

# Charitable Fundraising Guidelines

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# 1 Introduction

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If you conduct a fundraising appeal for charitable purposes in NSW, there are laws you must follow. The purpose of these Guidelines is to help you understand and comply with your legal obligations.

Many of the legal obligations can be found in the following laws administered by NSW Fair Trading:

- *Charitable Fundraising Act 1991* (NSW) (the Act)
- Charitable Fundraising Regulation 2021 (NSW) (the Regulation), and
- Authority Conditions attached to an authority to fundraise.

Other legislation and agencies that regulate the activities of charitable organisations include the Australian Charities and Not-for-profits Commission (ACNC), the *Charities Act 2013* (Cth), the Australian Securities and Investment Commission (ASIC), *Corporations Act 2001* (Cth) (Corporations Act), the Australian Competition and Consumer Commission (ACCC), the Australian Consumer Law (ACL), NSW Fair Trading and the *Associations Incorporation Act 2009*.

It is important to be aware that charitable fundraisers may need to comply with obligations under other laws, such as federal taxation law. You should not rely on these Guidelines to provide assistance with such matters.

These Guidelines are **not legal advice**. If in doubt about any of the requirements, check the legislation and seek independent legal advice if necessary.

This information replaces all previous guidelines issued.

## Further information

If you require further information or clarification on the Guidelines or Charitable Fundraising please contact NSW Fair Trading.

## 2 Authority to fundraise in NSW

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### 2.1 What is charitable fundraising?

The Act regulates fundraising appeals for charitable purposes in NSW.

For there to be a charitable purpose, there must be an intention to provide a benefit to the public or a section of the public rather than to obtain a private benefit or advantage

Charitable purpose is defined in the Act to include “any benevolent, philanthropic, or patriotic purpose”. While the definition of charitable purpose in the Act is different to the one used by the Australian Charities and Not-for-profits Commission (ACNC) it may be helpful to be aware of some of the charitable purposes set out in the *Charities Act 2013* (Cth), namely:

- Advancing health
- Advancing education
- Advancing social or public welfare
- Advancing religion
- Advancing culture
- Promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia
- Promoting or protecting human rights
- Advancing the security or safety of Australia or the Australian public
- Preventing or relieving the suffering of animals
- Advancing the natural environment
- Promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a state or a territory or another country (where that change furthers or opposes one or more of the purposes above) and
- Other similar purposes ‘beneficial to the general public’ (a general category); examples include:
  - enhancing public space for public benefit
  - providing recreational facilities which are open to everyone (for example, sports centre)
  - promoting the value of agriculture by holding an annual agricultural show
  - promoting industry and business for the public benefit.

A charity's purposes, aims and objectives are usually set out in its governing instrument, that is the formal document which sets up a charity and establishes how it will run.

## 2.2 Who is required to hold an authority to fundraise?

If an individual or organisation (whether incorporated or unincorporated) intends to conduct a fundraising appeal for charitable purposes in NSW, they must hold an authority to fundraise unless exempted. Applications for an authority should be made to NSW Fair Trading.

An ACNC registered charity is automatically eligible for an authority to fundraise but must still apply to NSW Fair Trading for an authority.

If not registered with the ACNC an applicant for an authority to fundraise will be assessed to ensure all the persons proposing to conduct the fundraising appeal, and all the persons associated with the proposed appeal, are fit and proper persons.

An individual will not be considered a fit and proper person to be associated with a fundraising appeal not limited to but specifically if:

- in the last 10 years they have been found guilty of an offence involving fraud or dishonesty;
- they have been convicted of an offence against the NSW Charitable Fundraising laws;
- they have been declared bankrupt or entered in an insolvency arrangement such as a deed of agreement with creditors;

An organisation will not be considered fit and proper to be associated with a fundraising appeal if:

- a director or person involved in its management would not be considered a fit and proper person as above; or
- the corporation becomes insolvent, is placed in liquidation, external administration or wound up.

Further information on the assessment of a person as fit and proper can be found at [www. https://www.fairtrading.nsw.gov.au/charitable-fundraising/apply-to-fundraise/fit-and-proper-factsheet](https://www.fairtrading.nsw.gov.au/charitable-fundraising/apply-to-fundraise/fit-and-proper-factsheet)

## 2.3 Who is exempt from holding an authority?

Not all charitable fundraisers in NSW are required to hold an authority to fundraise, however there are still general provisions in NSW laws that must be complied with. Exempt fundraisers will find that these Guidelines are generally not relevant, but they may represent good business practice which can be adopted.

The following categories are exempt from requiring an authority to fundraise in NSW.



### 2.3.1 Small fundraisers

A fundraiser will be exempt if:

- gross annual fundraising is \$15,000 or less,
- it does not receive any remuneration for conducting fundraising appeals, other than the payment of lawful and proper expenses, and
- only use volunteers to participate in its fundraising appeals

### 2.3.2 Universities

Universities, and entities controlled by universities, are not required to hold an authority to fundraise.

An entity controlled by a university means a person, group of people or body of which a university, or the council, board or Senate of a university, has the level of control defined in Australian Accounting Standards.

### 2.3.3 Local councils

Local councils as well as trustees of trusts are exempt where:

- a council is a trustee, or
- a mayor, councilor, general manager, public officer or senior staff member of a council is a trustee by virtue of holding that office, or
- a person nominated by a council is a trustee by virtue of being a person nominated by the council.

### 2.3.4 Parents and citizens associations

A parents and citizens association constituted in connection with a government school under the *Education Act 1990* is not required to hold an authority.

However, Parents and Friends Associations in non-state government schools, such as private schools or independent faith schools, need to hold an authority to fundraise as they do not fall under the portfolio and control of the NSW Minister for Education and Early Childhood Learning.

### 2.3.5 Religious body

A religious body or religious organisation which is a recognised denomination for the purposes of the *Marriage Act 1961* (Cth) is exempt.

The following further religious bodies or organisations are exempted by the Regulation:

- ACE Global Incorporated
- Australian Asian Church Incorporated
- Bible Society NSW
- Buddhist Council of New South Wales Incorporated
- Church Missionary Society NSW & ACT Limited
- City Bible Forum Incorporated

- Coffs Coast Schools Ministry Inc
- Cornerstone Community
- Creflo Dollar Ministries
- Far East Broadcasting Co (Australia)
- Good News Broadcasting Association Limited
- Grace Evangelical Church Newcastle Inc
- Hope Media (trading as Hope 103.2)
- Hope Mission Centre
- Hour of Power Australia Limited
- Hwa Tsang Monastery Inc
- Jesse Duplantis Ministries
- Kenneth Copeland Ministries Eagle Mountain International Church Ltd
- Leading the Way With Dr Michael Youssef Australia Limited
- Loyal Orange Institution of New South Wales
- Open Doors Ltd
- Rose Mountain Incorporated
- Scripture Union NSW
- Seventh Day Baptists (Australia) Pty Ltd
- Shoalhaven Employers of Christian Education Teachers Inc
- Shree Swaminarayan Temple (Sydney) Inc
- Tahlee Ministries Incorporated
- The E.U. Graduates Fund
- The Servants of Jesus Community Ltd
- Voice of the Martyrs Limited

## 2.4 How do I become an authority holder?

To apply for, or renew, an authority, download and complete the *Charitable Fundraising* Application or Renewal Form from the NSW Fair Trading Charitable Fundraising webpage at [www.fairtrading.nsw.gov.au/charitable-fundraising](http://www.fairtrading.nsw.gov.au/charitable-fundraising). There is no application fee.

An authority will be issued for up to five years. Authorities can be renewed up to three months after they have expired.

All authorities to fundraise are listed on a public register. You can check if an authority is valid by visiting <https://www.service.nsw.gov.au/transaction/check-charitable-fundraising-licence>

## 2.5 Do I need to register with the ACNC?

The ACNC is a Commonwealth Government agency. It registers and regulates charities nationally, mainly for taxation purposes.

To access charity tax concessions and other benefits, you may need to register as a charity with the ACNC. Registration with the ACNC is voluntary.

You do not need to register with the ACNC to apply for or hold a NSW charitable fundraising authority. However, if you are registered with the ACNC there are streamlined application and reporting processes available which are detailed below.

Each organisation conducting charitable fundraising appeals should consider whether ACNC registration is appropriate based on their own circumstances and eligibility.

For more information, contact the ACNC (visit [www.acnc.gov.au](http://www.acnc.gov.au) or call 13 22 62).

## 2.6 Special arrangements for ACNC-registered charities

### **Application for an authority to fundraise**

ACNC-registered charities are automatically entitled to apply for and receive a NSW fundraising authority. This simplifies and streamlines the application process for an ACNC registered entity to apply for an authority to fundraise in NSW.

### **Annual Report**

Authority holders registered with the ACNC are not required to submit an annual report as an exemption from the requirement to lodge has been issued by NSW Fair Trading. By lodging an Annual Information Statement with the ACNC, charities that fundraise in NSW will meet the obligation to submit an annual report.

### **Compliance Statements**

Authority holders who are also registered with the ACNC do not have to provide a compliance statement (as required under the Act) directly to NSW Fair Trading if they include the compliance statement in their Annual Information Statement submitted to the ACNC. A data sharing arrangement allows the information reported to the ACNC to be shared with NSW Fair Trading.

### **NB: Transitional arrangements for 2021 Annual Information Statement**

As systems and administrative processes are still being developed to facilitate information sharing between NSW Fair Trading and the ACNC, it will initially not be possible to lodge the NSW annual return and compliance statement required under the Act via the ACNC 2021 Annual Information Statement. To reduce duplication, transitional exemptions from the requirement to lodge this information have been issued for NSW authority holders registered with the ACNC. This includes both a [class exemption with conditions](#) and a [Statement of Regulatory Intent](#) that have been published on the NSW Fair Trading website. It is expected that the 2022 Annual Information Statement will allow NSW fundraisers to include all the information required under the Act.

## 3 Conducting an appeal

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### 3.1 What is a fundraising appeal?

A charitable fundraising appeal is where a person solicits or receives money, property or other benefits from another if it is made out:

- that the appeal is for a charitable purpose, or
- that it is for the support of an organisation which has a charitable purpose  
(Refer to 2.1 for the definition of charitable purpose).

Examples of fundraising activities may include:

- requesting donations,
- selling merchandise, or
- holding events,

to raise money where there is a representation that the proceeds will benefit the public or a section of the public rather than be for private benefit.

#### 3.1.1 What is not considered a fundraising appeal?

The following are not considered fundraising appeals and no authority is required:

- payment of a genuine membership renewal fee of an organisation,
- an appeal to (or the receipt of money or benefit from) members of an organisation,
- any property bequeathed, or directions or instructions about how property may be bequeathed,
- collecting done in a workplace or organisational setting to raise money for a colleague or their immediate family,
- an appeal to (or the receipt of money or benefit from) any Commonwealth, State or local government authority,
- a payment of a genuine fee or charge for:
  - educational facilities or services,
  - child-minding services,
  - goods and services supplied by a supported employment service for people with disabilities,
  - nursing or medical services, or
  - other care or welfare services,
- an appeal to (or the receipt of money or benefit from) a registered club if the support is provided under the ClubGRANTS scheme

Certain projects and activities may not be intended as a fundraising appeal. For example, activities done for cost recovery such as publishing an information

handbook, selling equipment at cost or at a nominal mark-up, or a stage play by a drama group. Be aware that such activities may constitute an appeal if they fall within the definition of fundraising appeal in the Act.

### **3.1.2 How can I conduct a charitable fundraising appeal?**

A person conducts a fundraising appeal if they organise the appeal. Sometimes an authority holder will authorise someone else (called a “trader”) to organize or be part of the fundraising appeal on their behalf.

Common ways to raise funds from the public are:

- Face-to-face
- Telemarketing
- Online
- Crowdfunding
- Sales of goods and services
- Community gaming activities
- Television (including Telethons)
- Charitable Events
- Direct mail.

## **3.2 Who can participate in my charitable fundraising appeal?**

A person participates in a fundraising appeal if they solicit or receive any money, property or other benefit in the course of the appeal or assist in organising the appeal.

Participants may be volunteers or receive a wage, commission or fee.

A participant may only take part in a fundraising appeal if an authority holder has provided written authority to the participant to fundraise on their behalf.

These requirements do not apply to fundraisers exempted from the obligation to hold an authority to fundraise.

### **3.2.1 Written permission to participate in an appeal (not face-to-face)**

Where an appeal is not conducted face-to-face (e.g. telemarketing), the permission the authorised fundraiser gives to a participant must be in writing.

The document must include:

- Participant's name,
- Terms and conditions of authorisation, and
- Description of the appeal or appeals to be undertaken,

The written authorisation must be signed and dated by the authority holder,

delegate (including the trader where authorised to do so under written agreement) or governing body.

### **3.2.2 Written permission to participate in a face-to-face appeal**

The authorisation given by an authorised fundraiser to a participant involved in a face-to-face appeal must be in the form of an identification card or badge, which must:

- be uniquely numbered with the number shown on the card,
- include the name of the authorised fundraiser and their phone number,
- include the name of the face-to-face collector,
- include the words 'paid collector' and name of collector's employer if collector received a wage, commission or fee for services,
- have printed issue and expiry dates,
- be signed and dated by authority holder, delegate (including the trader where authorised to do so under written agreement) or governing body, and
- have details printed in sufficient size to be easily read by members of the public.

The badge or card must always be worn when conducting a face-to-face appeal. It must be recovered by the authorised fundraiser when the collector's involvement in the appeal has ended.

### **3.2.3 Participation of children**

A child is defined as a person under the age of 15 years. A child who participates in fundraising appeal:

- cannot be under eight years of age,
- may only receive a benefit, such as wages, commissions and/or other material benefits, if over the age of 13,
- must have parental consent to participate in the appeal and be able to contact his or her parents during an appeal,
- must be adequately supervised (having regard to age, sex and maturity of child), which includes:
  - at least one supervisor per six child participants
  - where the child is 11 years or older, supervisors must be in close proximity to the child participant, know the whereabouts of the child and make contact every 30 minutes
  - where the child is under 11 years of age, their supervisor must be in constant contact,
- must work with at least one other child participant, and
- must not enter a private dwelling when engaged in door-to-door fundraising.

Compliance with requirements regarding child participants is the responsibility of the authority holder. An authority holder must take all reasonable steps to ensure any child participant also complies with these requirements.

### *Well-being*

Authority holders must ensure that the physical and emotional well-being of a child participant is not put at risk.

This means that authority holders must:

- take all reasonable steps to ensure children always have access to drinking water and receive appropriate and sufficient nutritious food which is available at reasonable hours,
- ensure toilet, hand-washing and hand-drying facilities are accessible,
- ensure children are accompanied by their parent or by an adult authorised by their parent when travelling home after they participate in the appeal. This requirement does not apply where the child is over 12, the distance home is less than 10 kilometres, public transport is available, and the journey is being completed within daylight hours,
- ensure children are adequately clothed and protected from extremes of climate or temperature (e.g. sun protection), and
- not punish, socially isolate, immobilise or subject children to any behaviour likely to humiliate or frighten them.

### *Insurance*

Appropriate insurance, including public liability insurance, must be secured for a child participant. This includes adequate insurance to protect the interests of the child against any claim which could be brought against them; for example, for property damage.

### *Hours of participation*

A child must not be required or permitted to participate in a fundraising appeal:

- for more than four hours on a school day,
- for more than six hours on days other than school days,
- for more than five days per week,
- before sunrise or after sunset where the appeal is conducted outdoors, and
- after 8.30pm if the following day is a school day.

After participating for any maximum period provided above, a child must receive a minimum break of 12 hours before participating further.

Any weight that a child lifts must be reasonable, considering their age and condition.

### *Children receiving wage, commission or benefit*

A letter of employment or engagement must be issued to any child participant

who receives a wage, commission or some other material benefit for participating in a fundraising appeal.

The letter must contain:

- Details of how wages, commissions or benefits will be calculated, including any guarantee of minimum payment or benefit,
- Method of payment,
- General terms and conditions of employment or engagement, and
- Rights of the employee.

The authority holder must maintain a record of employment for each child participant employed or engaged. For every child, the record must include:

- Child's full name, residential address and contact number,
- Child's date of birth,
- Description of the nature of employment,
- Details of parent's consent to child's employment (including retention of any written documentation), and
- The name and address of the person immediately responsible for the child during the appeal.

If the employer is a trader, the employer must make the records available to the authority holder.

### **3.3 What requirements apply to a face-to-face appeal?**

Face-to-face collections may be conducted:

- door to door,
  - in a street or public place (e.g. train station),
  - in a privately-owned public space (e.g. a shopping centre or university campus), or
- in a place of entertainment.

Face-to-face participants must prominently display any identification card or badge.

If a collection is to be undertaken in any public road or place, an authority holder should contact the local council(s) to determine whether approval is required. This especially applies if a stall, stand or similar device is to be used for the fundraising appeal.

If a collection is to be undertaken in a privately-owned public space, then the authority holder must first obtain written approval from the owner of the private space as well as comply with any policies or reasonable directions.



Fees and charges may be charged by owners, councils or relevant authorities for use of premises or areas. Authority holders must ensure costs are reasonable and do not exceed the proceeds of the fundraising appeal.

Authority holders must also comply with all reasonable directions of owners, councils or relevant authorities where face-to-face fundraising appeals are held.

A fundraising appeal must not solicit donations from persons in motor vehicles, including where stationary or stopped at traffic lights.

### 3.4 What requirements apply to a telemarketing appeal?

Phone calls for the purposes of soliciting donations are known as telemarketing. Persons conducting or participating in fundraising appeals using telemarketing must comply with the *Do Not Call Register Act 2006* (Cth), Do Not Call Register Regulations 2017 and Telecommunications (Do Not Call Register) Industry Standard 2017.

Regardless of whether requested, a participant must disclose to the person being solicited that they are employed if they receive a wage, commission or fee for participating. The disclosure must include the name of their employer.

#### 3.4.1 Do charities need to comply with the Do Not Call Register?

The Do Not Call Register is a Federal database where individuals and organisations can remove their telephone, mobile and fax numbers to opt out of receiving most unsolicited telemarketing. The Act establishes the register, and outlines rules for making unsolicited telemarketing calls and sending unsolicited marketing faxes to numbers on the register.

However, charities registered with the ACNC are permitted to call numbers listed on the Do Not Call register.

Charities not registered with the ACNC are not permitted to call numbers on the Do Not Call register. Civil penalties and injunctions apply to persons in breach of the *Do Not Call Act 2006* (Cth).

#### 3.4.2 How can charities comply with telemarketing requirements?

Registered charities must meet the requirements of the Telecommunications (Telemarketing and Research Calls) Industry Standard 2017. The relevant regulator is the Australian Communications and Media Authority, which has several enforcement options available for breaches of the standards, from formal warnings to penalties.

- The Telecommunications (Telemarketing and Research Calls) Industry Standard 2017 outlines: prohibited calling times that must be complied with,
- information that must be provided during telemarketing calls, which includes:
  - Name of individual making call

- The company name or business name of employer or registered business name and, where requested, contact details
- The charity that caused call to be made and, where requested, contact details
- The purpose of the call
- Information that must be provided upon request during telemarketing calls
- that a caller must terminate a call if;
  - it is reasonable to conclude that someone has received the call at an inappropriate time (for example, they are not at their usual residential address)
  - the person receiving the call asks for it to end or indicates they do not want it to continue
- that a caller must ensure that:
  - calling line identification is enabled for all calls (for example, does not call from a blocked or private number),
  - the number they are calling from can receive a return telephone call. Telephone numbers for return contact must remain available for at least **30 days**,
  - when a person makes a return call, they must be able to obtain details of the employer and purpose of the original call.

### 3.5 What requirements apply to an online appeal?

Online appeals refer to fundraising appeals through a charity's website or via email. Many charities offer direct links for one off payments or longer term donation plans. For example, many charities have a 'donate now' button on their website's homepage.

Where online fundraising appeals receive donations from persons in NSW, the charity must hold an authority to fundraise under the Act (unless exempt) and comply with the Act, Regulations and Authority Conditions.

Regardless of whether requested, a participant must disclose to the person being solicited that they are employed if they receive a wage, commission or fee for participating. The disclosure must include the name of their employer.

### 3.6 What requirements apply to a crowdfunding appeal?

Crowdfunding is another method of raising funds for individuals, businesses, not-for-profits and charities.

It involves an individual or an organisation setting a fundraising target online and then asking for donations to reach that target. There are numerous crowdfunding bodies that provide a platform for this form of fundraising.

If a person raising funds for a charitable purpose accepts money from someone living in NSW, it must abide by all relevant laws, regulations and authority

conditions (even where the charity is based or registered outside of NSW). This includes where money is accepted via an online platform.

If a crowdfunding platform obtains a benefit for hosting the fundraising appeal or conducts fundraising appeals for business or trade, they are considered to be a trader for the purposes of Section 11 of the Act.

Before crowdfunding for a charitable purpose, where funds may be donated by persons in NSW, persons conducting the appeal need to:

- obtain an authority to undertake a fundraising appeal unless exempt,
- carefully read the terms and conditions of the crowdfunding platform to ensure they are fair and reasonable, including details of what will happen to money raised if the fundraising target is not met,
- ensure the distribution of funds between the crowdfunding body and authority holder is reasonable. The amount or calculation of the amount to be returned to the authorised fundraiser from proceeds of the appeal must be included in a written agreement, and
- ensure any advertisement or notice of information of the appeal are accurate and outline how funds are distributed between the authority holder and crowdfunding body as well as explain how funds will be used if the target is met.

If a person is considering crowdfunding to raise money on behalf of a charity, the person should contact the charity to obtain authorisation to conduct the appeal.

### **3.7 What requirements apply to the sales of goods and services?**

In the context of a charitable fundraising appeal, the sale of goods and services may include:

- selling food through door-to-door sales (e.g. confectionary),
- sale of merchandise in retail outlets where a portion of the profits are donated to charities,
- sales from tickets for charity concerts, and/or
- sales of publications for charity.

An authority holder must take all reasonable steps to ensure that the expenses of the appeal do not exceed a fair and reasonable proportion of the gross income obtained from the supply of goods or services.

Where goods or merchandise are sold, a stock inventory record must be maintained in addition to any other records.

All fundraisers must also ensure they comply with the *Fair Trading Act 1987* (NSW) and the Australian Consumer Law wherever the supply of goods or services is involved.

### 3.8 Can I conduct community gaming as part of an appeal?

Yes. A community gaming activity can be conducted as part of a fundraising appeal provided the game is conducted in compliance with the requirements under the *NSW Community Gaming Act 2018 and Community Gaming Regulation 2020*. Community gaming activities include a range of lotteries, raffles and games of chance operated by, or on behalf of, charities and not-for-profit organisations. This excludes commercial lotteries conducted by Lotteries NSW.

For further information visit <https://www.fairtrading.nsw.gov.au/community-gaming>

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### 3.9 What must I include in advertisements, information and notices about my appeal?

Advertisement, notice or information involves any representations made to the public as part of a fundraising appeal. This includes posters (including for charity concerts), advertisements, flyers and direct marketing.

Any advertisement, notice or information provided as part of a fundraising appeal must:

- clearly and prominently outline the name of the authorised fundraiser,
- not be reasonably likely to cause offence,
- be based on fact,
- not be false, misleading or deceptive or likely to mislead or deceive, and
- may also need to comply with other laws, such as the Australian

Consumer Law.

For example, where a participant is employed by a trader, it would be false and misleading for a participant to state 'I am (name) from the (name) charity', whereas in fact they are from a commercial organisation, not the charity itself. It would also be false and misleading for a participant to answer a question that he or she is not remunerated for the purposes of the appeal, when in fact that person is remunerated by a trader.

For advertisements involving traders see *Chapter 7 Appeals conducted jointly with traders*.

#### 3.9.1 Disclosures by participants

A person who participates in an appeal other than by face-to-face solicitations (e.g. by telephone, online or mail) and receives a wage, commission or fee must disclose, at the beginning of the conversation:

- that he or she is employed, whether or not this information is requested, and
- the name of his or her employer for the purposes of the appeal.

### **3.9.2 Questions to participants**

If questioned about a fundraising appeal, a person conducting or participating must respond by:

- honestly answering any questions in relation to purpose or details of the appeal or arranging to find answers or follow up responses if unable to answer at the time or unsure of an answer,
- providing reasonable information on how gross income and any articles obtained from the appeal will be distributed,
- providing information on what is to happen to any goods and materials collected,
- providing reasonable information relating to fundraising appeals jointly conducted with a trader,
- informing the person being solicited of the source from which the person's name and other details were obtained, if requested, and
- informing the person solicited that the person's name and details will be removed as soon as practicable from the source of information, if requested.

Authorised fundraisers must provide employees, traders or volunteers with information and written instructions to ensure accurate and consistent responses to reasonable questions.

The requirements of participants must be contained in the authority holder's internal policies that must be complied with.

### **3.9.3 Compliance by participants**

Authority holders must ensure that persons conducting or participating in the fundraising appeal comply with the Act, Regulations and Authority Conditions.

Authority holders must develop and exercise appropriate controls, policies and procedures to ensure participants involved in collections are accountable and acting with integrity.

## **3.10 What requirements apply to collection devices?**

Collection devices are widely used for fundraising purposes. Examples include:

- boxes or buckets held by participants,
- boxes or buckets placed in shops or businesses,
- boxes selling sweets/confectionary and food products, or
- canisters placed on shop counters selling sweets/confectionery and food products.

The standard conditions attached to all authorities' state that proper supervision, security and control must be exercised over the use and clearance of collection

boxes or devices. Authority holders must establish appropriate procedures and internal controls to be issued to all participants using collection boxes, which must also be incorporated into written agreements with traders.

Collection boxes for monetary donations must be:

- securely constructed,
- properly sealed to prevent unauthorised opening,
- uniquely numbered, and
- clearly labelled with the name of the authorised fundraiser.

### 3.11 What requirements apply to appeals for donated goods?

Where a fundraising appeal for collection of donated articles of clothing is to be conducted by the authority holder, the authority holder must ensure:

- if the collection device is a bin, each bin must have 'CHARITY OPERATED' displayed on its chute, or
- if the collection device is a collection bag, each bag, or any advertisement, notice or information distributed with each bag, must have printed 'CHARITY OPERATED' in a clearly visible position.

For font and size specifications, see Authority Condition 14.

Any advertisement, notice or information must also include particulars of what is to happen to any goods or material collected.

If the appeal is conducted jointly with a trader see *7.4 What requirements apply to collection of goods with a trader for collection of goods.*

### 3.12 Do I need to comply with Australian Consumer Law?

The Australian Consumer Law (ACL) is a scheme for fair trading and consumer protection that applies nationally and in all States and Territories of Australia. The ACL applies to activities in trade or commerce, whether or not carried out for profit. Charities and fundraisers carrying out activities in trade or commerce have obligations under the ACL.

#### 3.12.1 Who ACL applies to

When considering whether your activities are in trade or commerce, you need to consider the characteristics of the activity; not just your organisational structure or whether your organisation is for profit or not. You may be acting in trade or commerce for some activities but not others. Determining whether an activity is undertaken in trade or commerce depends on the individual facts of the case.

The ACCC has issued guidance for charities to use in their compliance with the ACL, which is published at [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au).

The guidance states, broadly, that if you:

- engage in a fundraising activity involving a supply of goods or services,
- are a for profit professional fundraiser (e.g. a joint trader), or
- are fundraising in an organised, continuous way,

then your organisation is likely to be engaged in trade or commerce and therefore have clear obligations under the ACL.

### **3.12.2 Obligations under ACL**

A person's obligations under the ACL vary depending on the fundraising activity. Generally, you must not:

- engage in misleading or deceptive or unconscionable conduct,
- make false or misleading representations, or
- use harassment or coercion.

Some consumer guarantees would also apply to fundraising activities involving the sale of goods or services.

For more information and examples, visit the ACL Guide for Fundraising at [www.accc.gov.au/publications/guide-to-the-acl-for-charities-not-for-profits-fundraisers](http://www.accc.gov.au/publications/guide-to-the-acl-for-charities-not-for-profits-fundraisers)

## 4 Financial requirements

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### 4.1 What banking requirements apply to my appeal?

Money received in the course of a fundraising appeal must be banked immediately, before deduction of expenses, into an account with a bank, building society or credit union. Deposits and withdrawals from the account must be able to be identified and related to each particular fundraising appeal undertaken.

These requirements do not apply to fundraisers exempted from the obligation to hold an authority to fundraise.

### 4.2 What portion of the proceeds can I use to conduct the appeal?

#### 4.2.1 Lawful and proper expenses

Proceeds from an appeal must be spent on the charitable purposes or objects that were the subject of representations made during the appeal. Any expense deducted from the proceeds must be lawful and proper.

If donations are the only form of income, a fundraiser must take all reasonable steps to ensure that expenses do not exceed 50 per cent of gross income raised. If donations are not the only source of income, an authority holder must take all reasonable steps to ensure that expenses do not exceed a fair and reasonable proportion of the gross income.

The following expenses are not lawful and proper:

- Expenses prohibited under any law,
- Expenses not supported by documentary evidence, or not verifiable as being properly incurred, and
- In the case of an expense paid or incurred by an organisation that is an authorised fundraiser, if it was not properly authorised by or on behalf of the organisation.

Authority holders should be aware that:

- commissions paid or payable to any person as part of a fundraising appeal must not exceed one-third of the gross money obtained by that person during the appeal, and
- if a fundraising appeal is conducted with a trader, expenses must be of a type and amount described in a written agreement between the trader and the authority holder.



#### **4.2.2 Expenditure by an organisation must be authorised**

Where an authority holder is an organisation:

- any expenditure for conducting the fundraising appeal, and
- any disposition of funds and profits resulting from a fundraising appeal must be properly authorised by or on behalf of the organisation.

### **4.3 Can I invest money received from an appeal?**

Money received in the course of a fundraising appeal should be applied to the charitable purposes intended. However, if the money is not immediately required, the money may be invested, but only in a manner allowed for the investment of trust funds.

This is subject to any Act which confers special powers of investment on the person or organisation concerned.

Authority holders who are considering investment of charitable funds raised and are unsure of their obligations in this regard should seek professional advice.

### **4.4 How do I safeguard assets and stock?**

The authority holder must ensure all assets obtained during, or as a result of, a fundraising appeal are safeguarded, recorded and properly accounted for.

These assets would include any stock of goods purchased or manufactured by the authority holder to be sold as part of a fundraising appeal.

### **4.5 Do I need to issue receipts for donations?**

#### **4.5.1 When to issue a receipt**

A receipt is to be written or issued immediately for all money received, even where not requested by the donor.

Exceptions to this requirement are when the money is:

- received through a collection box or similar device,
- received through the supply of goods and services,
- received through a payroll deduction scheme, or
- deposited directly into an account dedicated to the fundraising appeal or authority holder.

A single receipt may be issued to each donor every 12 months for the aggregate amount received, if donations are by direct debit/deposit into the authorised fundraising account.

#### **4.5.2 Proper control over receipts**

An authority holder must ensure proper controls and accountability of receipts. The gross money received by a participant who solicits or receives money in a fundraising appeal must be counted in the presence of the participant. The participant must then be issued with a receipt for that amount.

The authority holder may also issue a single receipt for the gross money cleared from a collection box or similar device.

Each receipt must include the following information:

- consecutive numbering of all receipts, as part of an ongoing series, and
- the printed name of the authorised fundraiser.

Other information may be required under specific tax and organisational law, including, but not limited to the Corporations Act, the *Australian Charities and Not-for-profit Commission Act 2012* (Cth), and the *Income Tax Assessment Act 1997* (Cth).

## 5 Record keeping

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### 5.1 Do I need to keep financial records?

An authority holder must keep financial and other records that correctly record and explain transactions, and the authority holder's financial performance and position. The records must be in writing, in English or a form easily convertible into writing in English.

This includes records of all gross income and expenditure and transactions. Records must be kept of particulars of all invoices, receipts, vouchers and other documents for each fundraising appeal that are necessary to explain the methods and calculations by which accounts relating to the appeal are maintained.

These requirements do not apply to fundraisers exempted from the obligation to hold an authority to fundraise but they reflect good business practice.

### 5.2 What other records must I keep?

#### *Record of Participants*

Details of all persons associated with the fundraising appeal, including any traders, employees and volunteers, and the activities undertaken by each person in relation to the fundraising appeal must be recorded and maintained.

#### *Cash book*

A cash book must be maintained for each account held with a bank, building society or credit union (including any passbook account) into which proceeds from any fundraising appeal are deposited or invested.

#### *Register of assets*

A register of assets must be maintained to properly account for all non-current assets obtained during, or as result of, the conduct of any fundraising appeal.

#### *Register of receipts*

A register recording details of receipts issued, including any electronic receipts. If more than three receipt books are issued during a fundraising appeal, the register must include details of the number assigned to and shown on each book correlated with the name of the person to whom it was issued, the date of issue and the date it was returned. The register must also record the name and signature of the person who issued, received and returned the book.

#### *Petty cash book*

If petty cash is used, a petty cash book must be maintained.

#### *Records of Minutes*

Where the authority holder is an organisation it must maintain records of meeting minutes which record all business relating to fundraising appeals transacted by the

governing body of the organisation (or by any subcommittee of that governing body). Minutes of any general or extraordinary meeting held by the organisation should also be maintained.

### **5.3 How long should I keep records for?**

All accounting records must be kept for at least seven years. All other records must be kept for at least three years.

## 6 Reporting requirements

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### 6.1 Do I need to submit an annual return?

Fundraisers that are exempt from the requirement to hold an authority to fundraise are not required to submit an annual return.

Authority holders are not required to lodge an annual return separately with NSW Fair Trading if they are ACNC-registered and comply with the reporting requirements of the ACNC. The ACNC will share information with NSW through a data sharing arrangement (see section 2.6).

All authority holders that are not registered with the ACNC must lodge an annual return with NSW Fair Trading within six months of the end of each financial year. It must be lodged even if no fundraising appeals have been held or if no income has been received by the authority holder.

It is important to be aware that the requirements of the Act do not interfere with or override other reporting requirements under other legislations such as the Associations Incorporations Act (NSW) or the Corporations Act (Cth).

### 6.2 What do I need to include in an annual return?

The following information must be included in an annual return:

- details of the authority holder (including the authority holder's name, registered address, phone number, website (if applicable) and email address)
- incorporated status
- information about fundraising activities, charitable purposes, and key beneficiaries
- traders' details
- an annual financial statement
- an auditor's report (if not exempt from auditing requirement under section 25)
- a declaration and statement of compliance

### 6.3 What information is in the annual financial statement?

The information included in the annual financial statement depends on the level of fundraising income for the financial year. All financial statements must be prepared in accordance with Australian Accounting Standards.

Where gross fundraising appeals income is less than \$100,000 the financial statement must include:

- An income statement that summarises the income and expenditure of each fundraising appeal conducted in a financial year,
- A balance sheet that summarises all assets and liabilities resulting from the conduct of fundraising appeals at the end of the financial year,
- A statement of cash flows.

Where gross fundraising appeals income is greater than \$100,000 but less than \$250,000 the annual financial statements must also include Notes to the financial accounts. The Notes should specify:

- The accounting principles and methods adopted in the preparation of financial statements
- Details of any material matter or occurrence, including those of an adverse nature such as an operating loss from a fundraising appeal conducted in the financial year.
- A statement that describes the manner in which the net surplus or deficit obtained from a fundraising appeal in the financial year as applied.
- The aggregate gross income and aggregate direct expenditure incurred in all fundraising appeals conducted jointly with traders in the financial year.

Where gross fundraising appeals income is greater than \$250,000 the annual financial statements must also include an independent Audit Report on the financial statements.

### **6.3.1 Declaration and Statement of Compliance**

The annual return must contain a Statement of Compliance authorised by the President or principal officer or some other responsible member of the governing body stating that:

- the authority holder has taken reasonable steps to comply with the Act, Regulations and the conditions of the authority
- the financial statements comply with the Act and the Regulations
- the organisation is able to pay all of the organisation's debts as and when the debts become due and payable
- the contents of the financial statement are true and fair
- the organisation has appropriate and effective internal controls

Authority holders that are registered with the ACNC are not required to submit a Statement of Compliance directly to NSW Fair Trading if they include it in their Annual Information Statements lodged with the ACNC.

If the authority holder is a company incorporated under the Corporations Act, this declaration is required in addition to the directors' declaration required under Section 295 of the Corporations Act.

## 6.4 Do I need to have accounts audited?

Under the Act, all authority holders must have all accounts associated with the receipt and expenditure of the proceeds of a fundraising appeal audited annually. The audit must be conducted by a Registered Company Auditor, authorised audit company or a person having other qualifications and experience acceptable to us and be in line with the relevant requirements of the Australian Auditing Standards.

However, an authority holder is exempt from this requirement if they do not receive more than \$250,000 gross income from fundraising appeals in any financial year. In these circumstances the financial accounts must be prepared by a person having qualifications or experience acceptable to us.

Significant diversity exists with authority holders in their activities and operations, size, and legal structures. Authority holders can operate under a variety of legal structures - including, a company limited by guarantee, a trust, an incorporated or unincorporated association, Royal Charter - each of which may impose specific financial reporting and auditing requirements. The authority holder's governing instrument or constitution may also impose financial requirements.

Authority holders should note that they do not necessarily have to arrange for a separate auditor's report if one that meets the requirements for an audit under the Act has already been prepared in compliance with another law.

### Auditor and accountant qualifications

The audit must be conducted by a Registered Company Auditor, authorised audit company or a person having other qualifications or experience acceptable to us and be in line with the relevant requirements of the Australian Auditing Standards.

An acceptable auditor would be a current member of either CPA Australia (CPA), The Institute of Chartered Accountants in Australia & New Zealand (CAANZ) or Institute of Public Accountants (IPA) and holds a current public practice certificate issued by one of those bodies.

The auditor must be objective, impartial, and free of any conflict of interest in performing their duties.

An authority holder is exempt from this requirement if they do not receive more than \$250,000 gross income from fundraising appeals in any financial year.

If the fundraising income is between \$100,001 and \$250,000, the authority holder must engage an accountant with formal accounting qualifications to prepare its annual financial statements.

If the fundraising income is less than \$100,000, the authority holder can engage an accountant who has no formal accounting training but who possesses other qualifications and experience we assess as suitable to prepare its annual financial statements.

## 6.4 What changes do I need to tell Fair Trading about?

An authority holder must notify Fair Trading as soon as possible, and within 28 days, if any of the following circumstances arise:

- a) the authority holder's name or address has changed,
- b) the charitable purpose for which the appeal is being or is to be conducted has changed,
- c) the authority holder's ACNC registration has been revoked or an ACNC responsible entity has been suspended or removed,
- d) you become aware that information or a document provided in an annual return was misleading or deceptive in a material particular,
- e) the authority holder becomes insolvent, is placed in liquidation or under external administration or is wound up,
- f) a member of the governing body of the authority holder, is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months,
- g) the incorporation status of the authority holder changes,
- h) a branch of the authority holder (that is not an authority holder in their own right) ceases to be under the responsibility of, and the direction and control of, the governing body of the authority holder,
- i) a branch of the authority holder ceases to operate,
- j) the name, address or telephone number of the authority holder's auditor changes,
- k) the authority holder decides to cease conducting a fundraising appeal,
- l) the particulars of a trader jointly conducting a fundraising appeal with the authority holder are changed,
- m) the authority holder engages a new trader in relation to a fundraising appeal,
- n) a material error is identified in an annual financial statement accompanying an annual return lodged by the authority holder.

The changes referred to in a, b, h, j, l, l and above can be notified to NSW Fair Trading by using a change of details form which can be found at [www.fairtrading.nsw.gov.au/help-centre/forms/associations-forms](http://www.fairtrading.nsw.gov.au/help-centre/forms/associations-forms)

All remaining matters must be referred to Fair Trading in writing to [charity.inquiry@customerservice.gov.au](mailto:charity.inquiry@customerservice.gov.au)



## 7 Appeals conducted jointly with traders

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### 7.1 What is a Trader?

Nowadays, many charitable organisations engage the services of a trader to conduct appeals on their behalf.

Traders, more commonly known as ‘commercial fundraisers’, are persons who conduct fundraising appeals in connection with the supply of goods or services in the course of their trade or business partly for their own benefit.

Traders are not required to hold an authority to fundraise. Instead, any appeal they conduct must be done jointly with a person or organisation that holds an authority.

The responsibilities outlined in this section do not apply to fundraisers exempted from the requirement to hold an authority to fundraise.

### 7.2 Do I need to enter into an agreement with a trader?

A written agreement must be executed wherever an authority holder conducts an appeal with a trader.

For example, if a restaurant chain advertises that a specific monetary value of each meal or particular product sold would go to a charitable organisation or purpose (i.e., an authority holder), then a written agreement must be executed between the restaurant and the authority holder.

#### 7.2.1 Particulars of contract

To ensure that the responsibilities between parties are made clear, especially around how collected funds will be used, distributed and monitored to promote transparency, written agreements between authority holder and trader must include:

- the rights, duties and responsibilities of each party
- how variation to the agreement may be made
- how the agreement may be terminated and for what reasons
- notice that alternative dispute resolution will apply to disputes and how alternative dispute resolution mechanisms will apply
- types of insurance policies, the level of insurance, and the terms and conditions of the relevant insurance policy
- an undertaking by the trader that they will comply with all relevant state and federal laws
- the trader’s obligation to comply with reporting requirements and also to help facilitate the authority holder to comply with reporting requirements

- appropriate internal controls/safeguards for accountability measures (e.g. traceable donations)
- trader's responsibility to maintain records, types of records and manner of keeping records
- amount of return to be obtained/basis of method of amount calculated (can't be a percentage) and manner of payment
- details of any commission, wage or fee payable to the trader and any other persons
- type and limits on amount of expenses that may be borne by the trader and authority holder

## 7.3 What must be disclosed in advertising?

Appeals conducted jointly with traders often include advertisements, for example brochures or leaflets, signage, online or television marketing. All advertisements, notices and/or information concerning the joint appeal must;

- Have been approved by the authority holder prior to distribution,
- Identify the trader and the holder of the authority, by outlining the full name, place of business and contact details,
- Ensure the name of the trader is displayed in the same font size as the name of the authorised fundraiser,
- Give details of the benefit to be received by authorised fundraiser and the trader including how funds or proportion of profits raised will be distributed. This must be expressed as a percentage of gross proceeds or a dollar amount, and
- Include details of the date the appeal commences and ends.

Note: Participants in appeals with traders should also note the disclosure requirements under *3.9.1 Disclosure by Participants* and *3.9.2 Questions to Participants*.

### 7.3.1 Appeals involving donated goods

Where the appeal conducted jointly with a trader involves collection of donated goods, details of the benefit to be received by the authority holder (charity) must be expressed in the advertisement, notice or information as:

- A percentage of the average gross income derived or expected to be received by the authorised fundraiser, or
- If the collection device is a bin, an average dollar amount derived or expected to be derived from each bin for each month.

*Example 1: The donated goods and materials become the property of and sold by [Trader]. The proceeds of sale will be paid to [Trader]. From these proceeds [Trader] will pay [Authority holder] 60% of the average gross income.*

*Example 2: The donated goods and materials become the property of and sold by [Trader]. The proceeds of sale will be paid to [Trader]. It is expected [trader] will pay [Authority holder] \$... per bin each month.*

The advertisement, notice or information must be updated if at any time there is a significant change in details. The details must be reviewed at least every 12 months.

## **7.4 What requirements apply to an appeal with a trader for collection of goods?**

Authority holders may engage traders in appeals that involve the collection of donated goods, for example, where traders own, distribute, collect or sort through items for a fee or benefit.

Appeals often involve the collection of donated goods by way of collection bins or bags.

The trader must maintain a register of bins and/or bags distributed or used in each appeal including:

- Date of distribution,
- Location, and
- Number of bags/bins distributed.

### *Monthly reports*

At least once a month for the duration of the appeal, the trader must provide a report to the authority holder containing information recorded on bins/bags including:

- Date of report,
- Date of distribution,
- Locality,
- Number of bins/bags distributed,
- Aggregate gross weight of sorted clothing obtained from the appeal (Clothing appeals only), and
- Certification by the trader that the report is accurate.

### *Bins*

Where items are donated through collection bins, each bin distributed by the trader must:

- be consecutively numbered with the number displayed prominently, and
- display the total number of bins currently used in connection with the appeal (this number should be reviewed and updated at least every 12 months from start of the appeal or where there is a significant change in number of bins used)

### *Donated clothing*

Where a fundraising appeal for collection of donated articles of clothing is to be conducted jointly by an authority holder with a trader, the authority holder must ensure:

- if the collection device is a bin, each bin must have 'COMMERCIALY OPERATED' displayed on its chute, or
- if the collection device is a collection bag, each bag, or any advertisement, notice or information distributed with each bag, must have printed 'COMMERCIALY OPERATED' in a clearly visible position..

Any advertisement, notice or information for such a fundraising appeal must also bear the words "COMMERCIALY OPERATED".

The trader must additionally maintain a separate record for each appeal that includes date and aggregate gross weight of unsorted clothing obtained from the appeal.

## **7.5 What requirements apply to an appeal with a trader for the sale of goods and services?**

Traders must maintain a record of goods and services supplied in an appeal.

If the appeal includes goods for sale, the trader must maintain a record including:

- Date, number and cost of units purchased or manufactured by the trader
- Date and number of units sold, and
- Gross income obtained from sales.

## **7.6 How much can I spend on a trader?**

The return from any appeal must be fair and reasonable and the authority holder must take all reasonable steps to make sure this occurs.

### **7.6.1 Donation only appeals**

The authority holder must receive at least 50 per cent of the gross incomes raised.

An authorised fundraiser must take all reasonable steps to ensure that the expenses payable in respect of the appeal for donations only do not exceed 50 per cent of the gross income. Expenses include amounts incurred by the authority holder and by the trader.

### **7.6.2 Goods or services appeals**

An authority holder must take all reasonable steps to ensure that the expenses payable do not exceed a fair and reasonable proportion of the gross income raised.

## 7.7 Do traders need to maintain records?

Traders must maintain records of fundraising appeal as required under the Act. For example, records of:

- Money collected and deposited as part of appeal,
- Participants and employees, including child participants,
- Collection devices used,
- Goods collected,
- Goods and services supplied, and
- Receipts.

*See also Chapter 5 Record Keeping for records to be maintained as part of a charitable fundraising appeal.*

### 7.7.1 Location of records

Any records and documents to be maintained by the trader, by agreement with the authority holder or as required by the Act, must be kept at the registered office of the authority holder.

### 7.7.2 Exemptions

Records may be removed from the registered office of the authority holder:

- for auditing purposes, or
- by law, regulations or authority conditions, or
- to be taken to a place where NSW Fair Trading has been notified in writing the change in location. For example, for them to be kept at the office of the trader.

Where an exemption applies authorising records to be kept at the office of the trader, those records must be made available to the authority holder upon request.

## 7.8 What are the banking requirements for traders?

A trader can maintain a bank account where the money from fundraising appeals is deposited.

### 7.8.1 Traders must maintain Separate accounts for each authority holder

A separate account must be maintained for each authority holder. The account can only consist of money raised in the appeals conducted jointly with the authority holder which the parties agree to be held in the trader's account.

### 7.8.2 Maintenance of banking records

The income from the fundraiser/s must be clearly identifiable in the banking and accounting records of the trader. The records must be provided to the authority holder in accordance with their written agreement.

## 7.9 What receipts can traders issue?

A trader may only use receipts or tickets issued by the authority holder as part of an appeal. Both the authority holder and the trader must maintain records of the receipts that have been issued.

## 7.10 Do I notify Fair Trading when I engage a trader?

Authority holders must notify NSW Fair Trading within 28 days when a new trader is engaged or the details of an existing trader change.

**Particulars that must be updated include:** Full name, business, postal and email and website addresses, and contact numbers.

**Other information that must be updated include:** Full name of each director (if an organisation) and owner of the trade or business conducted by the trader, the period for which the trader will be engaged, as in the written contract, and the type of appeals to be conducted.

## 8 Governance

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Governance refers to the practices and procedures put in place to ensure that a charity is run correctly. Good governance enables the day-to-day work of a charity to align with its purpose, and includes issues such as management requirements, governing instruments, internal controls, conflicts of interest and dispute resolution.

### 8.1 Management requirements

If the authorised fundraiser is an organisation, then in relation to its fundraising activities, it must ensure that:

- the organisation is administered by a governing body of not fewer than three persons,
- all business transacted by the governing body must be properly recorded in the organisation's meeting minutes,
- the minimum quorum for all meetings of the governing body must be the greater of three persons or one quarter of the governing body members.

The following requirements must be adhered to if the authorised fundraiser has individuals acting as trustees for a trust in relation to its fundraising activities:

- Trusts are required to be administered by not fewer than three trustees,
- All business transacted by the trustees must be properly recorded in the meeting minutes of the trust,
- The minimum quorum for all meetings of the trustees must be the greater of three trustees or one quarter of the governing body members,

### 8.2 Does my organisation need a governing instrument?

A governing instrument is a formal document that contains information about the objectives of an organisation and helps ensure that fundraising appeals are conducted in accordance with the organisation's charitable purpose. If the governing instrument is not clearly defined and aligned, it can affect an organisation's application for an authority to fundraise.

Governing instruments of organisations may vary depending on whether the organisation is an incorporated association, unincorporated association, company limited by guarantee, or co-operative.

There are four main types of governing instruments:

- constitution or rules of a co-operative or an incorporated association,
- trust deed,
- constitution or rules of an unincorporated association, or
- the constitution (previously known as the memorandum and articles of association) of a company limited by guarantee.

It is important that the constitution fits with the objectives of the organisation. If the governing instrument is not clearly defined and aligned, it might affect the organisation's application for an authority. Fair Trading recommends that organisations seek professional assistance in preparing governing instrument documents.

#### *Incorporated Associations*

An association incorporated under the Associations Incorporation Act is required to have a constitution, being a set of rules governing the affairs of the association, which must address matters referred to in Schedule 1 of the Associations Incorporation Act. Incorporated associations can adopt the Model Constitution developed by NSW Fair Trading to cover all matters outlined in Schedule 1 of the Association Incorporation Act, or create their own so long as it complies with the requirements of that Act.

#### *Companies Limited by Guarantee*

A company limited by guarantee registered under the Corporations Act will have either a single constitution (for newer organisations) or two separate documents: a 'memorandum of association' and 'articles of association' (for older organisations that have not updated their constitution).

#### *Co-operatives*

A co-operative registered under the *Co-operatives (Adoption of National Law) Act 2012* (NSW) must have a set of 'rules' that make up its constitution. Usually the aims or purposes of a co-operative are expressed by specifying its 'primary activity' in its rules. The rules may also include objects.

#### *Trusts*

Charitable trusts can be set up to support a variety of charitable purposes and are governed by the deed that establishes the trust. Generally a trust is set up to hold funds and distribute those funds in line with the rules found in the trust deed.

## **8.3 Authorised fundraisers must have internal controls**

An authorised fundraiser, in relation to its fundraising activities, must maintain an effective internal control structure over its fundraising activities. These include accountability for the gross income and all articles obtained from any appeal and expenditure incurred.



## 8.4 Remuneration of board members?

Under section 48 of the Act, Ministerial approval is required for a person to serve on a governing body if in receipt of remuneration or other benefit from the organisation.

An application for approval must be made in writing and sent to NSW Fair Trading prior to the appointment of a board member if the appointment is to include remuneration.

Details of the amount of remuneration or benefit is only required to be disclosed if it is received as a direct result of holding office as a member of the governing body of the authorised fundraiser. For example, the remuneration or benefit is received by payment of a director's fee, salary or allowance, or by the provision of free accommodation, a car, etc.

Ministerial approval is not required if the board member serves on the board by virtue of being a minister of religion or a member of a religious order.

## 8.5 Do I need insurance when conducting an appeal?

Appropriate insurance must be maintained by an authority holder for any appeal that involves children as participants. This insurance must protect both the child and the interests of the child against any claim which could be brought against the child for property damage, public liability or other such risks.

Other insurance may be required under other legislation, for example public and products liability insurance, workers compensation insurance, protection and association liability, volunteer personal accident insurance for volunteers and third party property insurance on motor vehicles. This requirement will depend on the organisational structure and how the charity operates.

Further to this, authority holders engaging with traders should include details of the insurance risks to be covered by each party in the written agreement between the authority holder and trader.

## 8.6 Complaint handling mechanisms

The authorised fundraiser must provide a mechanism that will properly and effectively deal with complaints made by members of the public and grievances from employees in relation to its fundraising activities.

## 8.7 Internal disputes

If the authorised fundraiser is an organisation, its governing instrument must establish a mechanism for resolving internal disputes within the membership of the organisation in relation to its fundraising activities.

## 8.8 Conflicts of interest

An authority holder should have mechanisms for dealing with any conflicts of interest that may occur involving a member of the governing body, office-holder, volunteers or employee of the authorised fundraiser, in relation to its fundraising activities.

Steps should be implemented to manage potential conflicts of interests, such as:

- Adopt a conflict of interest policy, and
- Establish and maintain a register of financial interests, and
- Promote a culture of disclosure, or
- Manage any conflict of interest appropriately.

If the appointment, conditions of service, remuneration or the supply of goods or services by, a member of the governing body (or the member's immediate family) is being considered at a meeting:

- (a) the member must be excluded from that part of the meeting, and
- (b) the quorum for the meeting must not include the member, and
- (c) the resolution of the matters being considered must be subsequently ratified at a general meeting of the organisation or by a committee that has been delegated the function to ratify the resolution of those matters.

### **Examples of conflicts of interest of a monetary kind**

- Where goods and services are supplied to the organisation by a member of the governing body or a salaried officer. The person may also benefit if the supplier is a family business or family company. Alternatively, this type of conflict may not directly benefit the person, but another member of the person's family.
- Where an asset belonging to the organisation is sold to a member of the governing body.
- Where a voting member of the governing body of the organisation is in receipt of a salary, fee or some other benefit (other than reimbursement for reasonable out-of-pocket).

### **Examples of conflicts of interest of a non-monetary kind**

- Where a voting member of the governing body votes on a matter which directly affects that person.
- Where the auditor, solicitor or other professional person is on the governing body of the organisation or related to a member of the governing body.
- Where the auditor acts on behalf of two clients which have common property dealings.

*To find out more about managing conflicts of interest policies visit under 'Managing conflicts of interest guide' at [www.acnc.gov.au](http://www.acnc.gov.au).*

## Resources

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Further resources that may be relevant to your fundraising appeal are listed below.

### National

#### **Australian Competition and Consumer Commission**

Ph: 1300 302 502

[www.accc.gov.au](http://www.accc.gov.au)

#### **Australian Securities and Investments Commission**

Ph: 1300 300 630

[www.asic.gov.au](http://www.asic.gov.au)

#### **Australian Charities and Not-for-profits Commission**

Ph: 13 22 63

[www.acnc.gov.au](http://www.acnc.gov.au)

#### **Fundraising Institute Australia**

Ph: 1300 889 670

[www.fia.org.au](http://www.fia.org.au)

#### **Public Fundraising Regulatory Association**

Ph: 1300 170 570

[www.pfra.org.au](http://www.pfra.org.au)

#### **Justice Connect not-for-profit law**

Ph: (02) 8599 2100

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

#### **Office of the Registrar of Indigenous Corporations (ORIC)**

Ph: 1800 622 431

[www.oric.gov.au](http://www.oric.gov.au)

## State and Territory Regulators

Charities must comply with any relevant fundraising laws in the state or territory they raise funds in, not just where they operate.

### Australian Capital Territory

Access Canberra

[www.accesscanberra.act.gov.au](http://www.accesscanberra.act.gov.au)

### Northern Territory

There is no state legislation in the NT governing fundraising or charities. However, other legislation may be relevant, for example, incorporated associations and cooperatives.

[www.nt.gov.au/industry](http://www.nt.gov.au/industry)

### Queensland

Office of Fair Trading Ph: 13 7468

[www.qld.gov.au/law/fair-trading](http://www.qld.gov.au/law/fair-trading)

### South Australia

Consumer and Business Services Ph: 13 1882

[www.cbs.sa.gov.au](http://www.cbs.sa.gov.au)

### Tasmania

Consumer Affairs and Fair Trading Ph: 1300 654 499

[www.consumer.tas.gov.au](http://www.consumer.tas.gov.au)

### Victoria

Consumer Affairs Victoria Ph: 1300 558 181

[www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)

### Western Australia

WA Consumer Protection, Department of Mines, Industry Regulation and Safety

Ph: 1300 304 054

[www.commerce.wa.gov.au](http://www.commerce.wa.gov.au)