



New South Wales

Charitable Fundraising Regulation 2015

under the

Charitable Fundraising Act 1991

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

VICTOR DOMINELLO, MP
Minister for Innovation and Better Regulation

Explanatory note

The object of this Regulation is to remake, with some changes, the provisions of the *Charitable Fundraising Regulation 2008*, which is repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the activities and appeals that do not constitute a fundraising appeal for the purposes of the *Charitable Fundraising Act 1991 (the Act)*,
- (b) the religious organisations that are exempt from the Act,
- (c) the organisations that may conduct fundraising appeals without holding an authority under the Act,
- (d) the manner of determining what constitutes a lawful and proper expense in connection with a fundraising appeal,
- (e) the particulars that are to be shown in the records of income and expenditure that a person or organisation conducting a fundraising appeal must keep,
- (f) the organisations that are exempt from the requirement to have their accounts audited,
- (g) the identification and obligations of participants in fundraising appeals,
- (h) the financial and organisational information that must be provided to the public on request, and the fees payable for that information,
- (i) the standard conditions that apply to certain authorities to conduct fundraising appeals,
- (j) the changes in particulars that an authorised fundraiser must provide to the Minister for Innovation and Better Regulation,
- (k) savings and formal matters.

This Regulation is made under the *Charitable Fundraising Act 1991*, including sections 5 (3) (f), 7 (1) (b), 9 (3) (a), 16 (6), 20 (3), 22 (2) (b), 47 (1) and (3), 49 (3) and 55 (the general regulation-making power).

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Charitable Fundraising Regulation 2015*.

2 Commencement

This Regulation commences on 1 September 2015 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Charitable Fundraising Regulation 2008*, which is repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

authorised fundraiser, 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 the financial year fixed for the organisation by its constitution or, if no financial year is fixed, the year commencing 1 July.

the Act means the *Charitable Fundraising Act 1991*.

trader means a trader within the meaning of section 11 of the Act.

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

Part 2 Fundraising appeals

4 Certain requests for, or receipts of, money not to constitute fundraising appeal

For the purposes of section 5 (3) (f) of the Act, a request for, or the receipt of, money from a person is prescribed if the money is wholly payable by the person as the genuine fee or charge for the provision of:

- (a) educational facilities or services, or
- (b) child-minding services, or
- (c) goods or services supplied through a supported employment service for people with disabilities, or
- (d) nursing or medical services, or
- (e) other care or welfare services.

5 Community support and expenditure schemes

(1) For the purposes of section 5 (3) (f) of the Act, a request for, or the receipt of, money, property or other benefit from a registered club is prescribed if:

- (a) the registered club applies profits to community development and support in accordance with the ClubGRANTS guidelines, and
- (b) 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 it has in section 16 of the *Gaming Machine Tax Act 2001*.

registered club has the same meaning as it has in the *Registered Clubs Act 1976*.

6 Religious organisations exempt from Act

For the purposes of section 7 (1) (b) of the Act, the following are prescribed as religious bodies or religious organisations to which the Act (apart from section 48) does not apply:

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
Coffs Coast Schools Ministry Inc
Cornerstone Community
Creflo Dollar Ministries
City Bible Forum Incorporated
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
IN Network Australia 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
New South Wales Ecumenical Council Relief Institute Inc
Open Doors Australia Inc
Rose Mountain Incorporated
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

7 Local councils and certain trusts exempt from obligation to hold authority to conduct fundraising appeals

- (1) For the purposes of section 9 (3) (a) of the Act, the following organisations and persons are authorised to conduct a fundraising appeal without being the holder of an authority:
- (a) councils,
 - (b) committees of councils (whether or not all of the members of the committee are councillors of the council),
 - (c) the trustees of a trust of which:
 - (i) a council is a trustee, or
 - (ii) a mayor, councillor, general manager, public officer or senior staff member of a council is a trustee by virtue of holding that office, or
 - (iii) a person nominated by a council is a trustee by virtue of being a person nominated by the council,but only in respect of a fundraising appeal conducted for the trust.
- (2) In this clause, *council*, *councillor*, *mayor*, *public officer* and *senior staff* have the same meaning as they have in the *Local Government Act 1993*.

8 Universities and controlled entities exempt from obligation to hold authority to conduct fundraising appeals

- (1) For the purposes of section 9 (3) (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 any such university, has control within the meaning of Australian Accounting Standards, as referred to in section 39 (1A) of the *Public Finance and Audit Act 1983*.

university means a university listed under the heading New South Wales in Part 1 of Schedule 1 to the *Higher Education Act 2001*.

9 Small fundraisers exempt from obligation to hold authority to conduct fundraising appeals

- (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 10, and
 - (c) only engages persons on a voluntary basis to participate in its fundraising appeals, and
 - (d) conducts its fundraising appeals in accordance with guidelines, if any, published in the Gazette by the Minister, and
 - (e) is not ineligible by reason of a declaration under subclause (3).
- (2) For the purposes of section 9 (3) (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 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 that small fundraiser's fundraising appeals generally or to 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 subsection (4) is guilty of an offence.
Maximum penalty: 5 penalty units.

10 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 Minister has, pursuant to this clause, determined that such an expense constitutes a lawful and proper expense in connection with that fundraising appeal, fundraising appeals of that class or description or fundraising appeals generally, and
 - (b) it is not an expense referred to in subclause (5) (a)–(c), and
 - (c) it complies with the requirements of this clause.
- (2) The Minister may, subject to this clause, decide what constitutes a lawful and proper expense in respect of a particular fundraising appeal or any class or description of fundraising appeals or fundraising appeals generally.
- (3) The Minister, in deciding what constitutes a lawful and proper expense, must have regard to the provisions of this clause and to:
 - (a) the type and amount of expenses generally accepted as being associated with the manner of appeal concerned, and
 - (b) whether the ratio that the amount of the expense in question bears to the gross income obtained from the appeal is reasonable in the circumstances.

- (4) The Minister's decision has effect with respect to an authorised fundraiser when it is notified to the authorised fundraiser or when it is notified in the Gazette, whichever occurs first.
- (5) An expense is not a lawful and proper expense:
 - (a) if it is prohibited under any law, or
 - (b) if it is not supported by documentary evidence or is not otherwise verifiable as being properly incurred, or
 - (c) in the case of an expense paid or incurred by an organisation that is an authorised fundraiser, if it was not properly authorised by or on behalf of the organisation.
- (6) Commissions paid or payable to any person as part of a fundraising appeal must not exceed one-third of the gross money obtained by that person in the appeal.
- (7) If a fundraising appeal is conducted with a trader, expenses must be of a type and amount provided for, or described, in a written agreement between the authorised fundraiser and the trader.

11 Particulars to be shown in records of income and expenditure

For the purposes of section 22 (2) (b) of the Act, the following particulars are to be included in relation to each fundraising appeal:

- (a) particulars of all items of gross income received or receivable,
- (b) particulars of all items of expenditure incurred (including the application or disposition of any income obtained from the appeal),
- (c) particulars of the transactions to which the particulars in paragraph (a) or (b) relate.

Note. Accordingly, particulars of all invoices, receipts, vouchers and other documents of prime entry relating to each fundraising appeal, and such working papers and other documents as are necessary to explain the methods and calculations by which accounts relating to the appeal are made up, must be included in the records kept under section 22 of the Act.

12 Certain fundraisers exempt from requirement to have accounts audited

- (1) For the purposes of section 25 (1) of the Act, a person or organisation is exempt from the requirement imposed under section 24 (1) of the Act to have its accounts audited if it:
 - (a) does not receive more than \$250,000 gross in any financial year from any fundraising appeals that person or organisation conducts in that financial year, and
 - (b) is not the subject of a direction made by the Minister under subclause (2).
- (2) The Minister may direct a person or organisation in writing to comply with section 24 of the Act.

13 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 that has been 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 the fundraising appeal is taking place as part of a fundraising event or function and it is clear to a person attending the function or event that the fundraising appeal is being conducted by, or on behalf of, the holder of the authority to conduct the appeal.

14 Obligations of participants

A person:

- (a) who conducts or participates in a fundraising appeal otherwise than as a face-to-face collector (such as by telephone, email or mail), and
- (b) who receives a wage, commission or fee for doing so,

must, whether or not requested to do so by the person being solicited, disclose to that person the fact that he or she is so employed and the name of his or her employer for the purposes of the appeal.

Maximum penalty: 5 penalty units.

15 Public access to information

- (1) On request by a person (the *applicant*) under section 47 of the Act, a person or organisation that is (or, within the previous 12 months, was) the holder of an authority must provide to the applicant a copy of the annual audited financial statements (also known as financial reports) in respect of all fundraising appeals conducted by the person or organisation during the 7 financial years prior to the request.
- (2) If the applicant's request relates to an organisation, the following must also be provided on request:
 - (a) a copy of, or extract from, the organisation's objects and constitution, including any amendments,
 - (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 \$17.50 for the first page and \$1.50 for each additional page or such lesser amount as the person or organisation providing the information may determine.

16 Notification of changes to particulars of authorised fundraiser

- (1) An authorised fundraiser must, within 28 days (or within such further time as the Minister may allow) after the relevant change or event, provide to the Minister in writing:
 - (a) if the authorised fundraiser is a natural person, details of any amendment, deletion or addition to the charitable objects or purposes for which the person wishes to raise funds under its authority, and
 - (b) if the authorised fundraiser is an organisation (whether or not incorporated), details of any changes to its constitution with respect to:
 - (i) the charitable objects or purposes of the organisation, or
 - (ii) the non-profit nature of the organisation with respect to the disposition of funds obtained through its fundraising appeals, or
 - (iii) the disposition of funds and assets obtained from fundraising appeals to a non-profit organisation with similar or identical charitable objects or purposes in the event of a winding-up of the organisation, and
 - (c) if the authorised fundraiser is an organisation with branches that are not authorised fundraisers in their own right, details of any change in the following particulars:
 - (i) the name, including the trading or business name, of any branch,
 - (ii) the business address, postal address, email address, website address, address of the registered office and the telephone and facsimile numbers of any branch,

- (iii) the name of any branch that is no longer under the direction and control of the governing body of the authorised fundraiser,
- (iv) the name of any branch that has ceased to operate, and
- (d) details of any change to the incorporated status of the authorised fundraiser, and
- (e) if there have been any modifications to the particulars of an existing trader, or if a new trader has been engaged, the following details:
 - (i) if the trader is a natural person, the person's name, business address, postal address, email address, website address, and telephone and facsimile numbers,
 - (ii) if the trader is an organisation, its full name (together with any trading or business name), its business address, postal address, email address, website address, and its telephone and facsimile numbers,
 - (iii) if the trader is an organisation, the full name of each director and owner of the trade or business,
 - (iv) the period for which the trader is authorised to conduct the appeal according to the written contract,
 - (v) the type of appeal or appeals to be undertaken, and
- (f) details of any change in the name, address or telephone or facsimile number of the auditor, and
- (g) confirmation of any decision by the authorised fundraiser to cease to conduct fundraising appeals.

Maximum penalty: 20 penalty units.

- (2) This clause does not require an authorised fundraiser to notify the Minister of any change that has previously been notified, whether in a notice provided under this clause or in the authorised fundraiser's most recent application for an authority.

Part 3 Miscellaneous

17 Conditions of authority

Subject to any variations under section 19 of the Act, the conditions set out in the document titled “Charitable Fundraising Authority Conditions”, dated 31 July 2015 and published in the Gazette are conditions of any authority taken to have been granted under section 16 (6) of the Act.

18 Police authorised to act as inspectors

For the purposes of section 49 (3) of the Act, any police officer:

- (a) who holds the rank of sergeant or above, or
- (b) who acts in the capacity of a police officer holding the rank of sergeant or above,

is authorised to exercise all the functions of an authorised inspector under the Act.

19 Savings

Any act, matter or thing that, immediately before the repeal of the *Charitable Fundraising Regulation 2008*, had effect under that Regulation continues to have effect under this Regulation.