

Guide to Fundraising

Information for Victorian community organisations

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1. Overview

Organisations that fundraise need to comply with laws about fundraising. These laws are different in each state. This fact sheet covers the laws on fundraising in Victoria only, including the *Fundraising Act 1998* (Vic) and the *Fundraising Regulations 2009* (Vic) (**Victoria's fundraising law**).

When organisations undertake fundraising activities in Victoria, they need to comply with requirements for fundraisers, including applying for a fundraising licence where necessary.

Fundraising activities include telephone appeals, public auctions, doorknock appeals, tin collections, clothing bins, public appeals to support clubs, associations, causes or people and a range of other activities that raise funds.

Fundraising requirements are regulated in Victoria by Consumer Affairs Victoria (CAV).

Each Australian State and Territory has its own rules relating to fundraising activities and there are differences across jurisdictions. Your organisation may need to comply with multiple jurisdiction's fundraising laws (including registering as a fundraiser in multiple jurisdictions) if it intends to fundraise in more than one State or Territory. A link to the relevant State and Territory government agency is provided in the Resources section below for you to obtain further information.

2. What is `fundraising'?

Victoria's fundraising law regulates 'fundraising appeals', which is an old and confusing phrase. It might be more useful for you to think of 'fundraising activities'. A fundraising activity can be a single event over a limited period of time or an ongoing activity.

Generally, fundraising activities are those activities which meet the following requirements:

- > you ask or target the public (ie. people outside your organisation)
- > you ask for money or other benefits, such as goods or services (eg. food, clothes)
- the reason for you asking for the money or benefit is not solely for your profit or commercial benefit.

In general, if you or your organisation is asking for or receiving money or other benefits to use for 'not-for-profit' purposes, you will be conducting fundraising activities.

Examples of fundraising activities from the CAV website include:

doorknock appeals



- telephone appeals
- traffic intersection and highway collections
- golf days, movie nights and trivia nights
- dinner dances and balls
- public auctions
- clothing bins
- sale of goods at opportunity shops
- appeals run by commercial fundraisers
- public appeals to support clubs, associations, causes or people, or
- sale of goods where part of the sale price is donated to a charitable organisation or cause.

Example:

An organisation sells goods to the public. Part of the money raised will be donated to the homeless but the remainder will be the organisation's profit. As the goods are not being sold solely for the profit, the company will be conducting a "fundraising" activity.

Fundraising within an organisation, which is targeted at past and present members and their families and friends, will not be fundraising under Victoria's fundraising law.

Example:

If an organisation holds an auction which is promoted only to its members, there is no need to register as a fundraiser. However, if the auction is promoted to the wider general public, then the activity will be conducting a "fundraising" activity.

3. Does our organisation need to register as a fundraiser?

Generally, an organisation who conducts a fundraising activity will need to register as a 'fundraiser' in Victoria, unless:

- the law says the activity is <u>not</u> fundraising, or
- your organisation is an <u>exempt organisation</u>.

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What activities does the Victorian fundraising law consider are <u>not</u> 'fundraising'?

While the Victorian fundraising law provides a broad definition of what is considered a 'fundraising' activity, it also provides a list of activities that are not taken as 'fundraising' (even if they are targeted at the general public and promoted for a not-for-profit purpose).

Your organisation will not have to register as a fundraiser for the following activities:

- promotions for membership or joining fees
- raising money for a patriotic fund (as defined in the Veterans Act 2005 (Vic))
- seeking bequests (see <u>Gifts, wills, bequests and endowments</u> for more information)
- raising money within a workplace targeted at past or present employees or members and their relatives, even if the fundraising is for a cause other than the organisation itself (eg, raising funds to donate to the Red Cross within the workplace for disaster relief)
- receiving grants from a government body or corporation, partnership or trust that is permitted to donate for non-profit or non-commercial purposes under its constituent documents (see <u>Grants</u> <u>and Funding</u> for more information)
- memorial gifts (eg, a request to donate funds in lieu of flowers upon a death), or
- raffles, lotteries and other gaming activities authorised under the Gambling Regulation Act 2003 (Vic) (see Raffles and Minor Gaming for legal information about these activities).

Beware!

Though there is no need for your organisation to register as a fundraiser if it is holding a raffle or lottery or other gaming activity, these activities are regulated under the *Gambling Regulation Act 2003* (Vic). Your organisation may still need to comply with certain rules under this Act, including obtaining a permit to conduct such activities from the Victorian Commission for Gambling Regulation. For more information on obligations for holding a raffle or lottery, see the <u>Raffles and Minor Gaming</u> fact sheet or the Victorian Commission for Gambling Regulation website.

Which organisations are exempt from registration?

A small number of fundraisers are exempt from registration (although they must still comply with general obligations for fundraising as set out below). For further detail about the exceptions see the CAV Exemptions from Fundraising Registration (a link is provided in the Resources section below).

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General exemption for fundraising less than \$10,000 and using unpaid volunteers

Your organisation does not need to register as a 'fundraiser' if it meets <u>both</u> of the following requirements:

- it receives fundraising of less than \$10,000 (gross or total amounts before deductions and tax) in a financial year; and
- only unpaid volunteers are used to conduct the fundraising.

Beware!

You will need to monitor the situation if your organisation falls in this category. If your organisation is exempt because fundraising does not exceed \$10,000 (gross) in a financial year and uses unpaid volunteers to conduct fundraising, you should continue to assess whether your organisation fits into this category throughout the year. When you start using paid volunteers <u>or</u> you receive more than \$10,000 (gross) in fundraising, you must then register as a fundraiser at that point as you will no longer be able to rely on this exemption.

Special exemptions for certain organisations

Specific types of organisations do not need to register as a fundraiser when fundraising. These are:

- state government schools, school councils and registered non-government schools and some kindergartens
- tertiary educational institutions, including universities and TAFE colleges
- hospitals and certain other health organisations funded by the government (eg, state-funded residential care services)
- religious bodies authorised to marry people
- > registered political parties, trade unions, workplace relations and industrial organisations
- licensed children's services receiving funding for a kindergarten program from the Department of Education and Early Childhood Development
- ▶ the Anti-Cancer Council (known as the Cancer Council Victoria), and
- > any other organisation the Minister specifically declares to be exempt.



Note:

Being an exempt organisation exempts you from registration as a "fundraiser" with CAV only. Exempt organisations are still required to comply with the other obligations related to the fundraising activity eg, keep accurate financial records. They are also still required to comply with fundraising laws in other states.

Examples of fundraising where registration IS required

• Goods or services being promoted or labelled for sale to the public on the basis that a certain percentage or dollar amount from the sales of the product will be given to a nominated beneficiary or charity. e.g "For every product sold, \$1.00 will be donated to the Anti Cancer Council"

• People with collection tins soliciting donations on roads/highways (subject to Victoria Police permit). They are considered to be fundraising and require identification badges and secured, numbered and labelled collection tins.

• Television or radio stations that promote a competition, talent quest or reality TV programs, where the public is invited to vote for a particular contestant, with a percentage of the funds raised by the telephone billing process being donated to a nominated beneficiary or charity.

Examples of fundraising where registration is NOT required

• Organisations that decide to raise funds in order to send their members on an overseas tour. This type of financing is considered to be solely for the benefit of the organisation and is not considered to be fundraising.

Beware!

The obligation to register extends to "commercial fundraisers". A "commercial fundraiser" is a person or organisation outside your organisation who you hire to administer all or part of the fundraising activities. This means that even though you may be exempt from registering as a fundraiser, if you decide to outsource any of your fundraising to a paid service provider, you will fall outside your exemption and will need to register.

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4. How does our organisation register as a `fundraiser'?

If your organisation needs to register as a fundraiser, you need to apply to CAV for a licence **28 days before** you start fundraising. There is no fee to register as a fundraiser.

Requirements for registration are set out in the CAV's *Fundraising Registration Guidelines* (see Resources at the end of this fact sheet), and provides information about:

- how to submit an fundraising application to CAV and the level of detail required
- your organisation's obligation to provide an explanation if less than 35% of the proceeds raised are being directed to the stated not-for-profit purpose
- the grounds on which CAV may refuse your registration, and
- the kind of conditions CAV may attach to your registration.

Note:

The form has a relevant persons section. Relevant persons include the person applying for registration, all appeal managers and all relevant associates of the fundraiser. You will need all relevant persons to complete the Police Records Check section of the registration form.

You will also need to obtain a written consent from each "beneficiary" named in the application or provide a written letter explaining why you can't obtain such consent. "Beneficiaries" must be clearly identified so that the public has have confidence in giving to fundraisers. For example, generally identifying "orphaned and disadvantaged children" as a 'class' of beneficiaries or a 'cause' is not sufficient. Rather, identifying a specific orphanage which cares for children, or specific programs for disadvantaged children in a particular locality or region would be more acceptable.

Note:

You need to register **28 days** <u>before</u> your community organisation proposes to undertake its fundraising activities. If you have special circumstances and need to lodge an urgent application for registration in less than 28 days, CAV may consider this but you will also need to provide a letter setting out your special circumstances.

CAV will generally respond to your registration application within 21 days of receiving your application, by either consenting to your application (or consenting with further conditions), requesting more information, or refusing registration (in which case you may not conduct fundraising activities). If you disagree with the decision made by CAV, you can appeal to the Victorian Civil and Administrative Tribunal (VCAT) within 28 days of the decision being made.

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Beware! If you forget to lodge your application within the 28 days of starting your fundraising activity, this will not be considered special circumstances warranting an urgent registration. You will need to delay your intended start of fundraising under your registration is approved.

Registrations have a default validity period of three years from the date of registration.

A longer period of up to 5 years can be provided by CAV on a case-by-case basis. You may consider requesting a longer duration if you have special circumstances that merit a longer period eg, you fundraise in multiple jurisdictions and want to reduce your administrative burden. You would need to show that your fundraising will continue to be in the public interest throughout the longer time period.

A register of all fundraisers registered in Victoria is maintained by CAV and is available to the public on the CAV website.

Beware!

Penalties for failing to register as a fundraiser with the CAV can be up to \$16,900 for individuals and \$33,800 for the association, as well as up to 12 months imprisonment for individuals.

5. What are some other relevant permissions and laws to consider when fundraising?

Depending on the activity, you may require some other permission to fundraise and you may need to approach other organisations to get these permissions in addition to CAV.

Fundraising activities which require other permissions include:

- Door knock appeals you will require permission from the local council of the area in which the door knock is to be conducted
- Traffic intersection collections (highway collections) if CAV allows you to conduct highway collections, you will also require permission from the local council of the area in which you are collecting and a highway collection permit from Victoria Police. Highway collection permits are available from Victoria Police Road Safety Awareness & Information Unit, 637 Flinders Street, Melbourne 3005, telephone (03) 9247 5779, or on the Victoria Police website

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- Large event taking place outdoors you should consider whether you need to contact other authorities such as the local council or Victoria Police and permits may be required. For more information, see the <u>Organising Events page</u> on the PilchConnect website.
- Running lotteries In Victoria, the rules regarding the conduct of lotteries, lucky envelopes and Calcutta sweepstakes are found in the *Gambling Regulation Act 2003* (Vic) and the *Gambling Regulation Regulations 2005* (Vic) (Victoria's gambling laws). Victoria's gambling laws are administered and regulated by the Victorian Commission for Gambling Regulation (VCGR), which is a government agency under the Victorian Department of Justice. For more information, see the Lottery, lucky envelope, and other sweepstakes page on the PilchConnect website.
- Australian Consumer Law It's also important to consider the Australian Consumer Law when fundraising, particularly when your fundraising involves the sale of goods or services (like merchandise or event tickets). For more information, see the <u>Australian Consumer Law page</u> on the PilchConnect website.

6. What are our obligations after registering as a 'fundraiser'?

Obligations after registration

After your organisation has been registered as a fundraiser with the CAV, you must meet certain obligations including:

- > conducting the fundraising appeal in accordance with the application approved by CAV
- keeping a separate bank account for funds raised by your organisation's fundraising
- ▶ informing CAV of changes in circumstances within specified timeframes. These changes include:
 - > a change to the name, address or contact person for the fundraiser
 - a change to the appeal manager or key staff
 - > if the fundraiser employs the services of a commercial fundraiser
 - if new beneficiaries are added
 - if anyone involved in the financial functions or management of the fundraising or associates has been charged or convicted with certain offences (eg, fraud, dishonesty, violence etc) or has become bankrupt, insolvent or placed under administration, and
 - if there is a change of circumstances affecting your compliance with any registration conditions,

keeping appropriate records

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- including your fundraising registration number on some documents, and
- complying with directions given by the director of the CAV (for example, having accounts audited).

Further information about these obligations is available on the CAV's website (see the link in the Resources section below).

What are our obligations when 'fundraising'?

Even if your organisation is exempt from registration, if you are running a fundraising appeal which is not an exempt activity, then you must meet certain general obligations, which include:

- > ensuring that any money raised is given to or used for the purpose for which it was raised
- complying with any legislation or conditions relating to particular types of fundraising activities, such as:
 - collectors wearing identification badges
 - > securing, numbering, labelling and emptying of collection receptacles
 - using legible and clear wording on direct debit deduction forms
 - disclosing the exact dollar or percentage amount of funds to be passed on to beneficiaries when obtaining donations as part of the supply of goods or services
- not making false, misleading or deceptive statements, including false statements about compliance with the Victorian fundraising laws.

Beware!

CAV can issue your organisation with an infringement notice if you breach the Victorian fundraising laws. There are also penalties for individuals. Breaches may also cause CAV to refuse any future applications for registration as a fundraiser and may result in your organisation being de-registered as a fundraiser.

For example, if all fundraising collectors don't wear clearly visible identification badges, the penalty is \$305.

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7. Fundraising and Tax

Some non-profit organisations may be entitled to certain tax concessions in relation to their fundraising. The Australian Taxation Office (**ATO**) and the Australian Charities and Not-for-Profits Commission (**ACNC**) have produced a summary of tax laws and how they apply to fundraisers, which can be found in the Resources section below.

Your non-profit organisation must be registered with the ACNC in order to be classified as a charitable organisation, and therefore able to apply for tax concessions from the ATO. The ATO then determines whether you charitable organisation is entitled to any tax concessions.

The ACNC link in the Resources section below provides further information on registration.

What are some of the tax concessions available?

GST

A non-profit organisation is required to register for GST when its annual turnover is \$150,000 or more, but can choose to voluntarily register if its turnover is less. If your organisation is registered for GST, or is required to be registered, it may be required to pay GST on any goods or services sold (supplied) as part of its fundraising events. These amounts must then be remitted to the ATO.

An organisation registered for GST can choose to treat all supplies made in connection with fundraising events as 'input taxed'. This means that its sales will not be subject to GST. However, the organisation will not be able to claim 'input tax credits' for the costs incurred in making the sales (i.e. the GST component that was paid by the organisation in initially acquiring the supplies).

For more information about GST concessions that may be available to your organisation, see the <u>GST page</u> on the PilchConnect website.

Income Tax

Unless it is exempt from income tax, an organisation may be required to pay income tax on money received as part of its fundraising activities. An organisation exempt from paying income tax will still have income tax obligations with respect to any employees (such as Pay As You Go (**PAYG**)).

For more information about income tax generally and whether your organisation is exempt, see the <u>income tax page</u> on PilchConnect's website.

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Tax deductible donations

Your organisation can only offer 'tax deductible donations' (for example, claiming to the public that 'donations over \$2 are tax deductible') if it has been endorsed by the ATO as a deductible gift recipient (**DGR**). For more information about DGR status and tax deductible donations see the ATO Resources page below or visit the <u>DGR page</u> on the PilchConnect website.

Unless your organisation has received DGR status, members of the public who donate to your fundraising activity are not entitled to claim a tax deduction on their donations to you and you cannot provide a tax deductible receipt.

Note:

It is important that your organisation can identify whether a donor or contributor might be entitled to a tax deduction so that you can accurately inform a potential donor and appropriate receipts can be provided.

8. Interstate Fundraising

The information in this fact sheet covers the laws on fundraising in Victoria only. Each Australian State and Territory has its own rules on fundraising activities, including different registration systems.

If your fundraising appeal will be conducted in more than one State or Territory, or aimed at residents from another State or Territory, then you will need to ensure that you are complying with each of the other State or Territories' obligations. This includes applying for a fundraising authority where necessary or ensuring you have a 'presence', ie. an address, within the State or Territory.

Below is a table outlining the relevant departments within each State or Territory and an overview of their general requirements for registration. Further information is available via the links in the Resources section below.

State	Body	Definition of `fundraising'	Requirements for registration
New South Wales	NSW Office of Liquor Gaming and Racing	Raising money, property or some other benefit with the representation that it will go in whole or part to a charitable purpose.	Any person or organisation conducts fundraising for a charitable purpose must apply for an 'authority to fundraise' licence.

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South Australia	Office of Liquor and Gambling Commissioner	Collecting money or goods, or conducting entertainment for a charitable purpose. Includes fundraising lotteries.	Any person or organisation that conducts fundraising must apply for a licence.
Queensland	Department of Justice and Attorney-General, Queensland	Any fundraising for a charitable or community purpose.	Any organisation that publicly fundraises in Queensland for a charity must register.
Tasmania	Consumer Affairs and Fair Trading	Any appeal for goods, services or donations for a charitable purpose.	Any person or organisation based outside Tasmania that fundraises in Tasmania, or an unincorporated Tasmanian body, must apply for approval from the Commissioner for Corporate Affairs.
Western Australia	Department of Commerce, Charitable Collections Section	Collection of money or goods from the public for a charitable purpose.	Any person or organisation that conducts a collection for a charitable purpose must obtain a licence.
Australian Capital Territory	Office of Regulatory Services, ACT Department of Justice and Community Safety	Collection of money or goods for charitable purposes.	An organisation collecting for charitable purposes must apply to the Office of Regulatory Services for a licence.

Note:

The Northern Territory does not have laws on general fundraising activities.

Beware!

If your organisation is using raffles, lotteries or other gaming activities to fundraise, there may be other laws and obligations that apply in each State or Territory. We recommend you seek advice as to each State or Territory's particular laws.

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9. Fundraising Online

The internet and electronic communications has created a new medium for fundraising which is becoming increasingly popular. Your organisation may use the internet or electronic communications to undertake fundraising activities such as:

- through a website or charity portal that may direct donations from shopping or other third party websites
- by updating or sending out fundraising appeals by email or SMS
- by adding podcasts, wikis and blogs to your fundraising activities, or
- by using social networking websites or forums to fundraise, such as Facebook, Twitter, YouTube.

Organisations often use or obtain assistance from online fundraising websites to raise money for their cause. These online websites may help your organisation in fundraising from guiding you on setting up a website for fundraising to acting as a portal to securely receive donation funds on your behalf.

New technologies create new challenges for fundraising regulation and may require careful consideration and assessment of the risks and benefits before use. For example:

- nuisance and spam there is potential for nuisance to be created if the internet or electronic communications are used for fundraising activities if they are over used. For example, mass emails can easily amount to spam if sent to an excessively large number of addresses. Text messages can also be sent out in large numbers to the point of creating a nuisance. It is against the law to send mass emails to people if they have not agreed to it under the Spam Act (Cth)
- privacy and data protection issues to enable the sending of mass communications to potential donors (eg, SMS, emails) and the collection, storage and use of such information of individuals may subject your organisation to compliance with privacy laws where such information is considered 'personal information' (eg. name, address, telephone numbers, email addresses)
- reputational issues and fraud the public may find it difficult to verify the identity of fundraisers operating on the internet. Others may claim to be affiliated with or collect funds on your organisation's behalf fraudulently
- compliance with State and Territory laws and laws in other jurisdictions when donations are received online, the person donating may be from another State or Territory (or even outside Australia). By creating your own online donations service you may need to be aware of the laws of other States and Territories. The laws governing this area can be quite unclear.



Beware!

While fundraising using the internet and electronic communications create great opportunities for your organisation to appeal to a broader audience, there are certain risks and challenges. In particular, where you fundraise on the internet and receive funds from persons in different States and Territories in Australia, you will need to comply with the fundraising laws in those jurisdictions, including potentially applying for multiple fundraising permits or registrations.

Tips on Online Fundraising

If your organisation does fundraise online there are precautions we recommend you take, including:

- seeking advice on each State and Territory's requirements on online fundraising to see whether your organisation requires a licence or authority
- using a safe and trusted third party website through which to organise your donations
- ensuring your online fundraising website has clear information on how the funds raised will be used
- ensuring your online fundraising website is secure, to protect personal information such as credit card details, and
- keeping a clear account of the funds collected.

Beware!

If you use third party online fundraising sites to promote or conduct your fundraising activities, it is worth checking:

- if those third party sites charge any fees, as some charge/retain a percentage of any donations
- the payment systems in place for your donors and security
- what payment options are available and commissions payable for credit card facilities
- how, and how quickly, you receive the money from the third party, and
- reviews of such online fundraising sites and whether they have a good track history or whether donors have had complaints about them.

For information on how to set up online fundraising see the Department of Broadband, Communications and the Digital Economy link in the Resources section below. For a guideline as to how to fundraise online ethically see the Fundraising Institute of Australia's Standards on 'Electronic Fundraising' and 'Social Media Fundraising' in the Resources section below.

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Tip:

Some online fundraising organisations create toolkits or guidelines to help other organisations comply with obligations when fundraising for that organisation. These may address issues like:

- requiring fundraisers to comply with certain obligations, to ensure the fundraising activity fits within the aims and value of the community organisation
- requiring fundraisers to complete a fundraising activity form
- requiring fundraisers to be responsible for obtaining any required insurance for their fundraising activity
- setting out the terms of licence/rights to use the community organisations' logos to publicise the fundraising activity and governance of media releases, media relations associating the community organisation, and
- requiring fundraisers to enter into a Cause-Related Marketing Agreement if the individual or corporate organisation wishes to partner with the community organisation by donating a percentage/fixed amount from the sale of services or products based on association with or support of the community organisation.



Resources

Legislation – Victoria

- Fundraising Act 1998 (Vic)
- Fundraising Regulations 2009 (Vic)
- Gambling Regulation Act 2003 (Vic)

Legislation – Other States and Territories

- Australian Charities and Not-for-profits Commission Act 2012 (Cth)
- Charitable Fundraising Act 1991 (NSW)
- Charitable Collections Act 2003 (ACT)
- Collections Act 1966 (Qld)
- Collections for Charitable Purposes Act 1939 (SA)
- Collections for Charities Act 2001 (Tas)
- Charitable Collections Act 1946 (WA)

Links – Consumer Affairs Victoria (CAV) Resources

- Consumer Affairs Victoria What is a Fundraiser Provides examples of "fundraising appeals"
- Consumer Affairs Victoria Registration Guidelines
- Consumer Affairs Victoria Exemptions from Fundraising Registration
- Consumer Affairs Victoria Fundraiser Responsibilities

Links – Australian Charities and Not-for-profits Commission (ACNC) Resources

- Australian Charities and Not-for-profits Commission Charity Tax Concessions available
- Australian Charities and Not-for-profits Commission Registration
- <u>Australian Charities and Not-for-profits Commission Obligations</u>
 Provides an overview of all present, and future obligations of registered charities and not-for-profits



Links – Australian Taxation Office (ATO) Resources

Australian Taxation Office – Fundraising

Links - Fundraising bodies of other States and Territories

- ▶ New South Wales Office of Liquor and Gambling and Racing Fundraising fact sheets
- South Australian Office of Liquor and Gambling Commissioner Fundraising
- Queensland Charities and Fundraising
- Tasmania Office of Consumer Affairs and Fair Trading Charities
- Western Australia Department of Commerce, Charitable Collections Section Charities
- <u>Australian Capital Territory Office of Regulatory Services Charitable Collections</u>

Other Useful Links

- Department of Broadband, Communications and the Digital Economy website Provides helpful information on how to start online fundraising
- Not for Profit Compliance Support Centre Provides general information on how to manage a not-for-profit, from 'how to get started' to 'legal obligations'
- Fundraising Institute of Australia Standard of Electronic Fundraising
- Fundraising Institute of Australia Standard of Social Media Fundraising
- Deloitte Survey into the Not for Profit Sector: 2012 Fundraising Provides information about how fundraising will change in the future and the difficulties associated with fundraising presently