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*Review of the  
Fundraising Appeals  
Act 1998*  
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# “ Preface ”



In February the Minister for Consumer Affairs, John Lenders invited me to review the *Fundraising Appeals Act 1998* to ensure that the current legislative environment continues to build on the public's confidence in fundraising endeavours.

The Government has a strong commitment to building and strengthening communities and fundraising is an important aspect of that.

In the past few months the review panel which I Chair has been meeting with stakeholders who have provided us with some valuable contributions to this review such as:

- Should a certain percentage of costs when undertaking fundraising be prescribed?
- Should fundraisers be required to identify publicly the percentage of total proceeds going to the beneficiaries?
- Should the exemptions for certain organisations to register for fundraising be removed?
- Is there a need for better education for community groups to better understand their obligations under the Fundraising Act?
- What role should a code of practice have in the industry?

In addition we will look at the meaning of a *fundraising appeal* in the Act and the objective of regulation and if there is a need for national legislative harmonisation.

As we now need input from the broader community and the fundraising industry this discussion paper has been prepared for distribution and comment. Your feedback is necessary and welcome, as we want to capture the views of as many Victorians as possible.

Our consultation process is now entering a new phase and your feedback would be appreciated.

A handwritten signature in black ink, appearing to read 'Luke A Donnellan'.

**LUKE DONNELLAN MP**  
Member for Narre Warren North

# “ The Review ”

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

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

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

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

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

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

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

Submissions should be forwarded to:

Review of the Fundraising Appeals Act 1998

Consumer Affairs Victoria

GPO Box 123A

MELBOURNE VIC 3001

or

by email to [fundraisingsubmissions@justice.vic.gov.au](mailto:fundraisingsubmissions@justice.vic.gov.au)

# “ *Executive Summary* ”

This discussion paper outlines the Government's commitment to community building and the role of fundraising as a critical revenue source for the not for profit sector. Changes in the fundraising industry are highlighted as is the history and objectives of the *Fundraising Appeals Act 1998* (the Act). The current regulatory system for the fundraising industry is outlined.

The discussion paper sets out a range of issues identified as a result of both preliminary consultations and work undertaken within Government. These issues can be divided under six main headings:

- Is the meaning of “fundraising appeal” clear?
- How is the current system, specifically the registration process, working?
- How does the current registration process sit with other reporting requirements imposed on fundraisers?
- How can transparency and public confidence in fundraising be increased?
- What role could/should a code of practice play in the industry?
- Should national harmonisation be a critical priority and what steps could be taken to promote harmonisation?

Unlike most other jurisdictions, the Victorian legislation does not restrict the meaning of the term to appeals undertaken for charitable or community purposes. Rather, a broad meaning is provided and various activities are excluded from this broad meaning. The review will consider whether the term “fundraising appeal” requires clarification.

The introduction of a public register has been a major change from previous practices. As the register has now been in operation for two years it is time to assess its overall effectiveness and determine if the register is beneficial to the community, or requires some change. As many organisations are exempt from registration, it is also timely to review this policy.

Many fundraising organisations that are required to be registered under the Act also need to report to the Victorian Government under other legislation. A multiplicity of reporting requirements may create administrative difficulties for some organisations without substantially benefiting the transparency of the fundraising operations of the organisation. The review is seeking information from fundraisers, whether exempt or registered, about the reporting requirements that currently apply to them.

The review will also consider whether any additional measures are required to increase transparency and improve public confidence in fundraising. It may be, for example, that greater transparency could be promoted by placing much more information (about the amount of funds raised, distributed and absorbed in administrative costs) on the register. By this means the public could make an assessment of the efficiency and effectiveness of different fundraisers.

Alternatively or in addition, a code of practice may be the best way for the industry to promote greater transparency and public confidence in fundraising.

All the states and the ACT have legislation regulating fundraising. However, there is considerable variation between the jurisdictions both in terms of the range of fundraising activities covered and the regulatory methodology that is adopted. As a consequence, any organisation wishing to fundraise in more than one state is faced with a plethora of statutory requirements affecting national fundraising. Promotion of national harmonisation could help to ensure that adequate and consistent consumer protection is provided Australia wide and could facilitate national fundraising activities. The review provides an opportunity to ascertain industry support for national harmonisation, and to explore any steps that can be taken to promote this goal.

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# “ Section 1 Background ”

# 1

## 1.1 Policy Context

In Victoria there are many different communities. They can be based around a location, a common interest, a common need or a cultural identity. However, while their aims are very different, communities that are effective have much in common, including a capacity to work together to achieve shared goals.

Governments now recognise that this capacity has to be strengthened and that there is a role for Government to help build the capacity of people to actively engage in a wide variety of social, economic, cultural, recreational, learning and civic activities. Community strengthening is a benefit in its own right (by building social capital) and is a way to deliver valuable community assets and services. In the longer term, it is also a way to reduce the growth in demand for expenditure on high cost remedial services.

Fundraising in its many forms is an activity integral to the workings of many community groups. It is undertaken for a multitude of reasons, from the purchase of equipment for the use of sporting club members to the collection of funds for overseas aid. Regardless of the objective, it is likely that the activities associated with fundraising are points of contact between particular organisations and the broader community.

## 1.2 Nature of the industry

Fundraising activities are infinitely diverse. They cover the spectrum from individuals using their after work hours to conduct small scale community activities to sophisticated commercial organisations raising money for a cause and earning income for the service.

Some of Australia's best known fundraisers now have large networks of responsibility and to fulfil their obligations (and to continue their great social achievements) a steady flow of funds is required from the public. Competition for funds is particularly intense and many charities and not for profit organisations use commercial fundraisers to provide them with new and more innovative methods of fundraising.

While commercial fundraisers are increasingly involved in all types of fundraising activity, the distinction between fundraising and commercial activity is also becoming increasingly blurred.

At one end of the spectrum is a donation to a cause (be it a charity, or research organisation or an arts body). Further along the spectrum is the purchase of a good or the attendance at an event. In these cases the goods (handcrafts at a fete for example) are purchased in part for their own value but also because they are another way to give. However, other fundraising activities are squarely within the commercial sector. In such cases commercial producers of cards, pens, clothing etc operate in the market place, but in promoting their products indicate that a small proportion of sales proceeds will be given to a particular charity/cause.

The increasing push to commercialisation is a challenge to the industry and the community.

## 1.3 The role of Government

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

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

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

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

While it is Government's role to provide a supervisory framework for the fundraising industry, there are various options for that framework. From a practical perspective, the framework has to accommodate large and small fundraisers as well as commercial businesses and community groups. The framework should

provide protection from practices that fall short of community expectations. At the same time the administrative burden on legitimate fundraisers should be minimised.

With such a framework in place, community groups can go about their activities, building social networks and providing much needed assistance to a diverse range of important causes. Similarly the broader community can be encouraged to contribute their time and income to causes outside the areas of their immediate self-interest.

## 1.4 Dimensions of fundraising activity

It is difficult to attribute a figure to the amount of fundraising occurring in Australia. Figures for specific appeals and charitable activities are often publicly available. However, it is not possible to sum these numbers together and be confident that the scope of the industry is represented. Fundraising is such a diverse activity, from a scout's lamington drive to a national appeal in response to an international crisis, that it is hardly surprising that there is not one data set that will inform us of the dimensions of fundraising in Australia.

To estimate the size of fundraising activity a different approach is required.

Most fundraising is for the not for profit sector and some is for government organisations (such as the major state art galleries). Analysis undertaken by the Australian Nonprofit Data Project is the most valuable starting point to develop some broad estimates<sup>1</sup>. This project uses data for the 1995/96 financial year as well as survey work undertaken in 1997. Some updating of not for profit sector data has been undertaken by the Australian Bureau of Statistics (using data for the 1999-2000 financial year).<sup>2</sup>

One estimate of the value of fundraising in Australia would suggest a figure in excess of \$2.5 billion<sup>3</sup>. This figure is based on information collected from non profit organisations who employ people (it is this group of non profits which are included in the country's economic statistics). Fundraising includes donations from individuals or companies, bequests, grants from foundations, revenue from special events, from fetes and raffles, from opportunity shops and from sponsorship.

<sup>1</sup> Mark Lyons and Susan Hocking (2000) *Dimensions of Australia's Third Sector: A Report from the Australian Nonprofit Data Project Centre for Australian Community Organisations and Management*, University of Technology, Sydney. Most of the data for this project was collected for the 1995/96 financial year.

<sup>2</sup> Australian Bureau of Statistics (2002) Cat. 5256.0 *Australian National Accounts: Non-Profit Institutions Satellite Account*.

<sup>3</sup> Data from Lyons and Hocking (2000) and updated by an annual growth rate in income of 6.5 per cent from 1995-96 to 1999-2000 (Appendix 2, ABS Cat.5256.0)

## 1.5 History and objective of the Fundraising Appeals Act 1998

However, it should be noted that this base figure does not take into account revenue from goods sold for fundraising purposes. Also, the figure would be much higher if all the fundraising activities from the myriad of incorporated and unincorporated associations who do not employ people were added. These organisations are likely to be much more dependent on their fundraising activities as a revenue source than are the organisations that employ people (which tend to be larger).

Another way of assessing the dimensions of fundraising activity is by looking at the levels of giving. The Australian Nonprofit Data Project has collected data on giving (the amounts of money donated) by Australian households. In 1997 Australians gave \$3 billion. Of this sum \$2.8 billion went to non profit organisations and \$0.2 billion to Government. The giving recorded here is to **all** non profit organisations, those that employ people and those that do not. However, these giving figures do not include other fundraising activities such as fetes. Nor do these figures include corporate giving.

A number of different estimates have been made about levels of corporate giving although definitional problems abound<sup>4</sup>. More recent (2000-01) work based on a new ABS survey estimates business giving to the community sector to be in excess \$1.447 billion. This figure is broken down between donations (\$586 million), business to community projects (\$182 million) and sponsorship (\$679 million)<sup>5</sup>.

Using these estimates, between \$4 billion and perhaps as much as \$6 billion dollars in fundraising occurs in Australia annually. Taking a middle point of this range for the national figure and a proportional figure for Victoria, fundraising in Victoria is likely to raise over \$1.2 billion annually. However, not all of this fundraising activity would come within the jurisdiction of the Act (given the definition in the Act and the exemptions from the Act).

There is a need to update and develop more comprehensive data on fundraising. Undoubtedly, better data is required to make a more precise estimate. However, whatever the precise figure, fundraising is a significant area of economic activity that impacts on Australian households in their roles as donors and purchaser; as employees and volunteers; and as beneficiaries.

The *Fundraising Appeals Act 1984* was developed to achieve a balance between:

- protecting the donating public and legitimate fundraising organisations from fraudulent and misleading fundraising practices; while at the same time
- providing a supervisory framework that minimised the administrative burden placed on legitimate fundraisers.

Fundraisers had to notify Government about fundraising appeals they intended to conduct. Exemptions from this requirement (and from account and record keeping requirements) were provided to many organisations including schools, churches and hospitals.

Major changes have subsequently occurred. The *Fundraising Appeals Act 1998* (the Act) replaced the earlier legislation. Whilst the previous notification of appeals scheme was retained, requirements imposed on fundraisers (regarding the handling of money and keeping of records for example) were made more stringent. These changes were made to improve the protection of the donating public and to take account of the evolution of the industry as professional fundraisers became more prominent and fundraising developed as an industry rather than just a collection of philanthropic volunteers. The Act also reduced the range of exemptions.

Despite these changes, concerns continued about the operation of the Act, specifically that:

- the notification of appeals process imposed an unreasonable administrative burden on many fundraisers; and
- the public was not adequately protected from unscrupulous fundraising practices.

Further amendments were made in 2001 in response to these concerns, the major change being replacing the notification of appeals process with a registration of fundraisers scheme. The current Act attempts to maintain public confidence in fundraising by:

- requiring registration of persons or bodies who want to conduct fundraising appeals
- prescribing requirements for registration and grounds for refusal of registration

<sup>4</sup> Mark Lyons (1999) "What do we Know of Corporate Support for Australian Nonprofits? A Research Note", *Third Sector Review* 5(2) pp71-80. Corporate giving for the not for profit sector is estimated as \$1.65 billion using strong assumptions.

<sup>5</sup> ABS (2002) Cat 8157.0, *Generosity of Australian Business*. The community sector includes organisations providing the following activities; Art and culture, Community service and welfare, Education and training, Employment, Environmental, Health, and Sports and recreation.



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

## 1.6 Outline and administration of the Act

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

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

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

Activities that are covered by the term "fundraising appeal" include:

- doorknock appeals
- telemarketing
- traffic intersection/highway collections
- donations to clothing bins
- sale of goods at opportunity shops
- appeals run by commercial fundraisers
- public appeals to support a club, association or an environmental or community cause
- public appeals to support a cause or person or group of person,

or

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

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

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

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

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

# “ Section 2 Issues ”

# 2

## 2.1 Meaning of fundraising appeal

A fundraising appeal occurs (section 5):

*If a person solicits or receives money or a benefit on the basis of a representation that the soliciting or receiving is not solely for the profit or commercial benefit of the person or any other person, cause or thing on whose behalf the person is soliciting or receiving the money or benefit.*

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

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

### Issue No 1

Is the term "fundraising appeal" the appropriate descriptor?

Should we instead talk about fundraising?

## 2.2 Registration/Exemption scheme

### 2.2.1 Registration and the register

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

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

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

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

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

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

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

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

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

- the need to be registered
- how to go about making an application for registration
- the ongoing responsibilities of registered fundraisers and
- how to go about making an informed decision to donate.

There is no fee for registration or renewal. In contrast to other registration schemes, all the administrative costs of processing applications and of the registration scheme in general are borne by Government. Requiring fundraising organisations to pay a registration fee could be one way of increasing resources available for the administration of the Act.

A commercial fundraiser retained to administer part or all of an appeal for another fundraiser or other organisation should be registered. The Act requires commercial fundraisers to be registered even when they administer part or all of an appeal for an organisation that is itself exempt from registration.

Section 6 of the Act defines what conducting a fundraising appeal means. The definition

- releases any person who organises or participates in an appeal only in the capacity of an employee or agent from the requirement to be registered
- applies regardless of whether or not the person conducting a fundraising appeal is paid or a volunteer and
- makes specific provision for circumstances where a commercial fundraiser is retained to administer part or all of an appeal.

Some commercial fundraisers have argued that they are not required to be registered although they administer part or all of an appeal because they are acting as an agent.

#### Issue No 2

**Does registration of fundraisers increase community confidence in fundraising activities?**

#### Issue No 3

**Is the current scope of registration appropriate?**

#### Issue No 4

**Has the registration process reduced the administrative burden placed on fundraising organisations?**

#### Issue No 5

**Does the Act make the need to be registered clear to all potential fundraisers?**

## Issue No 6

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

## Issue No 7

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

## Issue No 8

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

### 2.2.2 Exemptions

Some organisations are exempt from the need to be registered, either by the Act or by Ministerial Order. Exempt organisations are listed on page 4.

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

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

- banking
- the keeping of income and expenditure records for appeals
- the auditing of accounts
- the keeping of records for other aspects of appeals, such as records about who participated in an appeal as a supervisor or manager, details of anyone (other than the beneficiary) who benefited financially from an appeal, and beneficiary details, and
- the public inspection of those accounts and records.

In contrast, organisations exempted by Ministerial Order may have to fulfil the account and record keeping requirements of the Act. Currently, such an exemption applies to non profit organisations that use only volunteers and raise less than \$10,000 (gross) per financial year from the public. This exemption was given to reduce the administrative burden on the smallest organisations. While they are exempt from the need to register they must comply with all the other requirements of the Act. Exemptions have been given to various categories of organisations for a range of reasons. For example

- reporting requirements to Government are already in place because the organisation receives significant revenue from Government
- scrutiny by the Auditor General occurs as some organisations are subject to their own Act of Parliament, and
- public annual reporting and auditing already takes place.

Because of the large number of exemptions that already exist, there are currently two distinct groups of fundraisers. One group is subject to scrutiny and clear reporting requirements, via the Act, and the other is not.

While exemptions may be provided because of the reporting arrangements with another part of Government, this does not allow the public to have access to the same information about the exempt organisation that is available for registered fundraisers and may not mean that their fundraising activities are separately scrutinised. This might disadvantage **exempt** fundraisers with the public favouring fundraisers that provide information (via the register) that is readily accessible to public scrutiny.

The current dichotomy between registered and exempt fundraisers may be too different. If the register is used more extensively in the future to inform the public about the activities and practices of registered fundraising organisations, the playing field could become more unequal.

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

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

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

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

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

#### Issue No 10

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

#### Issue No 11

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

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

#### Issue No 12

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

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

#### Issue No 9

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

## 2.3 Reporting under other Victorian Acts

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

For example, incorporated associations are required to report under the *Associations Incorporation Act 1981*. That Act imposes different financial reporting requirements on incorporated associations. This means that incorporated associations that conduct fundraising appeals must report to Government under both Acts, requiring the preparation of two different sets of records to comply with the different requirements of those Acts. The appropriateness of the existing reporting requirements for incorporated associations is currently being assessed as part of the review of the *Associations Incorporation Act 1981*. The outcome of that review will form part of the consideration of the reporting requirements for fundraising.

Further, organisations that conduct raffles, lotteries or other fundraising activity permitted by the *Gambling Regulation Act 2003* are required to apply for a permit under that Act (a permit is not required for a raffle where the prize value is \$5,000 or less although adherence to other conditions is required).

Raffles are widely used as a fundraising activity by a diversity of community groups. This means that any organisation that conducts fundraising within the meaning of the Act and also undertakes fundraising by way of raffles or other activities covered by the *Gambling Regulation Act 2003* has to report to two different parts of Government. In preliminary consultations with stakeholders this was raised as an issue.

CAV recognises the possibility that a multiplicity of reporting requirements may create administrative difficulties for some organisations without substantially benefiting the transparency of the fundraising operations of the organisation. To better understand the current benefits and costs associated with current reporting requirements, CAV is seeking information from fundraisers, whether exempt or registered, about the reporting requirements that currently apply to them.

### Issue No 13

**What are your organisation's reporting requirements to the Victorian Government?**

### Issue No 14

**Do you have to report to different parts of Government with regard to your fundraising activities? Are these reporting requirements consistent? Is there scope for harmonisation?**

## 2.4 Transparency and public confidence in the fundraising sector

The objective of the Act is to maintain public confidence in fundraising. It aims to achieve this by

- identifying through the registration process, persons or bodies that conduct fundraising appeals
- ensuring that appropriate grounds exist to refuse registration, to deregister a fundraiser, and to stop appeals
- requiring that a public register of fundraisers be maintained, and
- ensuring public accountability for the funds raised by requiring the maintenance of financial records to which the public can have access.

An important aspect of maintaining public confidence is ensuring that the funds raised actually benefit the named beneficiary and that the amount spent on administrative costs is not excessive.

The Act does not specify a percentage of funds raised in the course of a fundraising appeal that must always be distributed to the beneficiaries. Rather, an approach based on allowing retention of a reasonable proportion of the funds raised has been adopted. The review will consider whether this approach is an effective means of ensuring that excessive amounts of the proceeds of appeals are not retained for administrative costs, or whether the Act should specify a percentage of funds that must be distributed to beneficiaries in all cases.

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

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

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

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

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

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

#### **Issue No 15**

**Do the current account and record keeping requirements of the Act provide adequate transparency for fundraising in Victoria?**

#### **Issue No 16**

**Where organisations are subject to multiple reporting requirements to Government should a common set of reports be provided?**

#### **Issue No 17**

**Given that most exempt organisations are not required to comply with the record keeping requirements of the Act, does the existence of those exemptions adversely affect the transparency of the industry as a whole?**

#### **Issue No 18**

**Should more information be made available on the public register, such as the amount raised by a fundraiser, the amount spent in administration costs, and the proportion of proceeds that are distributed to beneficiaries?**

## 2.5 Code of practice

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

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

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

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

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

### Issue No 19

Should different account and record keeping requirements apply depending on:

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

### Issue No 20

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

### Issue No 21

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

### Issue No 22

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

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

### Issue No 23

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

### Issue No 24

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

### Issue No 25

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



### Issue No 26

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

### Issue No 27

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

## 2.6 National harmonisation

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

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

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

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

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

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

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

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

The review provides an opportunity to ascertain industry support for national harmonisation, and to explore the steps that can be taken to promote this goal.

One step that could be taken is to encourage the development by the Commonwealth Government of a set of national accounting standards for the not for profit sector. The review will consider whether there is support for this proposal.

### Issue No 28

**Does national harmonisation have relevance for Victorian fundraisers?**

### Issue No 29

**Should the Victorian Government work towards the development and implementation of a national approach to the regulation of fundraising?**

### Issue No 30

**Would the development of a national code of conduct be a way to progress national harmonisation?**

**Issue No 31**

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

**Issue No 32**

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

**Issue No 33**

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

**Issue No 34**

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

## 2.7 Other issues

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

**Issue No 35**

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

## Notes

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