfplaw.org.au). The following topics contain relevant further information:

- ✔ Running the organisation - [www.nfplaw.org.au/runningtheorg](http://www.nfplaw.org.au/runningtheorg)

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

- ✔ Fundraising and Events - [www.nfplaw.org.au/fundraisingandevents](http://www.nfplaw.org.au/fundraisingandevents)

This page contains resources on the main legal issues when fundraising in Victoria

- ✔ Communications and Advertising - [www.nfplaw.org.au/comms](http://www.nfplaw.org.au/comms)

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

- ✔ Registering as a charity - [www.nfplaw.org.au/charity](http://www.nfplaw.org.au/charity)

## Legislation

### Tasmania

- ✔ [Collections for Charities Act 2001 \(Tas\)](#)
- ✔ [Collections for Charities Regulations 2001 \(Tas\)](#)
- ✔ [Gaming Control Act 1993 \(Tas\)](#)
- ✔ [Police Offences Act 1935 \(Tas\)](#)

### Other states and territories

- ✔ [Australian Charities and Not-for-profits Commission Act 2012 \(Cth\)](#)
- ✔ [Fundraising Act 1998 \(Vic\)](#)
- ✔ [Charitable Fundraising Act 1991 \(NSW\)](#)
- ✔ [Charitable Collections Act 2003 \(ACT\)](#)
- ✔ [Collections Act 1966 \(Qld\)](#)
- ✔ [Collections for Charitable Purposes Act 1939 \(SA\)](#)
- ✔ [Charitable Collections Act 1946 \(WA\)](#)

## Extra Resources

### Tasmania - Consumer Affairs and Fair Trading (CAFT)

- ✔ [Consumer Affairs and Fair Trading - Charities](#)
- ✔ [Consumer Affairs and Fair Trading - Publications and Forms](#)

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

- ✔ [Australian Charities and Not-for-profits Commission – Charity Tax Concessions available](#)

➤ [Australian Charities and Not-for-profits Commission – Registration](#)

➤ [Australian Charities and Not-for-profits Commission – Obligations](#)

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

#### **Australian Taxation Office (ATO)**

➤ [Australian Taxation Office – Fundraising](#)

#### **Fundraising bodies of other States and Territories**

➤ [New South Wales Office of Fair Trading – Charitable Fundraising](#)

➤ [South Australian Office of Liquor and Gambling Commissioner – Fundraising](#)

➤ [Queensland – Charities and Fundraising](#)

➤ [Tasmania Office of Consumer Affairs and Fair Trading – Charities](#)

➤ [Western Australia Department of Commerce, Charitable Collections Section – Charities](#)

➤ [Australian Capital Territory Office of Regulatory Services – Charitable Collections](#)

#### **Other useful links**

➤ [Department of Broadband, Communications and the Digital Economy website](#)

Provides helpful information on how to start online fundraising

➤ [Not for Profit Compliance Support Centre](#)

Provides general information on how to manage a not-for-profit, from ‘how to get started’ to ‘legal obligations’

➤ [Fundraising Institute of Australia Standard of Electronic Fundraising](#)

➤ [Fundraising Institute of Australia Standard of Social Media Fundraising](#)

➤ [Deloitte Survey into the Not for Profit Sector: 2012 Fundraising](#)

Provides information about how fundraising will change in the future and the difficulties associated with fundraising presently





**Contact us:**

[nfplaw@justiceconnect.org.au](mailto:nfplaw@justiceconnect.org.au)

**NFP Law home:**

[justiceconnect.org.au/nfplaw](http://justiceconnect.org.au/nfplaw)

**NFP Law Information Hub:**

[nfplaw.org.au](http://nfplaw.org.au)



**Melbourne Office**

PO Box 16013  
Melbourne VIC 8007  
DX 128 Melbourne

Tel +61 3 8636 4400  
Fax +61 3 8636 4455

**Sydney Office**

GPO Box 863  
Sydney NSW 2001  
DX 78 Sydney

Tel +61 2 9114 1793  
Fax +61 2 9114 1792

ABN: 54 206 789 276 | ACN: 164 567 917