

APPENDIX 7

State and Territory Fundraising Legislation

Australian Capital Territory

In the ACT, the *Lotteries Act 1964*, overseen by the ACT Gambling and Racing Commission, regulates lotteries including raffles, bingo, trade promotions and calcuttas (sweeps). Licenses are required under the legislation. However exceptions are made for lotteries where the total value of the prizes does not exceed a set amount (in this case, \$500) and the organisation is a charity, and for private lotteries where the lottery is restricted to members of an association and no advertising is undertaken.¹ All licensees under the Act are required to comply with the ACT Gambling Code of Practice. If required in writing, licensees must produce all records associated with the lottery.

The *Charitable Collections Act 2003* regulates door-to-door collections, as well as other collections for charities, including, but not limited to, art unions, clothing collection bins, op-shops, walkathons and telethons. Charities are required to have a license to make collections under this act, and are obliged to comply with certain reporting requirements. Both incorporated and unincorporated organisations may apply for a license. However, the Act specifies that the individual named in the application for the license for an unincorporated association is the licensee, not the body itself.² A license will not be approved if 'if the nominated person does not have the consent of the body to hold the licence'³. Some collections undertaken by charities are exempted under the Act, including:

- An approved lottery
- A bequest under a will
- Payment of a membership fee
- A collection taken during a church service
- Fundraising for a person to attend a sporting event
- Organisations that raise less than \$15 000 per annum
- Churches – raising funds on the premises (collection plates)
- Schools – voluntary contributions or other activities that raise funds from parents, friends P&C and Alumni for

1 *Lotteries Act 1964 (ACT)*, s. 6.

2 *Charitable Collections Act 2003 (ACT)*, Part 4, Division 4.2, s. 30.

3 ACT Department of Justice and Community Safety, Office of Regulatory Services, *Applying for a Charitable Collection License*, <http://www.ors.act.gov.au/licensing/CharCollects/charitable1.html> (accessed 24 October 2008).

- Educational activities
- Membership fees for clubs and associations
- Workmates, clubs or meetings raising funds from the people for the benefit of others within the group.⁴

Queensland

To conduct fundraising activities, organisations must meet the definition of 'charitable purpose' as defined in the *Collections Act 1966*. They must then apply to the Department of Justice and Attorney-General for registration as a charity. Once a charity is registered, it may continue to fundraise unless directed otherwise. 'Community purpose' organisations can apply for a sanction to fundraise under the Act. The Act requires organisations to keep appropriate records and lodge financial statements annually. Fundraising activities regulated under this Act include door-to-door appeals, street collections and fundraising appeals (such as disaster relief).

The Queensland Office of Gaming Regulation regulates Queensland's charitable and non-profit gaming through the *Charitable and Non-Profit Gaming Act 1999* and provides for:

the conduct of a variety of games including art unions, raffles, bingo, lucky envelopes, calcutta sweeps and promotional games. Under the Act these different games are broken into four categories titled category 1, 2, 3 and 4 games. Category 1, 2 and 3 games may only be conducted by non profit associations. The estimated gross proceeds (ticket sales) of the game determines whether the game is a Category 1, 2 or 3 game. An association intending to sell more than \$20,000 worth of tickets must apply for a Category 3 Gaming licence.⁵

Category 4 games are free entry draws to promote goods and services. A license is not required for Categories 1,2 or 4 games; however, the prizes offered under these categories are regulated. A license is required for a Category 3 game and only incorporated associations may apply (only incorporated associations can run Category 2 games also). If the game being conducted is an art union, accounting and general gaming records of the game must be kept for a period of five years and a return must

4 Office of Regulatory Services, *Charitable Collections Practice Manual*, (1.2.2 Collection) http://www.ors.act.gov.au/pdfs/Licensing/Char_Collect_Practice_Manual-2007Nov.pdf (accessed 24 October 2008)

5 Queensland Government, Office of Liquor, Gaming and Racing, *Competitions and Raffles*, <http://www.olgr.qld.gov.au/licensing/gamingLicensing/competition/index.shtml> (accessed 24 October 2008).

be lodged within two months of the drawing. Further regulation applies if the game is a Calcutta sweep⁶.

South Australia

The Collections for Charitable Purposes Act 1939 regulates fundraising activities for certain charitable purposes, including:

- Doorknock appeals
- Telemarketing
- Donations to clothing bins
- Sales of goods at second-hand shops
- Seeking bequests
- Badge days
- Public appeals
- Film nights.

Licenses are required to undertake the activities above, except if the charitable organisation is not raising funds for a charitable purpose – such as religious organisations, environmental groups and educational institutions (as defined in the legislation and accompanying Code of Conduct)⁷. Charities are required to lodge annual income and financial statements.

Fundraising for not-for-profit associations is regulated by the Lottery and Gaming Act 1939 and the associated regulations. All associations are eligible for a license under the Act, whether incorporated or not, providing that certain conditions are met. Regulations cover minor lotteries, major lotteries, instant lotteries and eyes down bingo. New regulations under the Act came into force on 1 September 2008.

New South Wales

The NSW Office of Liquor, Gaming and Racing administers the *Charitable Fundraising Act 1991*, which regulates fundraising for a charitable purpose. The definition of 'charitable purpose' is broad. Under his Act, fundraising refers to:

...donations, sponsorship, telethons, lotteries and competitions, supply of food, supply of entertainment, supply of other goods or services, in connection with any commercial undertaking.

6 Queensland Government, *Your Guide to Category 3 Games*, <http://www.olgr.qld.gov.au/resources/gamDocs/CNPCat3GamesGrossProceedsMore20000.pdf> (accessed 24 October 2008).

7 Government of South Australia, Office of the Liquor and Gambling Commissioner, *Charities*, <http://www.charities.sa.gov.au/> (accessed 24 October 2008).

A membership drive undertaken by an organisation is a fundraising appeal if one of the objects of the organisation is a charitable object.⁸

Any person or organisation wishing to fundraise must hold an authority to do so, unless that organisation was established under an Act, in which case it is exempt. An authorised organisation must keep records including a cash book, a register of assets and a minute book, and an annual audited financial statement must be provided. While incorporated associations are not required to lodge returns, unincorporated associations must do so if their income from fundraising is greater than \$25,000. The Act does not apply to religious organisations.

Tasmania

'Minor gaming' in Tasmania, such as bingo, raffles, lucky envelopes and Tassie's best punter, is defined as 'gaming where the proceeds are used for a not-for-profit organisation or for charitable reasons (such as education, welfare, sport and recreation)⁹. Minor gaming is subject to the provisions of the *Gaming Control Act 1993*. Permits (costing \$90) are only required when the prize value exceeds \$5,000; however, the appropriate conditions for minor gaming under the Act must still be adhered to. In addition, permit holders are required to 'keep such accounting records as necessary to correctly record and explain transactions arising from the conduct of gaming'¹⁰ and retain them for seven years.

Any person who solicits money for a charitable purpose from the public in Tasmania is subject to regulation by Consumer Affairs and Fair Trading through the *Collections for Charities Act 2001*. This includes incorporated bodies, individuals, unincorporated bodies and religious organisations. According to the Act:

Soliciting for donations means any request for donation however communicated, and includes solicitation by telephone, email, door-to-door, and standing with a donations tin in public. It also includes the giving of pins, badges and stickers where this is in response to a donation rather than an actual sale of the item. Donations will usually be money but can be anything of value including land and goods.¹¹

8 NSW Office of Liquor, Gaming and Racing, *Charitable Fundraising Fact Sheet*, http://www.olgr.nsw.gov.au/pdfs/fundraising_general_info.pdf (accessed 24 October 2008).

9 Tasmanian Department of Treasury and Finance, *Minor Gaming*, <http://www.treasury.tas.gov.au/domino/dtf/dtf.nsf/v-liq-and-gaming/FB99F4B68E442441CA2573460010F5AF> (accessed 24 October 2008).

10 Tasmanian Gaming Commission, Application for Minor Gaming Permit, [http://www.treasury.tas.gov.au/domino/dtf/dtf.nsf/LookupFiles/Minor-Gaming-Permit-Application.pdf/\\$file/Minor-Gaming-Permit-Application.pdf](http://www.treasury.tas.gov.au/domino/dtf/dtf.nsf/LookupFiles/Minor-Gaming-Permit-Application.pdf/$file/Minor-Gaming-Permit-Application.pdf) (accessed 24 October 2008).

11 Consumer Affairs and Fair Trading, *Charities*, http://www.consumer.tas.gov.au/business_affairs/charities (accessed 24 October 2008).

Permission to solicit for charitable donations must be gained unless the organisation is only incorporated in Tasmania or the organisation's principal office is located in Tasmania.

Northern Territory

In the Northern Territory, the Community Gaming Guidelines support the *Gaming Control Act* which regulates raffles, lotteries, calcuttas, sweepstakes, bingo, tipping competitions and other games. Permits are not required in order for an approved association to operate these if total ticket sales are under \$5 000. Where the prize is greater than \$5 000, a permit must be acquired. An association does not have to be incorporated in order to gain approval, but it must have a suitable constitution, identifiable office holders and a nominated person to be responsible for conducting lotteries¹².

Western Australia

Any organisation that collects money or goods from the public for charitable purposes in Western Australia must apply for a license under the *Charitable Collections Act 1946*. Licenses are not required for an organisation that collects money for non-charitable purposes, such as sporting clubs, conservation, environmental, animal welfare and schools or kindergartens that operate their own fund raising events. An organisation wishing to conduct a street collection in the Perth metropolitan area must have a separate street collection permit, regardless of whether it is licensed or not. All charities that are licensed under the Act must submit an annual audited financial statement.

The Western Australian Department of Racing, Gaming and Liquor regulates fundraising activities such as bingo, calcutta, lotteries (including raffles) and football tipping competitions through the *Gaming and Wagering Commission Act 1987*. Charitable groups, community-based organisations and sporting bodies can use the above games to raise funds. Organisation must produce a copy of the constitution or a certificate of incorporation in order to be considered for a permit. All gaming activity requires an organisation to have a license and gain approval except for minor raffles where the raffle is conducted and drawn within eight days and the value of the prize is under \$1 000¹³.

Victoria

The Fundraising Appeals Act 1998 regulates fundraising in Victoria. Fundraising occurs when ' any person or organisation, including a business, collects money for a

12 Northern Territory Government, Community Gaming in the Northern Territory, http://www.nt.gov.au/justice/licenreg/documents/RGL_Fact_Sheets/gaming_control_regs_2.pdf (accessed 24 October 2008).

13 WA Department of Racing, Gaming and Liquor, *Forms and Applications*, <http://www.rgl.wa.gov.au/Default.aspx?cat=GamingForms> (accessed 24 October 2008).

beneficiary, cause or thing, rather than solely for profit', and includes such activities as:

- doorknock appeals
- telemarketing
- dinner dances & balls
- trivia nights & auctions
- golf days & movie nights
- 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 or association or an environmental or community cause
- public appeals to support a cause, person, or group of persons, or
- the selling of goods where portions of the sale price are donated to a charitable organisation or cause.¹⁴

Anyone wishing to conduct a fundraising appeal is required to register unless they are an exempt organisation, including schools, religious bodies, registered political parties, trade unions, the Anti Cancer Council and not-for-profit organisations that receive less than \$10 000 gross in a financial year from fundraising, and uses only unpaid volunteers. Fundraisers must maintain financial records.

14 Consumer Affairs Victoria, *Fundraising Appeals*, <http://www.consumer.vic.gov.au/CA256EB5000644CE/page/Associations+Clubs+%26+Fundraising-Fundraising-Fundraising+appeals?OpenDocument&1=05-Associations+Clubs+%26+Fundraising~&2=30-Fundraising~&3=10-Fundraising+appeals~> (accessed 24 October 2008).