



New South Wales

Charitable Fundraising Regulation 2020

under the

Charitable Fundraising Act 1991

[*The following enacting formula will be included if this Regulation is made—*]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Charitable Fundraising Act 1991*.

Minister for Better Regulation and Innovation

Explanatory note

The object of this Regulation is to remake, with amendments, the *Charitable Fundraising Regulation 2015*, which will be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

This Regulation provides for the following—

- (a) certain activities that do not constitute fundraising activities for the purposes of the *Charitable Fundraising Act 1991* (the *Act*),
- (b) the entities that may conduct fundraising appeals without holding an authority under the Act,
- (c) the additional grounds on which the Secretary may refuse an application for an authority,
- (d) the circumstances in which a person may be found not to be a fit and proper person,
- (e) the grounds on which the Secretary may suspend or cancel an authority, the matters to be included in a notice suspending or cancelling an authority and the administrative review of the suspension or cancellation,
- (f) the determination of what constitutes a lawful and proper expenses in connection with a fundraising appeal,
- (g) the particulars that are to be shown in the records of payments into and out of accounts and the circumstances in which receipts must be issued to donors,
- (h) the requirement for persons who conduct fundraising appeals to keep and maintain certain records,
- (i) the requirement for authority holders to include certain information in annual returns lodged with the Secretary,
- (j) the persons and organisations that are exempt from the requirement to have accounts audited,
- (k) the religious bodies or organisations that are exempt from the Act,
- (l) the standard conditions to which an authority to conduct a fundraising appeal is subject and, in the case of an appeal involving child participants, the standard conditions in relation to the participation of children to which an authority is subject,
- (m) other matters of a minor, consequential or ancillary nature.

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Charitable Fundraising Regulation 2020 [NSW]
Explanatory note

This Regulation is made under the *Charitable Fundraising Act 1991* as amended by the *Charitable Fundraising Amendment Act 2018*, including sections 5(3)(f), 7(1)(b), 9(2)(a), 11(2)(a1) and (2A), 16(2)(i) and (5), 19(1) and (3), 19A(1)(g) and (2), 20(3) and (10), 22(2) and (2A), 23(1)(c) and (d), 24A(1)(j), 25(1), 25A(2), 47(1) and (3) and 55 (the general regulation-making power).

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Charitable Fundraising Regulation 2020

under the

Charitable Fundraising Act 1991

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Charitable Fundraising Regulation 2020*.

2 Commencement

This Regulation commences on 1 September 2020 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Charitable Fundraising Regulation 2015*, which is repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

a receipt includes a ticket.

ACNC responsible entity has the same meaning as *responsible entity* has in the *Australian Charities and Not-for-profits Commission Act 2012* of the Commonwealth.

Australian Accounting Standards has the same meaning as in the *Associations Incorporation Act 2009*.

Australian Auditing Standards has the same meaning as in the *Associations Incorporation Act 2009*.

authority holder, in relation to a fundraising appeal, means a person or organisation that holds an authority to conduct the appeal.

face-to-face collector means a person who participates in a fundraising appeal by face-to-face solicitation.

financial year, in relation to an organisation, means—

- (a) the financial year fixed for the organisation by the organisation's constitution, or
- (b) if no financial year is fixed for the organisation by the organisation's constitution, the year commencing 1 July.

gross amount, in relation to an appeal, means the amount collected by a trader in relation to the appeal minus the fair and reasonable expenses incurred by, and any wage, commission or fee paid to, the trader in relation to the appeal.

supply of goods does not include giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgment of the person's donation.

the Act means the *Charitable Fundraising Act 1991*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

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Charitable Fundraising Regulation 2020 [NSW]
Part 1 Preliminary

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Fundraising appeals

Division 1 General

4 Prescribed matters not constituting a fundraising appeal

- (1) For the purposes of section 5(3)(f) of the Act, the following are prescribed—
- (a) a request for, or the receipt of, money from a person if the money is wholly payable by the person as the genuine fee or charge for the provision of the following—
 - (i) educational facilities or services,
 - (ii) child-minding services,
 - (iii) goods or services supplied through a supported employment service for people with disabilities,
 - (iv) nursing or medical services,
 - (v) other care or welfare services,
 - (b) a request for, or the receipt of, money, property or other benefit from a registered club if—
 - (i) the registered club applies profits to community development and support in accordance with the ClubGRANTS guidelines, and
 - (ii) the request for, or receipt of, money, property or other benefit relates to that application of profits.
- (2) In this clause—
ClubGRANTS guidelines has the same meaning as in section 16 of the *Gaming Machine Tax Act 2001*.
registered club has the same meaning as in the *Registered Clubs Act 1976*.

Division 2 Organisations authorised to conduct fundraising appeals without holding authorities

5 Councils and certain trusts

- (1) For the purposes of section 9(2)(a) of the Act, the following organisations and persons are authorised to conduct a fundraising appeal without being the holder of an authority—
- (a) a council,
 - (b) a committee of a council (whether or not all of the members of the committee are councillors of the council),
 - (c) for a fundraising appeal conducted for a trust—the trustees of the trust if 1 or more of the trustees is—
 - (i) a council, or
 - (ii) a mayor, councillor, general manager, public officer or senior staff member of a council by virtue of holding that office, or
 - (iii) a person nominated by a council by virtue of being a person nominated by the council.
- (2) In this clause—
council, *councillor*, *mayor*, *public officer* and *senior staff* have the same meaning as in the *Local Government Act 1993*.

6 Universities and controlled entities

- (1) For the purposes of section 9(2)(a) of the Act, a university or a controlled entity is authorised to conduct a fundraising appeal without being the holder of an authority.
- (2) In this clause—
controlled entity means a person, group of persons or body of which a university, or the council, board or senate of the university, has control within the meaning of the Australian Accounting Standards.
university means a university listed under the heading New South Wales in Part 1 of Schedule 1 to the *Higher Education Act 2001*.

7 Small fundraisers

- (1) This clause applies to an organisation or person (a **small fundraiser**) that—
 - (a) does not receive more than \$15,000 gross in any financial year from any fundraising appeals it conducts in that financial year, and
 - (b) does not receive any remuneration for conducting fundraising appeals, other than payment of lawful and proper expenses determined in accordance with clause 14, and
 - (c) only engages persons on a voluntary basis to participate in its fundraising appeals, and
 - (d) conducts its fundraising appeals in accordance with any guidelines published in the Gazette by the Minister, and
 - (e) is not ineligible by reason of a declaration made under subclause (3).
- (2) For the purposes of section 9(2)(a) of the Act, a small fundraiser is authorised to conduct a fundraising appeal without being the holder of an authority.
- (3) The Minister may, by notification in the Gazette, declare that a small fundraiser specified in the notification is not eligible, for the period specified in the notification, to conduct a fundraising appeal without being the holder of an authority.
- (4) The Minister may give a written direction to a small fundraiser that relates to the conduct of—
 - (a) the small fundraiser's fundraising appeals generally, or
 - (b) a particular fundraising appeal conducted by the small fundraiser.
- (5) A small fundraiser who, without reasonable excuse, fails to comply with a direction given to the small fundraiser under subclause (4) is guilty of an offence.
Maximum penalty—5 penalty units.

8 Parents and citizens associations

For the purposes of section 9(2)(a) of the Act, a parents and citizens association constituted in connection with a government school under the *Education Act 1990*, whether incorporated or not, is authorised to conduct a fundraising appeal without being the holder of an authority.

Division 3 Applications, suspensions and cancellations of authorities

9 Secretary may refuse applications for authorities for certain matters

For the purposes of section 16(2)(i) of the Act, the following matters are prescribed—

- (a) that neither the applicant nor any other person associated with the proposed fundraising appeal has ever held an authority that was cancelled on a ground relating to fraud or dishonesty of the applicant or person,
- (b) that neither the applicant nor any other person associated with the proposed fundraising appeal has a conviction in New South Wales or elsewhere for an offence involving fraud or dishonesty that was recorded in the last 10 years unless the Secretary determines the conviction should be ignored because of—
 - (i) the time that has passed since the offence was committed, or
 - (ii) the triviality of the acts or omissions giving rise to the offence.

Note. Section 16(2) of the Act enables the Secretary to refuse an application for an authority if the Secretary is not satisfied of any one or more prescribed matters. Subsection (2)(i) provides for the regulations to prescribe additional matters.

10 Fit and proper person

For the purposes of section 16(5) of the Act, a person is not a fit and proper person in the following circumstances—

- (a) the person is a natural person or trustee who—
 - (i) has, in the last 10 years, been found guilty of an offence involving fraud or dishonesty, whether in New South Wales or elsewhere, or
 - (ii) has been convicted of an offence against the Act or this Regulation, or
 - (iii) has become bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors or makes an assignment of the person's remuneration for 1 or more of the person's creditor's benefit,
- (b) the person is a corporation and—
 - (i) a person who is a director of the corporation or otherwise concerned in the management of the corporation would not be a fit and proper person under the Act or this Regulation, or
 - (ii) the corporation becomes insolvent, is placed in liquidation or under external administration or is wound up.

11 Suspension or cancellation of authorities—additional grounds

For the purposes of section 19A(1)(g) of the Act, the Secretary may suspend or cancel an authority on the following grounds—

- (a) if the authority was granted to an ACNC registered entity under section 16(1)(b) of the Act—that the registration of the authority holder as an ACNC registered entity is revoked or any of the ACNC responsible entities of the ACNC registered entity are suspended or removed,
- (b) if the authority holder is a corporation—that the holder's registration or incorporation as a corporation is cancelled, revoked or suspended.

12 Suspension or cancellation of authorities—written notice

- (1) For the purposes of section 19A(2)(a) of the Act, the Secretary may, by written notice to the holder of an authority, suspend or cancel the authority if the Secretary is satisfied there are grounds to suspend or cancel the authority.
- (2) A notice suspending the authority must specify the following—
 - (a) the date or time from which the suspension takes effect,
 - (b) the grounds for the suspension,
 - (c) the period of suspension.

- (3) A notice cancelling the authority must specify the following—
 - (a) the date or time from which the cancellation takes effect,
 - (b) the grounds for the cancellation.

13 Suspension or cancellation of authorities—reviews

For the purposes of section 19A(2)(b) of the Act, the holder of an authority that is suspended or cancelled may apply to the Civil and Administrative Tribunal for an administrative review under the *Civil and Administrative Tribunal Act 2013* of the suspension or cancellation.

Division 4 Funds and expenses

14 Lawful and proper expenses

- (1) For the purposes of section 20(3) of the Act, an expense is a lawful and proper expense in connection with a fundraising appeal if—
 - (a) the Secretary has, in accordance with this clause, decided that the expense constitutes a lawful and proper expense in connection with—
 - (i) the fundraising appeal, or
 - (ii) fundraising appeals of the same class or description of the fundraising appeal, or
 - (iii) fundraising appeals generally, and
 - (b) the expense—
 - (i) is not prohibited under any law, or
 - (ii) is supported by documentary evidence or otherwise verifiable as being properly incurred, or
 - (iii) in the case of an expense paid or incurred by an authority holder that is an organisation—was properly authorised by or on behalf of the organisation, and
 - (c) the expense complies with the requirements of this clause.
- (2) The Secretary may decide what constitutes a lawful and proper expense in respect of—
 - (a) a particular fundraising appeal, or
 - (b) a class or type of fundraising appeals, or
 - (c) fundraising appeals generally.
- (3) In deciding what constitutes a lawful and proper expense, the Secretary must have regard to the provisions of this clause and to the following—
 - (a) the type and amount of expenses generally accepted as being associated with the manner of fundraising appeal concerned,
 - (b) whether the ratio that the amount of the expense bears to the gross income obtained from the fundraising appeal is reasonable in the circumstances.
- (4) As soon as practicable after deciding that an expense is a lawful and proper expense in connection with a fundraising appeal, the Secretary must—
 - (a) if the decision relates to an expense in respect of a particular fundraising appeal—give the authority holder for the fundraising appeal written notice of the decision, or
 - (b) in all other circumstances—publish notice of the decision in the Gazette.

- (5) The Secretary's decision has effect with respect to an authority holder on the earlier of the following—
 - (a) when the authority holder is notified of the decision,
 - (b) when the decision is notified in the Gazette.
- (6) A commission paid or payable to any person as part of a fundraising appeal must not exceed one-third of the total amount obtained by the person in the appeal.
- (7) If a fundraising appeal is conducted jointly with a trader, the expense must be of a type and amount provided for, or described, in the written agreement between the trader and the authority holder.

15 Payments relating to fundraising appeals must be identified

- (1) For the purposes of section 20(10)(a) of the Act, the following matters must be identified—
 - (a) payments relating to fundraising appeals that are made into and out of accounts,
 - (b) the fundraising appeal to which the payments relate.
- (2) If an account referred to in subclause (1)(a) consists only of money raised in the fundraising appeal concerned, the payments are taken to be identified for the purposes of this clause.

16 Receipts must be issued for all money received

- (1) For the purposes of section 20(10)(c) of the Act, an authority holder must issue a receipt to a donor for all money received from the donor, except where money is received in the following circumstances—
 - (a) through the supply of goods or services,
 - (b) through a payroll deduction scheme.
- (2) Despite subclause (1), an authority holder may issue a single receipt in the following circumstances—
 - (a) if money is received through a collection box or similar device that is cleared by a trader—the authority holder may issue a single receipt to the trader for the gross amount of money cleared from each box or device,
 - (b) if money is received and deposited directly into an authority holder's account in accordance with section 20(6) of the Act—a single receipt may be issued to a donor for the aggregate amount of money received during a period of not more than 12 months.
- (3) A receipt must include the following details—
 - (a) the name, including any trading or business name, of the authority holder,
 - (b) the number, or other form of identification, of the authority granted to the authority holder,
 - (c) the amount of the money received for which the receipt is issued,
 - (d) the date and time the receipt is issued.
- (4) If money is received by any person participating in a fundraising appeal, the participant must—
 - (a) count the money in the donor's presence, and
 - (b) issue a receipt to the donor for the amount of money received.

- (5) If a fundraising appeal is conducted jointly with a trader, the trader must issue receipts that are authorised and issued to the trader by the authority holder in accordance with the written agreement between the trader and the authority holder.

17 Records of income and expenditure must be appropriately kept, maintained and readily accessible

- (1) For the purposes of section 22(2) of the Act, records of income and expenditure must be kept and maintained as follows—
- (a) in English, or readily accessible and easily convertible into English,
 - (b) for a period of at least 7 years, or for a shorter period approved in writing by the Minister, after the income or the expenditure to which the records relate is received or incurred.
- (2) The records must identify the charitable purpose for which any money or benefit was received or paid in the course of a fundraising appeal.
- (3) The records must be kept, maintained and readily accessible for the purposes of the auditing of the records under section 22(2A) of the Act.

18 Additional records must be appropriately kept, maintained and readily accessible

- (1) A person or organisation that conducts a fundraising appeal must keep and maintain the following additional records in relation to the appeal—
- (a) details of all persons associated with the fundraising appeal, including any traders, employees and volunteers, and the activities undertaken by each person in relation to the fundraising appeal,
 - (b) a cash book for each account into which the gross income obtained from the appeal is paid,
 - (c) a register of assets,
 - (d) a register recording details of receipts issued, including any electronic receipts,
 - (e) if petty cash is used—a petty cash book.
- (2) An organisation that conducts a fundraising appeal must also keep and maintain a record of minutes of the following—
- (a) business relating to the fundraising appeal that is transacted by the governing body of the organisation,
 - (b) any general meeting or extraordinary meeting held by the organisation.
- (3) The records must be kept and maintained as follows—
- (a) in English, or readily accessible and easily convertible into English,
 - (b) for a period of at least 3 years, or for a shorter period approved in writing by the Minister.

19 Annual returns must include certain information and be accompanied by certain documents

- (1) For the purposes of section 23(1)(c) of the Act, the following information must be included in an annual return—
- (a) details of the authority holder, including—
 - (i) the authority holder's name and any trading or business name, and
 - (ii) the business address, the address of the registered office and postal address, and
 - (iii) the telephone number and email address, and

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- (iv) a website address, and
 - (v) an address for service specified by the authority holder,
 - (b) whether or not the authority holder is incorporated or unincorporated,
 - (c) if the holder is incorporated—the legislation under which the authority is incorporated,
 - (d) the number of, and personal details of, employees, including the name, date of birth, phone number and address of each employee,
 - (e) information about fundraising appeals, including the charitable purpose and duration of the appeal, and the beneficiaries of the appeal,
 - (f) details of any trader engaged by the authority holder in relation to any appeal conducted by the authority holder.
- (2) For the purposes of section 23(1)(d) of the Act, the following documents must accompany an annual return—
 - (a) an annual financial statement,
 - (b) an auditor’s report prepared for the purposes of section 24 of the Act,
 - (c) a statement of compliance in the form approved under section 24B of the Act.
- (3) An annual financial statement referred to in subclause (2)(a) must—
 - (a) be prepared in accordance with the Australian Accounting Standards, and
 - (b) consist of the following—
 - (i) an income statement that summarises the income and expenditure of each fundraising appeal conducted in a financial year,
 - (ii) a balance sheet that summarises all assets and liabilities resulting from the conduct of fundraising appeals at the end of the financial year,
 - (iii) a statement of cash flows,
 - (iv) if more than \$100,000 gross is received from any fundraising appeal conducted in a financial year—notes.
- (4) If the authority holder is an organisation, the annual financial statement referred to in subclause (2)(a) must also contain a declaration from the organisation that contains the following statements—
 - (a) the organisation is able to pay all of the organisation’s debts as and when the debts become due and payable,
 - (b) the financial statement satisfies the requirements of the Act and this Regulation,
 - (c) the contents of the financial statement are true and fair,
 - (d) the organisation has appropriate and effective internal controls.

Note. If an organisation is a company incorporated under the *Corporations Act 2001* of the Commonwealth, the declaration referred to in subclause (4) is to be provided in addition to the directors’ declaration referred to in section 295 of that Act.
- (5) If the authority holder is an organisation and receives more than \$100,000 gross in a financial year from any fundraising appeal conducted by the organisation in the financial year, the income statement and balance sheet referred to in subclause (3)(b) must also contain the following information—
 - (a) the accounting principles and methods adopted in the preparation of financial statements,
 - (b) details of any material matter or occurrence, including those of an adverse nature such as an operating loss from a fundraising appeal conducted in the financial year,

- (c) a statement that describes the manner in which the net surplus or deficit obtained from a fundraising appeal in the financial year was applied,
- (d) the aggregate gross income and aggregate direct expenditure incurred in all fundraising appeals conducted jointly with traders in the financial year.

20 Certain fundraisers exempt from requirement to have accounts audited

For the purposes of section 25(1) of the Act, a person or organisation is exempt from the requirement under section 24(1) of the Act to have the person's or organisation's accounts audited if the person or organisation does not receive a gross income of \$250,000 or more, in the financial year to which the audit requirement relates, from any fundraising appeal conducted by the person or organisation in the financial year.

Division 5 Miscellaneous

21 Written agreements between traders and authority holders to include certain matters

- (1) For the purposes of section 11(2A) of the Act, there must be a written agreement between a trader and an authority holder who are jointly conducting a fundraising appeal.
- (2) The written agreement must include the following matters—
 - (a) the parties to the agreement,
 - (b) how the agreement may be varied,
 - (c) how, and for what reasons, the agreement may be terminated,
 - (d) a requirement for the parties to participate in alternative dispute resolution to resolve disputes (including details of the mechanisms that will apply and how the mechanisms will apply),
 - (e) the types of insurance policies, including details about the level of insurance, and any other particular terms and conditions of each insurance policy,
 - (f) any reporting requirements under relevant laws including, for example, the Act and this Regulation,
 - (g) an undertaking by the trader that the trader will comply with all relevant laws including, for example, the Act and this Regulation,
 - (h) any responsibilities of each party to keep and maintain records, including, for example, the types of records, and the manner in which the records must be kept and maintained,
 - (i) any wage, commission or fee payable to the trader,
 - (j) any limit on the type and amount of expenses that may be incurred by the trader or authority holder,
 - (k) the method to be used for calculating the gross amount obtained by the trader for the appeal to which the agreement relates, and the manner of payment of the gross amount to the authority holder.

22 Standard conditions of an authority

For the purposes of section 19(1) of the Act, the conditions set out in Schedule 1 are imposed as conditions of an authority.

23 Authority holders to notify Secretary of additional matters

For the purposes of section 24A(1)(j) of the Act, the following circumstances are prescribed—

- (a) if the authority holder is an organisation with branches that are not authority holders in the branch's own right—
 - (i) details of any change to the name of a branch that ceases to be under the responsibility of, and the direction and control of, the governing body of the authority holder, and
 - (ii) the name of any branch that ceases to operate,
- (b) the details of any change to the incorporation status of the authority holder,
- (c) if there is a change to the particulars of a trader jointly conducting a fundraising appeal with the authority holder, or the authority holder engages a new trader in relation to the fundraising appeal, the following details—
 - (i) if the trader is a natural person—the person's name, business address, postal address, email address, website address, telephone number,
 - (ii) if the trader is an organisation—
 - (A) the organisation's full name, any trading or business name, business address, postal address, email address, website address, telephone number, and
 - (B) the full name of each director of the organisation and owner of the trade or business conducted by the trader,
 - (iii) the period for which the trader is authorised to conduct the fundraising appeal according to the written agreement between the trader and the authority holder,
 - (iv) the type of fundraising appeal or appeals to be undertaken,
- (d) details of any change in the name, address or telephone number of the auditor,
- (e) confirmation of any decision by the authority holder to cease conducting the fundraising appeal,
- (f) details of any material error identified in an annual financial statement accompanying an annual return lodged by the authority holder,
- (g) if the authority was granted under section 16(1)(b) of the Act—that the registration of the authority holder as an ACNC registered entity has been revoked or any of the ACNC responsible entities of the ACNC registered entity has been suspended or removed.

24 Public access to information

- (1) On request by a person (the *applicant*) under section 47(1) of the Act, a person or organisation that is, or, within the previous 12 months, was, an authority holder must provide the applicant with a copy of the annual audited financial statements in respect of all fundraising appeals conducted by the authority holder during the 7 financial years immediately preceding the request.
- (2) For the purposes of section 47(1)(b) of the Act, the following information is prescribed—
 - (a) a copy of, or extract from, the organisation's objects and constitution, including any amendments to the organisation's objects and constitution,
 - (b) the names of the members of the governing body of the organisation.
- (3) For the purposes of section 47(3) of the Act, the fee for providing financial statements or information is—
 - (a) \$20.00 for the first page and \$1.75 for each additional page, or
 - (b) such lesser amount as the person or organisation providing the information may determine.

25 Identification of face-to-face collectors

- (1) While participating in a fundraising appeal, a face-to-face collector must prominently display any identification card or badge issued to the person in compliance with a condition of the authority to conduct the appeal.
Maximum penalty—5 penalty units.
- (2) Subclause (1) does not apply if—
 - (a) the fundraising appeal is taking place as part of a fundraising event or function, and
 - (b) it is clear to a person attending the event or function that the fundraising appeal is being conducted by, or on behalf of, the authority holder.

26 Identification of non face-to-face collectors

- (1) This clause applies to a person (a *prescribed collector*) who—
 - (a) participates in a fundraising appeal otherwise than as a face-to-face collector including, for example, by telephone, email or mail, and
 - (b) receives a wage, commission or fee for participating in the fundraising appeal.
- (2) The prescribed collector must, whether or not requested to do so by a person being solicited, disclose to the person—
 - (a) the fact that the prescribed collector receives a wage, commission or fee for participating in the fundraising appeal, and
 - (b) the name of the prescribed collector's employer for the purposes of the fundraising appeal.
Maximum penalty—5 penalty units.

Part 3 Miscellaneous

27 Religious organisations exempt from Act

For the purposes of section 7(1)(b) of the Act, the following religious bodies or religious organisations are prescribed—

ACE Global Incorporated
Answers with Bayless Conley Australia Trust
Australian Asian Church Incorporated
Bible Society NSW
Buddhist Council of New South Wales Incorporated
Church Missionary Society NSW & ACT Limited
City Bible Forum Incorporated
Coffs Coast Schools Ministry Inc
Cornerstone Community
Creflo Dollar Ministries
Far East Broadcasting Co (Australia)
Good News Broadcasting Association Limited
Grace Evangelical Church Newcastle Inc
Hope Media (trading as Hope 103.2)
Hope Mission Centre
Hour of Power Australia Limited
Hwa Tsang Monastery Inc
Jesse Duplantis Ministries
Kenneth Copeland Ministries Eagle Mountain International Church Ltd
Leading The Way With Dr Michael Youssef Australia Limited
Loyal Orange Institution of New South Wales
Open Doors Australia Inc
Rose Mountain Incorporated
Scripture Union NSW
Seventh Day Baptists (Australia) Pty Ltd
Shoalhaven Employers of Christian Education Teachers Inc
Shree Swaminarayan Temple (Sydney) Inc
Tahlee Ministries Incorporated
The E.U. Graduates Fund
The Journey Inc
The Servants of Jesus Community Ltd
The Trustee for Gospel Patrons Society Foundation
Voice of the Martyrs Limited

28 Certain police officers may act as authorised officers

For the purposes of section 25A(2) of the Act, a police officer who holds, or acts in the capacity of a police officer who holds, the rank of sergeant or above, is authorised to exercise all the functions of an authorised officer under the Act.

29 Saving

Any act, matter or thing that, immediately before the repeal of the *Charitable Fundraising Regulation 2015*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Standard Conditions of an Authority

(Clause 22)

Part 1 Preliminary

1 Name of Schedule

This Schedule sets out the *Standard Conditions of an Authority*.

2 Commencement

This Schedule commences on 1 September 2020.

3 Definitions

In this Schedule—

child means a person under the age of 15 years.

Office means NSW Fair Trading.

Part 2 General

4 Application of Part

This Part applies to all fundraising appeals and prescribes the standard conditions to which an authority to conduct an appeal is subject.

5 Controls over conduct of fundraising appeals

An authority holder must exercise proper and effective controls over the conduct of a fundraising appeal, including controls to ensure the following may be accounted for—

- (a) the gross income and any article obtained from the appeal,
- (b) any lawful and proper expenses incurred in the appeal.

6 Organisations must submit audited annual financial statements to AGM

An authority holder that is an organisation must cause the annual financial statement referred to in clause 19(2)(a) of the *Charitable Fundraising Regulation 2020* that has been audited in accordance with section 24 of the Act or otherwise according to law to be submitted to an annual general meeting of the organisation within 6 months after the end of each financial year.

7 Expenses to be proportionate to gross income

An authority holder must take all reasonable steps to ensure that a lawful and proper expense payable in respect of the appeal does not exceed the following—

- (a) for a fundraising appeal for donations only (that is, without any associated supply of goods or services), however conducted—50% of the gross income obtained,
- (b) otherwise—a fair and reasonable proportion of the gross income obtained.

8 Persons participating in a fundraising appeal on behalf of an authority holder

- (1) This clause applies to an authorisation that an authority holder gives to the following persons (the *collector*) who participate in a fundraising appeal on behalf of the authority holder—

- (a) a member of the governing body of an organisation that is the authority holder,

public consultation draft

- (b) an agent or employee (whether voluntary or not) of or for the authority holder.
- (2) The authorisation must—
 - (a) if the collector participates in the fundraising appeal as a face-to-face collector—
 - (i) be in the form of an identification card or badge that is uniquely numbered and indicates the date the card was issued and expires, and
 - (ii) include the name and contact telephone number of the authority holder, and the name of the collector, and
 - (iii) if the collector receives a wage, commission or fee participating in the appeal—include the words “paid collector” and the name of the collector’s employer, and
 - (iv) be signed and dated by the authority holder, a delegate of the authority holder or the governing body of the authority holder, and
 - (v) be of a sufficient size to ensure the particulars may be easily read by members of the public, and
 - (vi) be recovered by the authority holder as soon as the collector’s involvement in the appeal has ended, or
 - (b) if the collector participates in the fundraising appeal otherwise than as a face-to-face collector—
 - (i) be in writing, and
 - (ii) include the name of the collector, and
 - (iii) include a description of the appeal the collector is participating in, and
 - (iv) include the terms and conditions under which the authorisation was granted, and
 - (v) be signed and dated by the authority holder, a delegate of the authority holder or the authority holder’s governing body.
- (3) If the appeal is conducted jointly with a trader, the trader may sign the authorisation for the purposes of subclause (2)(a)(iv) or (b)(v) if the written agreement between the trader and the authority holder provides for the trader to sign the authorisation.

9 Fundraising through direct marketing

If a fundraising appeal involves solicitation through direct marketing, the authority holder must—

- (a) if requested by a person being solicited—
 - (i) inform the person of the source from which the authority holder obtained the person’s name and other details, and
 - (ii) ensure the person’s name and other details are—
 - (A) removed as soon as practicable from the source of names or contacts used for the purposes of the appeal, or
 - (B) if the removal of the name and details is not practicable—to be rendered unusable, and
- (b) ensure the name and other details of a person being solicited are not disclosed to any other person or organisation without the express consent of the person to whom the information relates, and
- (c) ensure the *Australian Consumer Law (NSW)*, the *Telecommunications (Telemarketing and Research Calls) Industry Standard 2017* of the Commonwealth and any other laws and standards relevant to a fundraising appeal that involves solicitation through direct marketing, including laws

relating to fair trading, trade practices, privacy and anti-discrimination, are complied with.

10 Collection boxes for monetary donations

- (1) If a collection box or similar device is used for monetary donations, the box or device must be—
 - (a) securely constructed, and
 - (b) properly sealed, and
 - (c) uniquely numbered, and
 - (d) clearly labelled with the name of the authority holder.
- (2) The use and clearance of the box or device must be supervised and secure.

11 Payments in connection with fundraising appeals must be authorised

If an authority holder is an organisation, payments made in connection with the following must be authorised by or on behalf of the organisation—

- (a) any expenditure incurred in relation to the conduct of a fundraising appeal,
- (b) any distribution of funds or profit raised in a fundraising appeal.

12 Advertisements, notices or information about fundraising appeals

- (1) Any advertisement, notice or information provided as part of a fundraising appeal must—
 - (a) clearly and prominently disclose the name of an authority holder and the charitable purpose of the fundraising appeal, and
 - (b) comply with the *Australian Consumer Law (NSW)* and any other laws and standards relevant to a fundraising appeal, including laws relating to fair trading, trade practices, privacy and anti-discrimination.
- (2) If the fundraising appeal involves the collection of donated goods or material, any advertisement, notice or information must also include particulars of how the donated goods or material will be dealt with.
- (3) If the fundraising appeal is conducted jointly by a trader and an authority holder, any written or printed advertisement, notice or information must also include the following—
 - (a) the full name under which the trader operates for the purposes of the appeal, and the business address, postal address, email address, website address and telephone number of the trader,
 - (b) the date on which the appeal commences and the date on which the appeal ends,
 - (c) if the appeal involves the collection of donated goods or material—details of the intended distribution of funds raised or of any guaranteed minimum payment or proportion of profits to be paid by the trader to the authority holder under section 11(2)(c) of the Act as—
 - (i) a percentage of the average gross income derived, or expected to be derived, from all goods and material collected over a specified period of the appeal, or
 - (ii) if the collection device is a collection bin—an average dollar amount derived or expected to be derived from each bin for each month over a specified period of the appeal.

13 Certain information must be provided about fundraising appeals

If a person conducting or participating in a fundraising appeal is asked a question in relation to the purpose or the details of the appeal, the person must—

- (a) honestly answer the question, or
- (b) if the person is unable to answer the question—arrange to find an answer to the question.

14 Donation of goods or material using collection bins or bags

(1) If a fundraising appeal conducted jointly by a trader and an authority holder involves the collection of donated goods or material, the following requirements must be complied with—

- (a) if the collection device is a collection bin—
 - (i) each bin must be consecutively numbered in a clear and visible manner, and
 - (ii) if there is more than one bin used in connection with the appeal—the total number of bins currently used in connection with the appeal must be displayed on the bin in a clear and visible manner, and
 - (iii) for each month during which the appeal is conducted, the trader must—
 - (A) maintain a record of each bin used in relation to the appeal, including the number and location of each bin, and the date the record for each bin is made, and
 - (B) provide a copy of the record to the authority holder,
- (b) if the collection device is a collection bag, for each month during which the appeal is conducted, the trader must—
 - (i) maintain a record of each bag distributed as part of the appeal, including the date on which, and location from which, each bag was distributed, and the total number of bags distributed, and
 - (ii) provide a copy of the record to the authority holder.

(2) If the fundraising appeal is for the collection of donated articles of clothing, the following additional requirements must be complied with—

- (a) if the collection device is a collection bin—
 - (i) an adhesive notice obtained from the Office that states “COMMERCIALY OPERATED” must be displayed on the chute of each bin, and
 - (ii) for each month during which the appeal is conducted, the trader must—
 - (A) maintain a record of the gross weight of unsorted clothing obtained from the collection bin and the date the record is made, and
 - (B) provide a copy of the record to the authority holder,

Note. The record under subclause (2)(a)(ii) may be combined with the record referred to in subclause (1)(a)(iii).

- (b) if the collection device is a collection bag—
 - (i) each bag, and any advertisement, notice or information distributed with each bag, must display “COMMERCIALY OPERATED” in a clear and visible manner in the following format—

COMMERCIAL

OPERATED

- (ii) for each month during which the appeal is conducted, the trader must—
 - (A) maintain a record of the gross weight of unsorted clothing obtained from the collection bag and the date the record is made, and
 - (B) provide a copy of the record to the authority holder.

Note. The record under subclause (2)(b)(ii) may be combined with the record referred to in subclause (1)(b).
- (3) If a fundraising appeal conducted solely by an authority holder involves the collection of donated articles of clothing, the following requirements must be complied with—
 - (a) if the collection device is a collection bin—an adhesive notice obtained from the Office that states “CHARITY OPERATED” must be displayed on the chute of each bin,
 - (b) if the collection device is a collection bag—each bag, and any advertisement, notice or information distributed with each bag, must display “CHARITY OPERATED” in a clear and visible manner in the following format—

CHARITY

OPERATED

15 Management of authority holders

- (1) The fundraising activities of an authority holder that is an organisation must be managed as follows—
 - (a) the organisation must be administered by a governing body that consists of at least 3 persons or 3 trustees,
 - (b) the quorum for a meeting of the governing body is the greater of—
 - (i) 3 persons or 3 trustees, or
 - (ii) one-quarter of the members constituting the governing body,
 - (c) any transaction made by a member of the governing body must be recorded in the organisation’s minutes to a meeting.
- (2) Persons or trustees who are members of the same family must not—
 - (a) comprise more than one-third of the governing body, or
 - (b) be co-signatories on the same transaction on the bank account of the organisation or trust.
- (3) In this clause, a person is a member of the *same family* as another person if the person is—
 - (a) a spouse or de facto partner of the other person, or
 - (b) whether by birth, adoption or marriage, any of the following—
 - (i) a child of the other person,

- (ii) a sibling of the other person,
- (iii) a parent of the other person,
- (iv) a grandparent of the other person,
- (v) a grandchild of the other person.

16 Processes for avoiding conflicts of interest

- (1) An authority holder must establish a process for managing and resolving conflicts of interest involving the following—
 - (a) if the authority holder is an organisation—a member of the governing body of the organisation,
 - (b) an agent, employee or collector (whether voluntary or not) of an authority holder.
- (2) If, in a meeting of a governing body, the appointment, conditions of service or remuneration of, or the supply of goods or services by, a member of the body or the member's immediate family, is being considered—
 - (a) the member must be excluded from that part of the meeting, and
 - (b) the quorum for the meeting must not include the member, and
 - (c) the resolution of the matters being considered must be subsequently ratified at a general meeting of the organisation or by a committee that has been delegated the function to ratify the resolution of those matters.

17 Internal dispute resolution processes

If an authority holder is an organisation, the organisation must establish a process for the resolving internal disputes between the members of the organisation in relation to the organisation's fundraising activities.

18 Complaint handling processes

An authority holder must establish a process for resolving complaints made by members of the public and any employees or collectors (whether voluntary or not) of the holder in relation to the holder's fundraising activities.

19 Prohibition against soliciting from motor vehicle occupants

A person must not participate in a fundraising appeal by soliciting any money, property or other benefit from another person who is occupying a motor vehicle that is—

- (a) in motion, or
- (b) temporarily stopped for any reason, including at a traffic light or intersection.

Part 3 Child participants in fundraising appeals

Division 1 Application

20 Application of Part

This Part applies to a fundraising appeal involving child participants and prescribes the standard conditions in relation to the participation of children in the appeal to which an authority is subject.

21 Definition

In this Part—

child participant means a child who participates in a fundraising appeal.

22 Age of child participants

A child participant must—

- (a) if the child will not receive any wage, commission or fee for participating in the fundraising appeal—be of or above the age of 8 years, or
- (b) if the child will receive any wage, commission or fee for participating in the fundraising appeal—be of or above the age of 13 years.

Note. Division 3 sets out additional conditions that apply to child participants who receive a wage, commission or fee for participating in a fundraising appeal.

Division 2 General

23 Duties to ensure compliance with standard conditions

An authority holder must take all reasonable steps to ensure the standard conditions prescribed in this Part are complied with.

24 Parental consent

An authority holder must obtain the consent of a child's parent before permitting the child to participate in the appeal.

25 Insurance

A child participant must be covered by an appropriate insurance policy, including a public liability insurance policy.

26 Parental contact

An authority holder must—

- (a) take all reasonable steps to ensure that a child participant is able to make contact with the child's parent at all times, and
- (b) facilitate the making of any contact whenever the child requests or whenever it is otherwise appropriate to do so in the interests of the child.

27 Supervision

- (1) An authority holder must ensure a child participant is appropriately supervised having regard to the child's age, sex and degree of maturity.
- (2) The supervisor must—
 - (a) remain in the general vicinity of the child at all times, and
 - (b) make contact with the child at intervals of not more than 30 minutes, and
 - (c) know the whereabouts of the child at all times.
- (3) The supervisor must not supervise more than 6 child participants at any one time.
- (4) If a child participant is under 11 years of age, the supervisor must maintain contact with the child at all times.

28 Child participants must not work alone

A child participant must work with at least 1 other child participant.

29 Food and drinks

- (1) A child participant must be provided at reasonable hours during their participation in a fundraising appeal with food that is varied, sufficient, nutritious and appropriate having regard to the age, taste and culture of the child.
- (2) Water or fruit juice, or other nutritious drinks, must be readily available to the child at all times during the child's participation in the appeal.

30 Access to toilet facilities

A child participant must have access to clean and easily accessible toilet, hand-washing and hand-drying facilities.

31 Protection from elements

A child participant must be adequately clothed and otherwise protected from extremes of climate.

32 Moving unreasonable weights prohibited

A child participant must not be permitted or required to move anything that is of an unreasonable weight having regard to the child's age or condition.

33 Entry to private homes and motor vehicles prohibited

A child participant must not be permitted or required to—

- (a) enter a private dwelling while soliciting door-to-door, or
- (b) solicit from a person who is occupying a motor vehicle.

34 Limitations on hours of participation

- (1) A child participant must not participate in a fundraising appeal as follows—
 - (a) on a day on which the child is required to attend school (a *school day*)—for more than 4 hours,
 - (b) on a day other than school day—for more than 6 hours,
 - (c) on a day other than a school day if the following day is a school day—finish participating in the appeal later than 8.30 pm,
 - (d) for more than 5 days per week.
- (2) If the child participant is participating in a fundraising appeal outdoors, the child must not—
 - (a) start participating in the appeal before sunrise or 6.30 am, whichever is the later, and
 - (b) finish participating in the appeal later than sunset or 6.00 pm, whichever is the earlier.
- (3) A child participant must not be permitted or required to start participating in a fundraising appeal less than 12 hours after the child has previously finished participating in an appeal or any other work.

35 Travel home

A child participant must be taken home by the child's parent or another adult authorised by the child's parent after the child finishes participating in the appeal unless—

- (a) the child is more than 12 years of age, and

- (b) the distance between where the child finishes participating in the appeal and the child's home is less than 10 kilometres, and
- (c) travel home will be by public transport and will be completed within daylight hours.

Division 3 Child participants who receive wages, commissions or fees

36 Application

This Division applies to the employment of a child participant for the purposes of conducting a fundraising appeal.

37 Definitions

In this Division—

employee means a child participant who is employed for the purposes of conducting a fundraising appeal.

employer means a person who employs a child participant for the purposes of conducting a fundraising appeal.

38 Letter of employment

Prior to an employee's commencement of employment, an employer must provide the employee with a letter of employment that contains the terms and conditions of the employment, which includes the following—

- (a) the basis on which wages, commissions or fees will be paid or provided, including how those matters will be calculated, any guarantee of minimum payments and the method by which payment will be effected,
- (b) the rights of the employee.

39 Records of employment

- (1) An employer must maintain a record of employment in relation to each employee that includes details of the following—
 - (a) the employee's full name, date of birth, residential address and telephone number,
 - (b) the date of employment,
 - (c) a description of the nature of the employment,
 - (d) the full name and residential address of the person immediately responsible for the employee during the appeal,
 - (e) consent to the employee's employment provided by the employee's parent, including an original copy of any written consent provided by the parent.
- (2) If the employer is a trader, the employer must make the records available to the authority holder.