

1993—No. 386

**CHARITABLE FUNDRAISING ACT 1991—REGULATION**

(Charitable Fundraising Regulation 1993)

NEW SOUTH WALES



*[Published in Gazette No. 91 of 20 August 1993]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Charitable Fundraising Act 1991, has been pleased to make the Regulation set forth hereunder.

ANNE COHEN  
Chief Secretary.

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**Citation**

1. This Regulation may be cited as the Charitable Fundraising Regulation 1993.

**Commencement**

2. This Regulation commences on 1 September 1993.

**Definitions**

3. In this Regulation:

“**child**” means a person under the age of 15 years;

“**public street**” has the same meaning as in the Traffic Act 1909;

“**the Act**” means the Charitable Fundraising Act 1991;

“**trader**” means a person so described in section 11 of the Act.

**Meaning of “fundraising appeal”**

4. For the purposes of section 5 (3) (f) of the Act, a request for, or the receipt of, money from a person does not constitute a fundraising appeal 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 by a sheltered workshop or supported employment services for people with disabilities; or
- (d) nursing or medical services; or
- (e) other care or welfare services.

**Religious organisations exempt from Act**

5. For the purposes of section 7 (1) (b) of the Act, the NSW Auxiliary of the British and Foreign Bible Society is prescribed as a religious body or religious organisation to which the Act does not apply.

**Lawful and proper expenses**

6. (1) For the purposes of section 20 (3) of the Act, lawful and proper expenses in connection with fundraising appeals are those that comply with this clause.

(2) The Minister may, subject to this clause, decide what constitutes a lawful and proper expense in respect of particular fundraising appeals 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 proceeds from the appeal is reasonable in the circumstances.

(4) A decision of the Minister has effect when it is notified to the holder of the authority conducting the relevant fundraising appeal or when it is notified in the Gazette.

(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 the holder of an authority—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, in addition to complying with the requirements of this clause, expenses must be of a type and amount provided for, or described in, a written agreement between the holder of the authority and the trader.

#### **Prescribed institutions at which fundraising appeal money may be**

7. For the purposes of section 20 (6) of the Act, a credit union is a prescribed institution (being an institution at which an account may be held for the paying into of money received in the course of a fundraising appeal).

#### **Particulars to be shown in records of income and expenditure**

8. The following particulars are to be included in the records kept under section 22 of the Act 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 particulars of the application or disposition of any proceeds obtained from the appeal.

#### **Identification of collectors**

9. (1) A person who participates in a fundraising appeal by face-to-face solicitation must, while so participating, wear any identification card or badge issued to the person for the purposes of the appeal.

(2) The card or badge must be prominently displayed at all times.

Maximum penalty: 5 penalty units.

### **Obligations of participants**

**10.** A person who participates in a fundraising appeal by means of any solicitation otherwise than face-to-face (e.g. by telephone or mail) and who receives a wage, commission or fee for doing so must, whether or not required to do so by the person being solicited, disclose to that person the fact that they are employed and also the name of their employer for the purposes of the appeal.

Maximum penalty: 5 penalty units.

### **Public access to information**

**11. (1)** The holder of an authority is required to furnish, on request by any person under section 47 of the Act, copies of the annual audited statements prepared in relation to fundraising appeals conducted during the 7 years prior to the request.

**(2)** The following must also be furnished on request:

- (a) a copy of or extract from the organisation's objects and constitution, including any amendments;
- (b) the names, qualifications and occupations of members of the governing body of the organisation.

**(3)** If the information required is furnished by the holder of an authority, the maximum fee that may be charged for furnishing the information is:

- for the first page ..... \$5.50
- for each additional page ..... \$0.50

**(4)** If the information required is furnished by or on behalf of the Minister, the fee for furnishing the information is:

- for the first page ..... \$5.50
- for each additional page ..... \$0.50

### **Notification of changes to particulars of authority holder**

**12. (1)** The holder of an authority must furnish to the Minister in writing:

- (a) details of any change in the name of the holder; and
- (b) details of any change in the business address, the postal address, the address of the registered office and the phone number of the holder; and

- (c) if the holder is a person, details of any amendment, deletion or addition to the objects or purposes for which the person wishes to raise funds under the authority; and
- (d) if the holder is an unincorporated organisation, details of any alteration or amendment to its constitution; and
- (e) if the holder is an incorporated organisation, details of any changes to its constitution with respect to:
  - the charitable objects or purposes of the organisation; or
  - the non-profit nature of the organisation with respect to the disposition of funds obtained through its fundraising appeals; or
  - the disposition of funds and assets obtained from fundraising appeals to a non-profit organisation with similar or identical charitable objects in the event of a winding-up of the organisation; and
- (f) if the holder is an organisation with branches that do not hold a fundraising authority in their own right, details of any change in the following particulars:
  - the name, including the trading or business name, of any branch;
  - the business address, the postal address, the address of the registered office and the phone number of any branch;
  - any branch which is no longer under the direction and control of the governing body of the applicant organisation;
  - any branch which has ceased to operate; and
- (g) details of any change to the incorporated status of the holder; and
- (h) the following details if there have been any modifications to the particulars of an existing trader, or if a new trader has been engaged:
  - if the trader is a natural person, the person's name, business and postal address and telephone and facsimile contact numbers;
  - if the trader is an organisation, its full name (together with any registered business names), its business and postal addresses and its telephone and facsimile contact numbers;
  - if the trader is an organisation, the full name of each director and owner of the business;
  - the period for which the trader is authorised to conduct the appeal according to the written contract;
  - the type of appeal or appeals to be undertaken; and

- (i) details of changes to the name, address and telephone number of the auditor (but this requirement does not apply if such particulars have been previously provided as part of any other application or notification); and
- (j) confirmation of any decision by the holder of the authority to cease to conduct fundraising appeals.

(2) The holder of an authority must furnish any information required by this clause within 28 days (or within such further time as the Minister may allow) after the change or event necessitating the furnishing of the information.

(3) References in this clause to changes are references to changes made or undergone:

- (a) in the case of a holder of an authority who holds the authority by virtue of clause 2 of Schedule 2 to the Act—since the date on which the holder was taken to have been granted its authority; or
- (b) in any other case—since the date of the last application for an authority.

Maximum penalty: 20 penalty units.

### **Return of authority to Minister**

13. The person in possession of an authority must return the authority to the Minister in either of the following circumstances:

- (a) if the authority has been revoked—in which case it is to be returned not later than 1 month after the date of the decision to revoke it;
- (b) if the holder of the authority has ceased to exist—in which case it must be returned not later than 1 month after the holder has ceased to exist.

Maximum penalty: 20 penalty units.

### **Police authorised to act as inspectors**

14. Pursuant to section 49 (3) of the Act, every police officer of or above the rank of sergeant is authorised to exercise any function of an authorised inspector under the Act.

### **Evidence by certificate**

15. For the purposes of section 52 of the Act, the Secretary, Chief Secretary's Department, is a prescribed officer.

**Guidelines**

**16.** For the assistance and guidance of persons conducting or intending to conduct fundraising appeals, the Minister may publish guidelines specifying recommended practices for conducting any such appeals in accordance with the Act and this Regulation.

**Conditions of authority when application delayed**

**17. (1)** The conditions set out in Schedule 1 are (except as otherwise provided by conditions imposed under section 19 of the Act) conditions of any authority taken to have been granted in accordance with section 16 (6) of the Act.

**(2)** The conditions set out in Schedule 2 are (except as otherwise provided by conditions imposed under section 19 of the Act) conditions of any authority taken to have been granted in accordance with section 16 (6) of the Act, in so far as children are participants (whether on a paid or voluntary basis) in any appeal conducted under the fundraising authority.

**Transitional conditions of authorities for existing charities**

**18. (1)** Pursuant to clause 1 of Schedule 2 to the Act, the conditions set out in Schedule 1 to this Regulation are (except as otherwise provided by conditions imposed under section 19 of the Act) conditions of any authority taken to have been granted by clause 2 of Schedule 2 to the Act.

**(2)** Pursuant to clause 1 of Schedule 2 to the Act, the conditions set out in Schedule 2 to this Regulation are (except as otherwise provided by conditions imposed under section 19 of the Act) conditions of any authority taken to have been granted by clause 2 of Schedule 2 to the Act, in so far as children are participants (whether on a paid or voluntary basis) in any appeal conducted under the fundraising authority.

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**SCHEDULE 1—CONDITIONS APPLYING TO CERTAIN  
AUTHORITIES**

(Cl. 17, 18)

**Maximum period for which authority is taken to have been granted**

1. If the authority is taken to have been granted under section 16 (6) of the Act, the holder of the authority is permitted to conduct the appeal or appeals for the period of time specified in the application. If no such period is specified, the holder of the authority is permitted to conduct an indefinite number of appeals within a maximum period of 12 months.

**Internal controls**

2. Proper and effective controls must be exercised by the holder of the authority over the conduct of all appeals, including accountability for all income or articles received from any appeal and expenditure incurred.

**Safeguarding of assets**

3. The holder of the authority must ensure all assets obtained during, or as a result of, a fundraising appeal are safeguarded and properly accounted for.

**Maintenance of proper books of account and records**

4. (1) The holder of the authority must maintain such books of account and records as are necessary to ensure proper accountability for all fundraising appeals, including the following:

- (a) a cash book for each account held with a bank, building society or credit union (including any passbook account) into which proceeds from any fundraising appeal are deposited or invested;
- (b) a register of assets;
- (c) a register recording details of receipt books or computerised receipt stationery;
- (d) a register recording details of tickets or computerised ticket stationery;
- (e) a petty cash book (if petty cash is used).

(2) If the holder of the authority is an organisation, a minute book must be kept containing minutes of all business relating to fundraising appeals that is transacted by the governing body of the organisation (or by any subcommittee of that governing body) and any general or extraordinary meeting of its general membership.

(3) If the holder of the authority engages persons to participate (whether on a paid or voluntary basis) in a fundraising appeal, it must keep a register of participants.

**Report on outcome of appeal or appeals**

5. (1) A return under section 23 of the Act (in a form approved by the Minister) must be lodged within the period indicated below by the following holders of authorities in relation to appeals conducted by them:

- (a) for a natural person, within 1 month after the close of each appeal;



(b) for an unincorporated organisation, within 3 months after the audited financial statements are adopted at its annual general meeting or within 7 months after the conclusion of each of its financial years, whichever occurs sooner.

(2) If the gross income from all fundraising appeals is less than \$10,000 for the financial period on which a return is to be based, a periodic return is not required to be submitted in accordance with subclause (1). However, a return in a form approved by the Minister must be lodged within 2 months after the expiration of the fundraising authority, or if an application for a further authority is lodged, the return must accompany that application, whichever event occurs sooner.

(3) If an organisation ceases to function, a return in a form approved by the Minister must be lodged within 2 months of its ceasing to function.

#### **Maintenance of an account**

6. (1) The title of the account into which the gross proceeds from any appeal are to be paid in accordance with section 20 (6) of the Act must include the name of the holder of the authority.

(2) If a fundraising appeal is conducted jointly between the holder of the authority and a trader and the trader maintains an account for the purposes of section 20 (6) of the Act, the account is to consist only of money raised in the appeal conducted on behalf of that authority holder and no other.

(3) Disbursement from the account in amounts of \$200 or more must be by cheque drawn on the account, unless the particular conditions of the authority otherwise provide.

#### **Annual financial accounts**

7. (1) This clause applies to an organisation that conducts one or more fundraising appeals over a period of more than 12 months, being:

(a) an organisation that, immediately before the commencement of section 56 of the Act, was a charity within the meaning of the Charitable Collections Act 1934; or

(b) an organisation that is required by any law to prepare annual financial statements.

(2) In its application to an organisation mentioned in subclause (1) (b), this clause does not require the reproduction of information already contained in the annual financial statements of the organisation concerned but requires the information to be separately itemised or to be

shown as notes to the profit and loss accounts or balance sheets of the organisation.

- (3) The accounts of the organisation must contain:
- (a) a statement of income and expenditure of all fundraising appeals conducted during the financial year; and
  - (b) a balance sheet that includes all assets and liabilities resulting from the conduct of appeals as at the end of the financial year; and
  - (c) the following information as notes accompanying the statement of income and expenditure and the balance sheet:
    - (i) details of the accounting principles and methods adopted in the presentation of the financial statements;
    - (ii) information on any material matter or occurrence, including those of an adverse nature such as an operating loss from fundraising appeals;
    - (iii) a statement that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied and that distinguishes between amounts spent on direct services in accordance with the objects or purposes for which the authority was granted, recurrent costs of administration, and any other significant purposes (including transfers to reserves or accumulated funds);
    - (iv) details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged;
    - (v) a list of all forms of fundraising appeals conducted by the holder of the authority during the period covered by the financial statements;
    - (vi) the following comparisons (expressed in each case both as a monetary figure and as a ratio or percentage):
      - a comparison of the total costs of fundraising to the gross income from fundraising;
      - a comparison of the net surplus from fundraising to the gross income from fundraising;
      - a comparison of the total costs of services provided by the holder of the authority to the total expenditure;
      - a comparison of the total costs of services provided by the holder of the authority to the total income received.

(4) The statement of income and expenditure for fundraising appeals must show:

- (a) the aggregate gross income received; and
- (b) the total expenditure associated with all appeals; and
- (c) the net operating surplus or deficit.

(5) The annual accounts are to include a declaration by the President or principal officer or some other responsible member of the governing body of the organisation stating whether, in his or her opinion:

- (a) the accounts give a true and fair view of all income and expenditure of the organisation with respect to fundraising appeals; and
- (b) the balance sheet gives a true and fair view of the state of affairs with respect to fundraising appeals; and
- (c) provisions of the Act the regulations under that Act and the conditions attached to the authority have been complied with; and
- (d) internal controls exercised by the holder of an authority are appropriate and effective in accounting for all income received and applied from any fundraising appeals.

(6) If the organisation is a company incorporated under the Corporations Law, the declaration above is required in addition to the directors' statement provided pursuant to section 301 of the Corporations Law.

(7) The annual accounts of an organisation, after being audited in accordance with the provisions of section 24 of the Act or otherwise according to law, are to be submitted to an annual general meeting of the membership of the organisation within 6 months after the conclusion of the financial year of the organisation.

(8) The requirements of this clause are subject to the particular conditions of the authority concerned.

### **Ratio of expenses to receipts**

8. (1) A person or organisation conducting a fundraising appeal for donations only (i.e. without any associated supply or provision of goods or services) must take all reasonable steps to ensure that the expenses payable in respect of the appeal do not exceed 40 per cent of the gross proceeds obtained, whether the appeal is conducted house-to-house in a public street, in a public place or by telephone canvassing or in any other manner.

(2) A person or organisation conducting a fundraising appeal otherwise than for donations only (i.e. with associated supply or provision of goods or services) must take all reasonable steps to ensure that the expenses

payable in respect of the appeal do not exceed a fair and reasonable proportion of the gross proceeds obtained.

(3) For the purposes of this clause, giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgment of the person's donation is not a supply of goods.

#### **Receipting requirements etc.**

9. (1) Receipts or tickets are to be written or issued immediately for all money received, even when not requested by the donor, except where:

- (a) the money is received through a collection box or similar device; or
- (b) the money is received through the supply of goods or services; or
- (c) the particular conditions of the authority provide otherwise.

(2) Receipts or tickets used by a trader must be only those authorised and issued to the trader by the holder of the authority, details of which must be recorded in registers maintained by the trader and the holder of the authority.

(3) Effective controls must be exercised over the custody and accountability of receipts and tickets, including the following:

- (a) each receipt and ticket must be consecutively numbered as part of an ongoing series;
- (b) each receipt must have the name of the holder of the authority printed on it.

(4) If collection boxes or similar devices are employed for monetary donations, it is sufficient to issue only one receipt for the total proceeds cleared from each such box or device.

(5) The gross money received by any person participating in a fundraising appeal must be counted in the presence of that person and a receipt must then be issued to that person for that amount.

(6) For the purposes of this clause, giving a person who donates to a fundraising appeal a badge, sticker, token or other thing in acknowledgment of the person's donation is not a supply of goods.

#### **Record systems for items used in fundraising appeals**

10. A record system must be instituted and maintained for:

- (a) all identification cards or badges issued to persons participating in a fundraising appeal, by which a number assigned to and shown on each card or badge is correlated with the name of the person to

- whom it was issued, the date of issue and the date it was returned;  
and
- (b) all receipt books used in a fundraising appeal, by which a number assigned to and shown on each book is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned; and
  - (c) all collection boxes or similar devices used in a fundraising appeal for monetary donations, by which a number assigned to and shown on each box or device is correlated with the name of the person to whom it was issued, the location of the box or other device, the date of issue and the date it was returned.

**Persons conducting or participating in a fundraising appeal on behalf of an authority holder**

11. (1) This clause applies when the holder of an authority authorises a member, employee or agent as mentioned in section 9 (1) (b) of the Act.

(2) If the appeal concerned is not one to be conducted by solicitation in person (i.e. not a “face-to-face” appeal), the authorisation must be in writing and must:

- (a) include the name of the authorised member, employee or agent;  
and
- (b) include the terms and conditions under which the authorisation is granted; and
- (c) include a description of the appeal or appeals to be undertaken;  
and
- (d) include the specific period for which the authorisation will apply, including the issue and expiry dates; and
- (e) be signed and dated by the holder of the authority (or a delegate of the holder of the authority or its governing body); and
- (f) be recovered by the holder of the authority from the bearer as soon as the bearer’s authorised involvement in the appeal is ended.

(3) If the appeal concerned is a “face-to-face” appeal, the authorisation is to take the form of an identification card or badge. The card or badge must:

- (a) be consecutively numbered; and
- (b) include the name of the holder of the authority and a contact telephone number; and
- (c) include the name of the person authorised to participate in the appeal (i.e. the bearer of the card or badge); and

- (d) if the bearer is in receipt of a wage, commission or fee for services, include the name of the bearer's employer; and
- (e) indicate its issue and expiry dates; and
- (f) be signed by a person delegated with that responsibility by the holder of the authority; and
- (g) in the case of a participant who receives a wage, commission or fee for participating, prominently bear the words "paid collector"; and
- (h) be of sufficient size to ensure that the particulars on it may be easily read by members of the public; and
- (i) be recovered by the holder of the authority from the bearer as soon as the bearer's authorised involvement in the appeal is ended.

(4) In a fundraising appeal conducted jointly with a trader, the person signing the authorisation for the purposes of subclause (2) (e) or (3) (f) may be the trader, if this is specifically authorised under a written agreement between the trader and the holder of the authority.

### **Participation of children in fundraising appeals**

12. Children may be authorised to participate in a fundraising appeal only if:

- (a) in the case of children who do not receive any wages or commission or some other material benefit (other than reimbursement for reasonable out-of-pocket expenses):
  - the child has attained the age of 8 years; and
  - Part A of Schedule 2 is complied with; and
- (b) in the case of children who are in receipt of wages or commission or some other material benefit (other than reimbursement for reasonable out-of-pocket expenses):
  - the child has attained the age of 13 years; and
  - Parts A and B of Schedule 2 are complied with.

### **Fundraising through telephone canvassing or other direct marketing**

13. (1) If a fundraising appeal is conducted by soliciting through "direct marketing" by means of a telephone, electronic device (such as a facsimile machine) or direct mailing, a code of practice must be established and observed by the person or organisation conducting the appeal.

(2) In all cases, the code of practice must include at least the following:

- (a) the person or organisation holding the authority to conduct the appeal must nominate a person to be responsible for ensuring the code of practice is complied with;
  - (b) when requested, the holder of the authority must identify the source from which the name, telephone number or address of the person being solicited was obtained;
  - (c) if the person being solicited requests the removal of his or her name from the list or database used for the purposes of the appeal, that request must be promptly complied with;
  - (d) the name, address and telephone number of the person solicited must not be provided or sold to any other person or organisation without first providing the person with an opportunity to refuse permission for this to be done;
  - (e) precautions must be taken to ensure that lists are securely stored and not misused and that unauthorised access to them is barred by some effective means.
- (3) If telephone solicitation is employed:
- (a) unless by prior arrangement, calls may be made only between the hours of 8.00 am and 9.00 pm, and may not be made on any day observed as a public holiday throughout New South Wales; and
  - (b) callers should freely offer to call back at a more convenient time when requested to do so; and
  - (c) calls should not be made under false pretences, such as in the guise of research or market surveys, when the intent of the call is to solicit for donations or to sell goods or services; and
  - (d) callers must at all times answer honestly any questions asked of them or arrange to find answers to those questions they are unable to answer; and
  - (e) callers must provide the person being solicited a clear opportunity to accept or decline the invitation or offer. A refusal of the invitation or offer must be accepted by the caller, courteously and promptly.
- (4) If solicitation is by direct mail:
- (a) the mail must indicate the source of the addressee's name and address or include a code which would facilitate the identification of that source if requested; and
  - (b) it should contain a statement of the addressee's right to have his or her name removed from the mailing list and to have the source from which the addressee's name and address was obtained identified on request.

**Use of collection boxes for monetary donations**

14. (1) If a collection box or similar device is used for monetary donations, it must be:

- (a) securely constructed; and
- (b) properly sealed; and
- (c) consecutively numbered; and
- (d) clearly labelled with the name of the holder of the authority.

(2) Proper supervision, security and control must be exercised over the use and clearance of the box or device.

**Authorisation of expenditure**

15. If the holder of the authority is an organisation, all payments of expenditure involved with the conduct of a fundraising appeal, and the disposition of funds and profits resulting from a fundraising appeal, must be properly authorised by or on behalf of the organisation.

**Advertisements, notices and information**

16. (1) Any advertising, notice or information provided as part of a fundraising appeal:

- (a) must clearly and prominently disclose the name of the holder of the authority; and
- (b) must be conducted in accordance with decency, dignity and good taste; and
- (c) must be based on fact and must not be false, deceptive or misleading; and
- (d) must conform strictly to the provisions of any relevant law.

(2) When requested, persons or organisations conducting or participating in a fundraising appeal must use their best endeavours, at all times, to answer honestly any question asked of them relating to the purpose of the appeal or the details of the appeal or to arrange to find answers to questions they are unable to answer. In particular, information is to be given as to how the gross proceeds or articles obtained in the appeal will be distributed and on other matters referred to in subclause (3) (a).

(3) If a fundraising appeal is jointly conducted with a trader, the following additional requirements must be complied with:



- (a) any written or printed advertisement, notice or information must include:
- the full name under which the trader operates for purposes of the appeal, and details of the trader's normal place of business and telephone number; and
  - details of the basis on which the benefit to be received by the holder of the authority is to be calculated or provided (*not* to be expressed as a percentage of the "net" proceeds from the appeal); and
  - details of the extent of the benefit to be obtained by the trader from the appeal (*not* to be expressed as a percentage of the "net" proceeds from the appeal); and
  - the date on which the appeal commenced, or will commence, and the date on which it will end;
- (b) in respect of any advertisement, notice or information provided or displayed:
- the format and text of any advertisement or any notice must be approved by the holder of the authority; and
  - if the name of the trader is shown, it must be in the same print size as the name of the holder of the authority; and
  - if the logo of the holder of the authority is displayed, it must appear once only, and represent not more than 10 per cent of the surface area.

### **Appeals for donated goods**

17. (1) If a fundraising appeal involves the collection of donated goods or material jointly with a trader, the following requirements must be complied with:

- (a) if the collection device is a bin:
- each bin must be consecutively numbered, and the number displayed in a prominent manner on the bin; and
  - if there is more than one bin used in connection with the appeal, there must be a reference on the bin to the total number of bins currently used in connection with the appeal, and this reference should be reviewed and updated at any time there is a significant change in the number of bins in use but otherwise at intervals of not greater than 12 months after the commencement of the appeal; and

- a record of bins must be maintained by the trader which will include the date, number and location of each bin;
  - (b) if the collection device is a collection bag, a record must be maintained by the trader that includes the date, the locality and the number of bags distributed as part of the appeal.
- (2) If the appeal is for the collection of articles of clothing, a record of the appeal must be maintained by the trader, which must include the date and aggregate gross weight of unsorted clothing obtained from the appeal.

### **Appeal connected with sale of goods or provision of services**

18. If a trader conducts a fundraising appeal involving the sale of goods or the provision of services, records of the goods and services sold or provided must be maintained by the trader, which (in the case of goods for sale) must include the date and number of units purchased or manufactured, together with their cost, the date and number of units sold and the gross proceeds obtained.

### **Lotteries and games of chance**

19. If a fundraising appeal involves a lottery or game of chance, in addition to complying with the requirements of the Act and the conditions of the authority, the holder of the authority must also comply with the provisions of the Lotteries and Art Unions Act 1901.

### **Agreement with trader**

20. If a fundraising appeal is conducted jointly with a trader, the return to the holder of the authority must be fair and reasonable and governed by a written agreement between the holder of the authority and the trader, **which** must include at least the following specifications:

- (a) the amount of the return to be obtained by the holder of the authority from the appeal, or the basis or method by which this will be calculated, and the manner in which payment will be effected;
- (b) details of any commission, wage or fee payable to the trader and any other persons from the proceeds of the appeal;
- (c) details of the type, and any limitation on the amount, of expenses to be borne by the trader and the holder of the authority as part of the appeal;
- (d) the basic rights, duties and responsibilities of both parties;
- (e) insurance risks to be covered by each party (e.g. public liability, workers compensation for employees, personal accident insurance for volunteers, third party property insurance);

- (f) details of any records and documentation to be maintained by the trader (including those required by or under the Act) and the requirement that the trader keep these at the registered office of the holder of the authority, unless provided for otherwise by a condition attached to the authority;
- (g) details of the specific internal controls and safeguards to be employed to ensure proper accountability for all proceeds obtained during the appeal;
- (h) the process to be followed in resolving disputes between the parties to the contract or agreement, complaints from the public and grievances from employees;
- (i) the reporting requirements imposed on the trader;
- (j) an undertaking by the trader to comply with the provisions of the Charitable Fundraising Act 1991 and the regulations under the Act and the conditions of the authority;
- (k) a mechanism to deal with the effect on the contract of any subsequent addition, variation or deletion of an existing condition of the authority;
- (l) the circumstances in which the contract is or may be terminated.

**Management**

21. If the holder of the authority is an organisation:
- (a) it must be administered by a responsible committee of not fewer than 3 persons; and
  - (b) all business transacted by the responsible committee must be properly recorded in the organisation's minutes.

**Circumstances under which records may be kept at a place other than the registered office**

22. Records may be removed from the registered office for either of the following reasons:
- (a) to be taken into the custody of the auditor for purposes of audit;
  - (b) any other purpose required by law or by a condition of the authority.

**Conflicts of interest**

23. A mechanism is to be provided by the holder of the authority which will properly and effectively deal with any conflicts of interest which may occur involving a member of the governing body or an office-holder or

employee of the organisation. This includes the establishment of a register of pecuniary interests.

### **Internal disputes**

24. If the holder of the authority is an organisation, its constitution must provide a mechanism for resolving internal disputes within the membership of the organisation.

### **Complaint handling mechanism**

25. The holder of the authority must provide a mechanism that will properly and effectively deal with complaints made by members of the public and grievances from employees.

### **Retention of records**

26. Unless otherwise approved by the Minister, all entries made in any record required to be kept by this Schedule must be maintained:

- (a) in the case of accounting records, for a period of at least 7 years; and
- (b) in any other case, for a period of at least 5 years.

### **Soliciting from drivers etc. of motor vehicles**

27. A fundraising appeal must not be conducted by soliciting persons occupying motor vehicles while they are being driven on a public street or road (including motor vehicles which are stopped at traffic lights or at an intersection).

## **SCHEDULE 2—CONDITIONS RELATING TO PARTICIPATION OF CHILDREN IN FUNDRAISING APPEALS**

(Cl. 17, 18)

### **Part A—General**

#### **Application of this Part**

1. (1) This Part prescribes conditions for authorities to which clause 12 of Schedule 1 applies.

(2) The person or organisation conducting the appeal must ensure that the requirements of this Schedule are complied with in relation to any child participating in a fundraising appeal.

(3) The person or organisation conducting the appeal must take all reasonable steps to ensure that any child participating in the appeal complies with the requirements of this Schedule.

### **Parental consent and contact**

2. (1) The person or organisation conducting the appeal must take all reasonable steps to obtain the prior consent in writing of a parent, guardian or any other person responsible for the child before allowing a child to participate in a fundraising appeal.

(2) The person or organisation conducting the appeal must ensure that the child is able to contact his or her parents, guardian or any other person responsible for the child during the appeal.

### **Supervision**

3. (1) The child must be adequately supervised having regard to the age, sex and degree of maturity of the child.

(2) A supervisor may supervise no more than 6 children.

(3) A supervisor must be in close proximity to the child, must know the whereabouts of the child and must make contact with the child at intervals not greater than 30 minutes.

(4) In the case of a child less than 11 years of age, the supervisor must be in constant contact with the child.

### **Working in pairs**

4. Children participating in a fundraising appeal must work at least in pairs.

### **Endangering of child**

5. The person or organisation conducting the appeal must ensure that the physical and emotional well-being of any child participating in a fundraising appeal are not put at risk.

### **Insurance**

6. Appropriate insurance must be secured for any child participating in a fundraising appeal, together with any other insurance required to protect the interests of the child against any claim which could be brought against the child for property damage, public risk liability etc.

**Entry of private homes, and dealing with persons in motor vehicles, prohibited**

7. The person or organisation conducting a fundraising appeal must take all reasonable steps to ensure that the child does not enter a private dwelling when soliciting door-to-door or solicit, sell or collect from a person in a motor vehicle.

**Hours of participation**

8. (1) A child may not participate in a fundraising appeal for more than 4 hours on any day on which the child attends school.

(2) On days other than school days, the child must not participate in a fundraising appeal for more than 6 hours.

(3) A child must not participate in a fundraising appeal on more than 5 days per week.

(4) If participating in a fundraising appeal outdoors, the child must not start before sunrise and must not finish later than sunset.

(5) The child must not be required to participate in a fundraising appeal later than 8.30 pm if required to attend school on the following day.

**Minimum breaks between successive shifts etc.**

9. A child must not be required to participate further in a fundraising appeal without receiving a minimum break of at least 12 hours.

**Maximum loads for lifting**

10. A child must not be required or permitted to lift any weight that, having regard to the age and condition of the child, would be likely to be dangerous to the health of the child.

**Food and drink**

11. (1) The person or organisation conducting the appeal must take all reasonable steps to ensure that each child receives appropriate and sufficient nutritious food.

(2) Food should be available at reasonable hours.

(3) Drinking water must be readily available to any child.

**Toilet facilities**

12. Toilet hand-washing and hand-drying facilities must be accessible to the child.

**Travel**

13. (1) The child must be accompanied:
- (a) by a person responsible for the child; or
  - (b) by an adult authorised by a person responsible for the child, when the child is travelling home after his or her participation in the appeal is finished.
- (2) This clause does not apply:
- (a) if the child is more than 12 years old; and
  - (b) if the distance to the child's home is less than 10 kilometres; and
  - (c) if public transport is available; and
  - (d) if the journey is to be completed within daylight hours.

**Protection from the elements**

14. The child is to be adequately clothed and otherwise protected from extremes of climate or temperature.

**Punishment prohibited**

15. A child participating in a fundraising appeal is not to be subjected to any form of corporal punishment, social isolation or immobilisation or subjected to any other behaviour likely to humiliate or frighten the child.

**Part B—Additional requirements—if child receives a wage etc.  
Application of this Part**

16. This Part prescribes additional conditions if a child receives a wage or commission or is in receipt of some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

**Letter of appointment**

17. (1) A letter of employment or engagement must be issued to the child which contains details of the terms and conditions under which he or she is employed or engaged.
- (2) This letter must include:
- (a) details of the basis or method on or by which payment of wages or commission or some other material be calculated or providing, including details of any guaranteed minimum payment or benefit; and

- (b) the method by which payment will be effected; and
- (c) the general conditions of employment; and
- (d) the rights of the employee.

### **Record of employment**

18. (1) A record of employment must be maintained for each child employed or engaged.

(2) The record must include the following particulars with respect to the child:

- (a) the child's full name, residential address and phone number (if any);
- (b) the child's date of birth;
- (c) a description of the nature of the employment;
- (d) details of any consent provided by the child's parents or guardian (any written documentation to be retained);
- (e) the name and address of the person immediately responsible for the child during the appeal.

(3) If the employer is a trader for the purposes of the Act, the trader must make the records available to the holder of the authority.

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### **NOTE**

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SCHEDULE 1—CONDITIONS APPLYING TO CERTAIN AUTHORITIES  
SCHEDULE 2—CONDITIONS RELATING TO PARTICIPATION OF CHILDREN  
IN FUNDRAISING APPEALS

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#### EXPLANATORY NOTE

The object of this Regulation is to prescribe a number of miscellaneous matters that are necessary or incidental to the operation of the Charitable Fundraising Act 1991, including the following:

- (a) activities which do not constitute a “fundraising appeal” for the purposes of the Act;
- (b) determinations by the Minister of what constitutes a lawful and proper expense for the purposes of the Act;
- (c) extending to credit unions the institutions at which an account for the paying into of money received in the course of a fundraising appeal may be held;
- (d) 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 under the Act;
- (e) the identification of participants in fundraising appeals conducted by face-to-face solicitation;
- (g) the changes in particulars that the holder of an authority must furnish to the Minister;
- (h) publication by the Minister of guidelines specifying recommended practices for the conduct of fundraising appeals;
- (i) standard conditions of authorities to conduct fundraising appeals which are to apply in particular to existing charities on the commencement of the Act.

This Regulation is made under the Charitable Fundraising Act 1991, including section 55 (the general regulation-making power) and the sections mentioned in the Regulation.

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