

## **FUNDRAISING ACT (AUGUST 2015)**

### **ADVICE**

This advice is of a general nature to assist Rotary Clubs in District 9800 to determine obligations that they have, or may have, under the *Fundraising Act 1998* (the **Act**).

#### **Do Rotary Clubs need to register under the Act?**

If a Rotary Club conducts one or more fundraising appeals, then the Rotary Club needs to be registered.

Under section 5 of the Act:

*"A fundraising appeal occurs 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."*

Beautifully written by a lawyer. Try this instead.

If you ask for money or goods or take money or receive goods or other benefits and the person who gives does so on the basis of a representation (which might be something you said, or some signage that you use) that you are requesting money or receiving goods or benefits not solely for the profit or commercial benefit of you or your organisation.

Clearly if you are raising money for a named charity, it is a fundraising appeal. If you are raising money for "various community and international projects" it is still a fundraising appeal.

Examples of what might be a fundraising appeal:

1. A collection of goods for redistribution to charity.
2. A raffle for the benefit of a community organisation or project.
3. The selling of goods where there is a representation that monies will be applied to charity from the proceeds or the profits.

It is inevitable that each Rotary Club in the District needs to be registered under the Act.

#### **Who conducts a fundraising appeal?**

Almost always this will be the Club. Under section 6 of the Act a person conducts a fundraising appeal if he or she:

1. organises the appeal in a capacity other than as an employee or agent; or
2. is the sole participant in the appeal; or

3. is one of a number of participants in the appeal, but is not participating in the appeal as an employee or agent.

As a general proposition a member of a Rotary Club might organise an appeal in the capacity as agent on behalf of the Club. That means it is the Club which is conducting the appeal.

### **Who is an Associate?**

The Act refers to associates. In terms of Rotary Clubs, an Associate is a person who is able or will be able to have a significant influence over or with respect to the management or operation of the fundraising activities of the Club.

In your Club there might be no such persons, or it might be the present Secretary and Treasurer. Every Club will be different.

### **Raising money for nominated charities or organisations**

If you nominate in your promotional material that you are raising money for a particular organisation, then you need the consent in writing of that organisation to use the organisation's name in connection with your appeal.

If, for example, you propose to raise money for the neonatal unit at the Royal Children's Hospital, you would require the Royal Children's Hospital's consent to the use of its name in connection with the fundraising appeal.

If on the other hand you were raising money for neonatal care, you would not require the consent of any organisation.

Another example might be the Nepal earthquake. If you are raising money for the victims of the Nepal earthquake you would not need the approval of any organisation. If, on the other hand, you were raising money for a particular fund assisting in the relief of victims of the Nepal earthquake, you would require the consent of that organisation to use its name.

### **Banking arrangements**

Under the Act each organisation that conducts a fundraising appeal is required to have separate banking arrangements for monies raised during the course of a fundraising appeal unless:

1. the proceeds of the appeal are deposited in an account held in the name of the sole intended beneficiary of the appeal; or
2. you receive the consent of the Director of Consumer Affairs to conduct your banking in a different way (see sections 27, 19C and 23).

Effectively, without the consent of the Director of Consumer Affairs the bank account must:

1. be used exclusively for monies received in the course of fundraising appeals;
2. has a name that indicates that it contains fundraising appeal money; and

3. from which it is only possible to withdraw money by a cheque signed by at least two persons.

This does not mean that you need to open a separate account for each fundraising appeal, but if you do not do so then the Club must keep records in relation to the bank account that enables the money to be readily identified as having been received in the course of a particular appeal AND you should not mix your Club's money with funds raised.

Note a number of Clubs have successfully made application to the Director of Consumer Affairs to run a single account, and use the accounting system to differentiate between administration funds and fundraising funds.

Finally, a copy of the Act can be downloaded from [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au). The penalties for non-compliance with the Act are significant.

Information about the Act can also be found on the Consumer Affairs website – [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au).

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