GIFT ACCEPTANCE POLICY

Approved by Board: February 2019

LORD MAYOR'S CHARITABLE FOUNDATION

BACKGROUND

A written gift acceptance policy can help manage the expectations of donors and also serve as guidance for Board and staff members who are involved in working with donors in processing donations and (non-tax deductible) contributions. Having a gift acceptance policy in place in place in addition to the Fundraising Guidelines and Undertaking will assist the Foundation to manage its relationships with donors and manage the Foundation's fundraising risks.

The most significant reasons to adopt a gift acceptance policy include:

- accepting some types of gifts may run counter to the Foundation's values, or policies (for example the Investment Policy) and therefore, a gift acceptance policy can be useful to underscore why the Foundation cannot accept the gift. Some gifts may impose restrictions and obligations that may become burdensome, or alternatively place the Foundation in a compromised position, (for example, gifts in wills that create a separate trust, where the source of the funds cannot be traced, contravene legislation in particular, Proceeds of Crime Act 2002, Anti-Money Laundering and Counter-Terrorism Financing Act 2006, [or, are gambling proceeds that have been raised by Community Fund Holders]; Common Reporting Standards.
- the receipt of the donation might foreseeably lead to a legal dispute where the donor lacks sufficient capacity to make a donation, the size of the donation, the donor is unknown to the Foundation and the donor has not consulted with family members;
- with third party fundraising activities, understanding the source of the funds and what has been conveyed during a fundraising activity (for example community funds may raise their donations from gambling proceeds). Where fund holders seek to raise money for the Foundation or the Fund, they are acting in the capacity as the Foundation's agent and therefore their actions must also comply with relevant laws and policies;
- the circumstances in which the Foundation will refund a donation. Typically, the Foundation will not permit refunds for donations. However, if a community fund organises a fundraiser and cancels it, people who have purchased a ticket will be entitled to a refund.

1. PURPOSE

The Foundation is committed to ethical, accountable and transparent fundraising practices which build, protect and maintain public trust and confidence in the Foundation and are in keeping with the Code of Ethics and Professional Conduct of the Fundraising Institute of Australia, the code of practice of the Public Fundraising Regulatory Association and as a corporate entity bound by Australian laws and regulations.

The purpose of this policy, the Foundation Fundraising Guidelines and

Undertaking is to govern the acceptance of donations made to the Lord Mayor's Charitable Foundation and to provide guidance to donors in relation to the making of gifts to the Foundation. It aims to provide:

- Protection for the Foundation against breaches of ethical fundraising guidelines;
- Protection for the Foundation against reputational risks and breaches of relevant laws, policies and inconsistencies with the Foundation's values;
- Protect the public who contribute money or benefits in response to fundraising activities;
- Assist in meeting legal and compliance regime such as anti-money laundering and counter-terrorism;
- Guidance for staff and Board Members.

2. APPLICATION OF POLICY

The policy is to be read together with the Foundation's Fundraising Guidelines and Undertaking and applies to the receipt of all gifts to the Foundation, whether cash, in kind, bequests or shares.

3. RESPONSIBILITY

It is the responsibility of all Foundation staff and volunteer personnel to ensure the effective implementation of this policy and associated documents.

4. DEFINITIONS

"**Donors**" may be individuals, charitable fund account holders, community fund holders, volunteers and organisations.

"**Gift**" for the purposes of this policy includes donations which are tax deductible. The term Gift is not defined in the ITAA 97. Rather than attempting to a definition of gift the courts have described a gift as having the following characteristics and features:

- There is a transfer of the beneficial interest in property;
- The transfer is made voluntarily;
- The transfer arises by way of benefaction;
- No material benefit or advantage is received by the giver by way of return[1]

[1] In order to constitute a gift, the giver must not receive a benefit or an advantage of a material nature by way of return. It does not matter whether the material benefit or advantage comes from the DGR or another par ty. Any

"The characterisation of a gift falls to be determined by reference to the overall arrangements and transactions which constitute its context", 80 ATC 4438 at 4456; 11 ATR 145 at 165 per Deane J.

See ATO case examples below for further information in relation to what may or may not be characterised as a gift (see Appendix A).

Contributions include proceeds raised from raffles or other chance games for fundraising purposes and are not tax deductible.

5. POLICY CONTEXT

Every effort shall be made to raise unrestricted funds that offer the Foundation operational flexibility and an opportunity for strategic grant making. However, donor-advised granting is also supported.

All materials and other communications used for fundraising purposes and addressed to donors and the public shall clearly identify the Foundation and be accurate and truthful.

All fundraising material should follow Foundation communication and branding guidelines and be consistent with Australian laws.

Fundraisers shall uphold high standards of professional behaviour and be aware of their responsibilities in carrying out fundraising activities (refer to Fundraising Guidelines). They shall be provided appropriate training and supervision to ensure understanding of their responsibilities.

Fundraisers will not target vulnerable individuals or communities for donations or pledges of donations, especially where legally, capacity may be in doubt, and will take all reasonable steps including reviewing fundraising site allocations for face to face fundraising to ensure that this does not happen.

The Foundation is a public entity and will not offer specific opinions, recommendations, seals of approval, or statements, nor will it take actions that are or can be perceived as endorsements related to any political matters, products or services.

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benefit that is received (or reasonably expected to be received) by an associate of the giver has to be taken into account in determining whether a transfer falls within the provisions of paragraph 78A(2)(c) of the ITAA 1936. As well as any benefit or advantage received as a result of or in connection with a transfer of property, paragraph 78A(2)(c) of the ITAA 1936 also refers to any right or privilege (apart from the tax deduction that may be allowable) that the giver or the giver's associate may receive as disqualifying the transfer from being a gift. The giver may still be regarded as having received a material benefit in a case where the value of the benefit to the giver is less than the value of the property transferred. In these circumstance s it is not accepted that the value of the benefit received can be notionally deducted from the value of the property transferred and the net balance claimed as a gift. No part of the property transferred is considered a gift. Only advantages or benefits that are material will disqualify a transfer of property from being regarded as a gift.

6. ACCEPTANCE OF DONATIONS

The CEO will be responsible for the review, acceptance or refusal of gifts over $10K to the Foundation. The CEO may explicitly delegate this responsibility if the CEO is on leave. All Foundation staff are required to inform the CEO or the CMDO before any planned approach

to a potential donor, as well as any conversation that may occur with a donor regarding a prospective donation.

Core to the acceptance of gifts is the Foundation's independence. Donors may not influence
decisions of the Foundation.

The CEO may delegate responsibility for risk-assessing a donation to the respective team, who will follow an agreed and documented screening process.

7. TYPES OF DONATIONS

The Foundation may not place undue influence on any donor or accept donations where the legal capacity to make a gift is uncertain. The Foundation should request a medical certificate confirming capacity if a donor wishes to make a gift to the Foundation in these circumstances.

Anonymous donations will be accepted, however significant anonymous donations (to the value of $10,000 or more) may be subject to a risk assessment at the CEO's discretion.

Donations from political parties should not be accepted. Donations from politicians and civil servants in their personal capacity only may be accepted, and are subject to the same ethical considerations as donations from other individuals.

The Foundation will maintain the confidential nature of donor records and data relating to donors will not be sold to any third party, consistent with the Foundation's Privacy Policy.

8. FUNDRAISING INTERACTIONS

The Foundation will not engage in funding interactions, strategic partnerships, or co-branded collaborative efforts with businesses or other entities involved in the following:

Armaments: companies manufacturing/distributing anti-personnel landmines, cluster bombs, or conventional, nuclear or chemical/biological weapons, missiles or rockets.

Alcohol: companies manufacturing alcoholic drinks, with special conditions applicable to contributions in kind in the context of fundraising events targeting adults.

Tobacco: companies manufacturing tobacco, and companies which have a product base and/or brand identity that is focused on tobacco and/or smoking-related products (electronic cigarettes, tobacco-branded merchandise).

Gambling: companies directly engaging in gambling operations. This category includes stand-alone casino's, casino hotels, riverboat casinos, bingo halls, gambling machine manufacturers, lottery services, internet gambling services.

Adult content: the Foundation will not engage with products, services or companies for which core business is the provision and/or promotion of content suitable only for individuals aged 18 and up.[2]

[2] For the purpose of this document, 'adult content' refers to services and/or products containing or promoting graphic sexual content, realistic violence, strong language or gambling

APPENDIX A

ATO examples of how certain contributions or gifts are characterised.[3]

1. B buys a ticket in a raffle run by a DGR to win a boat. The payment for the ticket is not a gift. The payment is not voluntary as the ticket has been purchased as part of a contractual arrangement under which he has acquired rights in the raffle.
2. C promises his neighbour's daughter that he will give $2 to a DGR for each lap she completes in a walkathon to raise money for it. She completes 30 laps. C's gift of $60 to the DGR is voluntary even though the amount given depended upon the number of laps completed.
3. M, who suffers a depressive condition, goes to a health promotion charity (a DGR) which offers counselling for no charge. A prominent sign says that if you are satisfied with the service, a donation of $30 would be appreciated. M finds the counselling very helpful, and decides to give the suggested $30 to the DGR. The $30 is a gift. The use of moral persuasion does not prevent the payment from being considered as voluntarily made.
4. Payments made under a 'preferred donation arrangement' which satisfy the above conditions will be tax deductible. A preferred donation arrangement generally involves a giver giving money to the DGR expressing a preference that the money be passed on to an affiliate organisation preferred by the giver to fund projects or events nominated by the affiliate and approved by the DGR. The DGR must not be obligated to comply with the wishes of the giver. It must retain a discretion whether or not to distribute in accordance with the giver's 30 Paragraph 156 et seq. The operation of such an arrangement is illustrated in Re Australian Elizabethan Theatre Trust (1991) 102 ALR 681 at 683-685.
5. D is keen to encourage athletics. He sends a cheque for $300 to the ASF expressing a preference that the ASF allocate the money to a nominated athletics organisation which encourages children to participate in athletics. The ASF therefore has the discretion whether or not to apply the money in accordance with D's wishes. The $300 is a deductible gift, as benefaction has been conferred on the DGR.
6. There can also be issues about whether the recipient receives the transfer as a DGR. Where property is transferred to the trustee of a public fund under item 2 of the table in section 30-15 of the ITAA 1997 (a type of DGR often called an

[3] TR 2005/13 Income Tax: tax deductible gifts – what is a gift

ancillary fund), and the trustee has an obligation or otherwise gives an assurance to a giver to apply funds for another DGR in accordance with requests from the giver, a separate fund is thereby created. This separate fund does not satisfy the requirements for a public fund to which tax deductible gifts may be made. The separate fund is not entitled to be endorsed as a DGR. This situation is explained in Taxation Determination TD 2004/23.

7. The intention to confer benefaction need not be the sole reason for making a gift. For example, the fact that the giver is also motivated by the desire to obtain a tax deduction will not, by itself, deprive a payment of its character as a gift: Federal Commissioner of Taxation v. Coppleson 81 ATC 4550 at 4551-4552; (1981) 12 ATR 358 at 360.

8. C attends a fundraising dinner and pays $50 which is for the cost of the meal. Later, the 'hat is passed around' by the organisers and he contributes $20 to the DGR. The $50 cost of the meal is not a gift. However, the $20 contribution is a gift.

9. A body which is not a DGR organises an event to raise funds for a DGR. Admission tickets are sold to the public at a cost of $8 for adults, $3 for pensioners and $15 for a family (2 adults and up to 4 children). A box which includes seating for 6 people, plus food and drink for all, to view the event can be obtained at a cost of $300, by paying $40 to the organisers, purportedly to cover the cost of the benefit received, as well as a $260 'donation' to the DGR. The $40 is clearly not a gift to the DGR. Nor is the $260 because it was made to acquire a collateral advantage of a material nature. This would be the result whether or not the venue and facilities and so on had been provided free of charge to the organisers.

10. P gives $50 to an environmental DGR as part of its fundraising campaign. Later in the week she calls in on a radio station's promotion of the DGR, and is given a book on its environmental issues for having correctly answered questions about the DGR's activities. The $50 is a gift; it is unrelated to the book the DGR gave her.

Document History

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