



Be Careful When You LIFT THE LID

Every Rotary Club in Victoria will receive a request from Australian Rotary Health to fundraise for the campaign “LIFT THE LID” in the period October 1 to October 10.

You will receive material and be provided with suggestions as to how that fundraising might be undertaken.

If your Rotary Club is not registered as a fundraiser with Consumer Affairs, then some of the activities that have been suggested for fundraising purposes will put your Club in breach of the legislation and potentially subject to criminal prosecution and a fine.

District 9800 cares about your Club and its reputation, and that of your members. We do not want to see the Club or its members exposed, nor do we want to see the Clubs undertake unnecessary risks.

The Framework

Fundraising in Victoria is regulated by the Fundraising Act 1998.

You need to understand that legislation often gives specific meanings to words or phrases, meanings that do not accord with the way the same words or phrases are used in everyday language.

The Act provides a definition for what constitutes a fundraising appeal, and then describes a number of activities which, on the face appear to be fundraising appeals, but which the legislation says are not.

What is a fundraising appeal?

“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”.

I read that definition to mean that if you (as an individual) are collecting money on behalf of an organisation (your Rotary Club) for the purpose of giving that money to Australian Rotary Health, then:-

- a. A fundraising appeal is occurring; and
- b. You, as an individual, are participating in a fundraising appeal.

Soliciting or receiving any money or benefit for the purpose of the appeal, constitutes participating in the appeal.

Fundraisers need to be registered.

Section 17A of the Fundraising Act has the effect of requiring anyone who conducts a fundraising appeal to be registered by the Director of Consumer Affairs as a fundraiser, unless an exemption applies.

In the event that an exemption does not apply, the maximum penalty that applies is 240 penalty units (\$37,920.00).

Please note that a number of exemptions apply. The regulation that (in my view) might apply to some Rotary Clubs is an exemption for “organisations that receive less than \$10,000.00 gross in a financial year from fundraising, and not paid for conducting the fundraising and use only unpaid volunteers”.

In short, if:-

- a. You are conducting or propose to conduct a fundraising appeal;
- b. You receive or anticipate receiving \$10,000.00 or more in a financial year from fundraising, then you need to be registered with the Director of Consumer Affairs as a fundraiser.

Are you registered?

The Consumer Affairs website contains a database of fundraisers who are registered in Victoria. Of the Clubs in District 9800, 46 of them are not registered as fundraisers.

For each of those Clubs, you have the following choices:-

- a. Register as a fundraiser (which I would suggest you do in any event);OR
- b. Not raise any more than \$10,000.00 in any financial year; OR
- c. Only conduct activities that are exceptions from the definition of fundraising under the Act.

Section 5 of the Act lists a series of activities that do not “count” as fundraising activities. The ones that I think are most relevant to Rotary Clubs are as follows:-

- a. Soliciting a person to become a member of an organisation or to pay the joining or membership fee of an organisation;
- b. The soliciting or receipt of any money or benefit by or on behalf of an organisation from a person:-
 - i. Who is or was a member of the organisation;
 - ii. Who is in the process of becoming a member of the organisation;
 - iii. Is a relative of, or is personally acquainted with, any person referred to in i. or ii. even if the money or benefit is solicited or received on the basis that it will be applied for purposes other than the benefit of the organisation;
- c. Soliciting or receiving money:-
 - i. From a Commonwealth State or Territory body;
 - ii. A corporation, partnership or trust that is permitted to donate money or benefit from non-profit or non-commercial purposes by its empowering document.

That's it. It's not a long list.

What should you do?

1. Continue to support the LIFT THE LID initiative, but do so in accordance with your obligations under the Law of Victoria.
2. Register as a fundraiser (if you are one of the 47 Clubs who have either not registered, or allowed their registration to lapse). It will give you significant advantages in fundraising flexibility.

If you propose to collect money from the public by the use of collection tins in circumstances where you will be identified by the badges that you wear, then you need to be aware that the tins need to be numbered, and their emptying audited, and you also need to be aware that your Rotary badges will not be identifying badges within the meaning of the legislation.

The relevant legislation is set out below. A penalty unit is \$158.00.

9 Identification badges for collectors

- (1) If a person is in the course of conducting or participating in a fundraising appeal—
- (a) in a public place; or
 - (b) on the premises of a person from whom money or a benefit is being solicited or received without the prior invitation of that latter person— she or he must wear an identifying badge in such a way that the entire face of the badge is at all times clearly visible. Penalty: 10 penalty units.

A person who is conducting a fundraising appeal must issue an identifying badge to each person participating in the appeal who is required by subsection (1) to wear an identifying badge and must ensure that the badge—

- (a) prominently displays the words "Paid Collector" if the person to whom it is issued is entitled, or expects, to be paid for participating in the appeal (other than for out-of-pocket expenses);
- (b) prominently displays the words "Volunteer Collector" if the person to whom it is issued is not entitled, and does not expect, to be paid for participating in the appeal (other than for out-of-pocket expenses);
- (c) complies with any other requirements specified in the regulations. Penalty: In the case of a corporation, 120 penalty units. In any other case, 60 penalty units or imprisonment for 6 months or both.

The requirements for identifying badges in the regulations are:

- (1) A person who issues an identifying badge under section 9(2) of the Act must ensure that the badge prominently displays—
- (a) the name of the person conducting the fundraising appeal; and
 - (b) the name of the person to whom the badge is issued; and
 - (c) if the identifying badge is issued to a person who solicits or receives money or a benefit from a person who is in a motor vehicle on a road, an identification number issued by the person conducting the fundraising appeal.
- (2) Information required to be displayed on an identifying badge under section 9(2) of the Act or subregulation (1) must—
- (a) only contain lettering or numbers with a height not less than 4 millimetres; and
 - (b) if the information is handwritten, the lettering must be in capital letters.
- (3) Information that is not required to be displayed on an identifying badge under section 9(2) of the Act or subregulation (1) must be no greater in height than the information referred to in subregulation (2).
- (4) If a person issues more than one identification number for the purposes of subregulation (1)(c)—
- (a) the identification numbers issued must be sequential; and
 - (b) the person must—
 - (i) make a record of each identification number issued and the person to whom it relates; and
 - (ii) retain the record for at least 3 months after the fundraising appeal for which the badge is to be worn has ended.

10. (1) A person who is conducting a fundraising appeal must ensure that any receptacles that are used to collect donations for the appeal that are in a public place—

- (a) are securely constructed, properly sealed and consecutively numbered; and
- (b) are clearly labelled with—

- (i) the name of the appeal; or
- (ii) the name of the person conducting the appeal and the person or class of people or causes or things on whose behalf the appeal is being conducted. Penalty: In the case of a corporation, 120 penalty units. In any other case, 60 penalty units or imprisonment for 6 months or both.

11.(1) A person who is conducting a fundraising appeal must ensure that the use and emptying of any receptacles that are used to collect money for the appeal are supervised in a way that ensures, to the maximum extent that is practicable in the circumstances of the appeal—

(a) in the case of a fundraising appeal to which Part 3 applies, that all the money is deposited in one of the accounts referred to in section 27;

(b) in any other case, that all the money is collected and given to the person. Penalty: In the case of a corporation, 120 penalty units. In any other case, 60 penalty units or imprisonment for 6 months or both.

(2) A person who is conducting a fundraising appeal must ensure that the use and emptying of any receptacles that are used to collect donations other than money for the appeal are supervised in a way that ensures, to the maximum extent that is practicable in the circumstances of the appeal, that all the donations are collected and properly processed. Penalty: In the case of a corporation, 120 penalty units. In any other case, 60 penalty units or imprisonment for 6 months or both.

It only requires one complaint from the public.