Commercial Fundraisers and Consultants

Can a person engaged in business conduct an appeal?

Only Western Australia prohibits paid collectors, and then only for street collections in the metropolitan area.\(^1\)

Under the NSW provisions, a person engaged in business or a person who may receive a benefit from the appeal (a trader) can only conduct an appeal where:

- The appeal is conducted jointly between the trader and a holder of an authority;
- Any advertisement, notice or information concerning the appeal identifies the trader and the holder of the authority; and
- All material identifies the intended way in which the funds will be shared.\(^2\)

Queensland and the ACT have a similar structure. Authorisation from the Minister is required in Queensland where any commercial undertaking or purpose of private gain is joined with a charitable or community purpose.\(^3\)

The promoter (the person conducting the appeal) is named in an authority which must be given in writing by the governing body of the charity or nonprofit association.\(^4\) In the ACT, the fundraising licence is obtained by the charity, but the ‘commercial fundraiser’ conducts the appeal.\(^5\)

The Victorian and South Australian Acts apply to any person who conducts or participates in a fundraising appeal unless: the person is exempted under the Act (Victoria); or is a ‘collector’ (SA).\(^6\) However, the Victorian Act is not restricted to charitable purposes. South Australian collectors are considered ‘paid’ if they receive ‘valuable consideration’.\(^7\)

The only groups which must have an authority in Tasmania are Tasmanian unincorporated bodies, and non-Tasmanian incorporated bodies. In Western Australia a collector may be paid for door-to-door collections but not street collections.\(^8\)

Are there specific requirements for commercial fundraiser contracts?

Queensland requires a charity to enter into a written agreement with a promoter conducting the appeal for commission or reward and have it approved by the Minister prior to conducting any appeal.\(^9\) This agreement must be abided by unless there is a reasonable excuse.\(^10\) If a person makes an appeal for support on an understanding that they are not entitled to a reward, the charity can only reimburse them for expenses incurred.\(^11\)

\(^{1}\) Street Collections Regulations 1999 (WA) reg 11.
\(^{2}\) Charitable Fundraising Act 1991 (NSW) s 11.
\(^{3}\) Collections Act 1966 (Qld) s 9.
\(^{4}\) Collections Act 1966 (Qld) s 11.
\(^{5}\) Charitable Collections Act 2003 (ACT) ss 8, 12.
\(^{6}\) Fundraising Act 1998 (Vic) s 6.
\(^{7}\) Collections for Charitable Purposes Act 1939 (SA) ss 4, 6, 6A.
\(^{8}\) Street Collections Regulations 1999 (WA) reg 11.
\(^{9}\) Collections Regulation 2008 (Qld) reg 33.
\(^{10}\) Collections Regulation 2008 (Qld) reg 36(1).
\(^{11}\) Collections Regulation 2008 (Qld) reg 36(2).
New South Wales has a number of quite strict provisions relating to commercial or paid fundraisers, including:

- Any advertisement, notice or information must give details of the intended distribution of funds in the appeal or of any guaranteed minimum payment or proportion of profits to be paid to any person or organisation as a result of the appeal.
- Agreements have to be in writing and the return to the charity (authorised fundraiser) must be included either in terms of the amount or the basis or method of calculation of the return. Other requirements that must be in this agreement are set out in the Charitable Fundraising Regulation 2008 (reg 19).
- Direct marketing: New South Wales specifies that the authorisation to an agent to conduct a fundraising appeal (other than a doorknock or street collection) must be in writing, contain the person’s name and include the terms and conditions of authorisation including the period it applies, description of appeals being undertaken, and be signed and dated by the authority holder.\(^\text{12}\)
- Doorknock and Street Appeals: Paid collectors participating in doorknock appeals and street appeals must wear badges identifying them as ‘paid collectors’ with details of their employer.\(^\text{13}\)
- Traders: In an appeal conducted jointly with a trader, the trader is able to sign an authority but only if this is a term of the written agreement.\(^\text{14}\)
- Clothing Bins or donated goods: if a collection is conducted with a trader then the bag or bin has to be clearly marked ‘Commercially Operated’.\(^\text{15}\)

Western Australia has no strict requirement to have a written contract with the charity, but the Voluntary Code of Practice recommends it. It further advises that the contract set out:

a. procedures by which total donations will be paid into the organisation’s accounts and not passed on through the contractor;

b. the method of remunerating the contractor;

c. how the costs of the fundraising to be conducted will be paid and by whom;

d. the estimated return the organisation is to receive as a percentage of the gross funds raised;

e. how any losses that occur will be allocated;

f. the circumstances in which campaigns can be terminated and the procedures to follow for termination.

However, in Western Australia it can be a condition on the licence that any contracts which will give remuneration out of collection proceeds must be approved by the Minister before being made.\(^\text{16}\)

In South Australia, if a paid collector contract has been entered into the commercial fundraiser cannot engage any persons even if they are volunteers unless that commercial entity is a holder of a licence under the Act in its own right.\(^\text{17}\) Licences granted by the Minister can limit the proportion of proceeds which can be paid as commission.\(^\text{18}\)

In Tasmania an organisation cannot permit an employee, agent or contractor to receive a ‘manifestly excessive’ benefit derived wholly or partly from collection proceeds.\(^\text{19}\) It is illegal to use collection proceeds to pay for purposes other than ‘reasonable expenses’ and ‘reasonable payments’ to agents or contractors.\(^\text{20}\)

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\(^{12}\) Charitable Fundraising Regulation 2008 (NSW) reg 12.
\(^{13}\) Charitable Fundraising Regulation 2008 (NSW) reg 11.
\(^{14}\) Charitable Fundraising Regulation 2008 (NSW) reg 11(3).
\(^{15}\) Charitable Fundraising Regulation 2008 (NSW) reg 16.
\(^{16}\) Charitable Collections Act 1946 (WA) s 12(4).
\(^{17}\) Collections for Charitable Purposes Act 1939 (SA) s 6A.
\(^{18}\) Collections for Charitable Purposes Act 1939 (SA) s 12.
\(^{19}\) Collections for Charities Act 2001 (Tas) s 13.
\(^{20}\) Collections for Charities Act 2001 (Tas) s 14.