



Charitable Fundraising Regulation 2003

under the

Charitable Fundraising Act 1991

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

GRANT McBRIDE, M.P.,

Minister for Gaming and Racing

Explanatory note

The object of this Regulation is to remake (with some modifications) the *Charitable Fundraising Regulation 1998* (**the former Regulation**), which is to be repealed on 1 September 2003 by section 10 of the *Subordinate Legislation Act 1989*.

This Regulation prescribes a number of matters that are necessary or incidental to the operation of the *Charitable Fundraising Act 1991* (**the Act**), including:

- (a) activities and appeals that do not constitute a “fundraising appeal” for the purposes of the Act (clauses 5 and 6),
- (b) the religious organisations that are exempt from the Act (clause 7),
- (c) what constitutes a lawful and proper expense in connection with fundraising appeals (clause 8),
- (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 (clause 9),
- (e) the identification and obligations of participants in fundraising appeals (clauses 10 and 11),
- (f) certain financial and organisational information that must be provided to the public on request, and the fees payable for that information (clause 12),
- (g) the changes in particulars that an authorised fundraiser must furnish to the Minister (clause 13),

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- (h) standard conditions to apply to authorities to conduct fundraising appeals that are taken to have been granted under the Act when applications have not been dealt with in time (clause 14 and Schedules 1 and 2),
- (i) other provisions of a minor, consequential or ancillary nature (clauses 1–4 and 15–17).

The modifications made by this Regulation to the former Regulation relate mainly to the standard conditions set out in Schedule 1. Other modifications include clarifying the particulars to be shown in records of income and expenditure that must be kept under the Act, increasing the fees payable for certain information that must be provided to the public on request under the Act, removing superfluous provisions, and updating certain references.

This Regulation refers to the *ADMA Code of Practice*, dated November 2001, published by the Australian Direct Marketing Association Limited.

This Regulation is made under the *Charitable Fundraising Act 1991*, including section 55 (the general power to make regulations) and various sections referred to in the Regulation.

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Clause 1 Charitable Fundraising Regulation 2003

Part 1 Preliminary

Charitable Fundraising Regulation 2003

under the

Charitable Fundraising Act 1991

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Charitable Fundraising Regulation 2003*.

2 Commencement

This Regulation commences on 1 September 2003.

Note. This Regulation replaces the *Charitable Fundraising Regulation 1998* which is repealed on 1 September 2003 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

In this Regulation:

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

child means a person under the age of 15 years.

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 person so described in section 11 of the Act.

4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

Part 2 Fundraising appeals

5 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 sheltered workshop or through supported employment services for people with disabilities, or
- (d) nursing or medical services, or
- (e) other care or welfare services.

6 Requests for, or receipts of, money or other benefit from certain registered clubs not to constitute fundraising appeals

- (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 that is a participant in the community development and support expenditure scheme is prescribed.
- (2) A club is taken to be a participant in the community development and support expenditure scheme if it is for the time being included in a list prepared by, and kept in the offices of, the Department of Gaming and Racing, indicating those registered clubs that are likely to be participants in the scheme during the current tax year.
- (3) In this clause:

registered club means a club registered under the *Registered Clubs Act 1976*.

tax year has the same meaning as it has in relation to a registered club in the *Gaming Machine Tax Act 2001*.

7 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 Ministries Incorporated

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Part 2 Fundraising appeals

Buddhist Council of New South Wales Incorporated
Christian Broadcasting Association Limited trading as FM103.2
Crystal Cathedral Ministries Australia Limited trading as Hour of Power
Far East Broadcasting Company, Australia
Gospel Service Ministries Incorporated
Loyal Orange Institution of New South Wales
NSW Auxiliary of the British and Foreign Bible Society trading as Bible Society NSW
Open Doors with Brother Andrew (Australia) Inc.
Shoalhaven Employers of Christian Education Teachers Incorporated
The Hermitage Incorporated
Voice of the Martyrs Limited

8 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 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 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 income obtained from the appeal is reasonable in the circumstances.

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- (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 first occurs.
 - (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.

9 Particulars to be shown in records of income and expenditure

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 and of the transactions to which those particulars relate,
- (b) particulars of all items of expenditure incurred (including the application or disposition of any income obtained from the appeal) and of the transactions to which those particulars 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.

10 Identification of face-to-face collectors

While participating in a fundraising appeal, a face-to-face collector must prominently display the identification card or badge issued to the person for the purposes of the appeal.

Maximum penalty: 5 penalty units.

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Part 2 Fundraising appeals

11 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 or by mail), and
- (b) 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 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.

12 Public access to information

- (1) On request by any person under section 47 of the Act, an authorised fundraiser is required to furnish to that person a copy of the annual audited financial statements (also known as financial reports) in respect of all fundraising appeals conducted by the authorised fundraiser during the 7 financial years prior to the request.
- (2) If the authorised fundraiser is an organisation, 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 the members of the governing body of the organisation.
- (3) The maximum fee that may be charged by an authorised fundraiser for furnishing financial statements or information under section 47 of the Act is \$13.00 for the first page and \$1.00 for each additional page.
- (4) The fee for furnishing financial statements or information by or on behalf of the Minister under section 47 of the Act is \$13.00 for the first page and \$1.00 for each additional page.

13 Notification of changes to particulars of authorised fundraiser

- (1) An authorised fundraiser must furnish to the Minister in writing:
 - (a) details of any change in the name, including the trading or business name, of the authorised fundraiser, and
 - (b) details of any change in the business address, postal address, e-mail address, website address, address of the registered

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- office or telephone or facsimile number of the authorised fundraiser, and
- (c) 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
 - (d) if the authorised fundraiser is an unincorporated organisation, details of any alteration or amendment to its constitution, and
 - (e) if the authorised fundraiser is an incorporated organisation, 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
 - (f) 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, e-mail 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
 - (g) details of any change to the incorporated status of the authorised fundraiser, 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:
 - (i) if the trader is a natural person, the person's name, business address, postal address, e-mail address, website address, and telephone and facsimile numbers,
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- (ii) if the trader is an organisation, its full name (together with any trading or business name), its business address, postal address, e-mail 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
- (i) details of any change in the name, address or telephone or facsimile number of the auditor, and
- (j) confirmation of any decision by the authorised fundraiser to cease to conduct fundraising appeals.

Maximum penalty: 20 penalty units.

- (2) An authorised fundraiser 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 requiring the furnishing of the information.

Maximum penalty: 20 penalty units.

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

Part 3 Miscellaneous

14 Conditions of authority when application delayed

Subject to any variations under section 19 of the Act:

- (a) the conditions set out in Schedule 1 are conditions of any authority taken to have been granted under section 16 (6) of the Act, and
- (b) the conditions set out in Schedule 2 are conditions of any authority taken to have been granted under section 16 (6) of the Act, in so far as children are participants (whether on a paid or voluntary basis) in any fundraising appeal conducted under the authority.

15 Police authorised to act as inspectors

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

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

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

16 Evidence by certificate

For the purposes of section 52 of the Act, the Director-General, Department of Gaming and Racing, is a prescribed officer.

17 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Charitable Fundraising Regulation 1998*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Conditions applying to certain authorities

(Clause 14 (a))

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

- (1) An authorised fundraiser may conduct a fundraising appeal or appeals only for the period of time specified in the application for its authority.
- (2) If no such period is specified, an authorised fundraiser may conduct an indefinite number of fundraising appeals within a maximum period of 12 months.

2 Internal controls

Proper and effective controls must be exercised by an authorised fundraiser over the conduct of all fundraising appeals, including accountability for the gross income and all articles obtained from any appeal and expenditure incurred.

3 Safeguarding of assets

An authorised fundraiser must ensure that all assets obtained during, or as a result of, a fundraising appeal are safeguarded and properly accounted for.

4 Maintenance of proper books of account and records

- (1) An authorised fundraiser must, in relation to each fundraising appeal it conducts, maintain such books of account and records as are necessary to correctly record and explain its transactions, financial position and financial performance, including the following documents:
 - (a) a cash book for each account (including any passbook account) held with a bank, building society or credit union, or with any other institution, or institution of a class, prescribed under section 20 (6) of the Act, into which the gross income obtained from any fundraising appeal is 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).

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- (2) If the authorised fundraiser 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 committee of that governing body) and any general or extraordinary meeting of its general membership.
 - (3) If the authorised fundraiser engages persons to participate (whether on a paid or voluntary basis) in a fundraising appeal, it must keep a register of participants.

5 Report on outcome of appeal or appeals

- (1) An authorised fundraiser that is an unincorporated organisation must send a section 23 return to the Minister:
 - (a) if the organisation ceases to conduct appeals, within 2 months after it ceases to conduct appeals, and
 - (b) if in any financial year the gross income obtained from any appeals conducted by it exceeds \$20,000:
 - (i) within 3 months after the audited financial statements are adopted at its annual general meeting, or
 - (ii) within 7 months after the conclusion of the financial year concerned,whichever occurs sooner.
- (2) An authorised fundraiser that is a natural person must send a section 23 return to the Minister within one month after the close of each appeal conducted by the person.
- (3) In this clause, *section 23 return* means a return referred to in section 23 of the Act.

6 Maintenance of an account

- (1) The title of the account into which the gross income obtained from any fundraising appeal is to be paid in accordance with section 20 (6) of the Act must include the name of the authorised fundraiser.
- (2) If a fundraising appeal is conducted jointly by the authorised fundraiser 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 fundraising appeal conducted on behalf of that fundraiser.

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- (3) Disbursement from the account in amounts of \$260 or more must be by cheque drawn on the account, unless the particular conditions of the authority otherwise provide.

7 Annual financial accounts

- (1) The annual financial accounts (also known as financial reports) of an authorised fundraiser that is an organisation must contain:
- (a) a statement of financial performance (also known as a statement of income and expenditure or a profit and loss statement) that summarises the income and expenditure of all fundraising appeals conducted during the financial year, and
 - (b) a statement of financial position (also known as a balance sheet) that summarises all assets and liabilities resulting from the conduct of fundraising appeals as at the end of the financial year.
- (2) The annual financial accounts of an authorised fundraiser that is an organisation must also contain the following information as notes accompanying the statement of financial performance and the statement of financial position if, in the financial year concerned, the gross income obtained from any fundraising appeals conducted by it exceeds \$20,000:
- (a) details of the accounting principles and methods adopted in the presentation of the financial statements,
 - (b) information on any material matter or occurrence, including those of an adverse nature such as an operating loss from fundraising appeals,
 - (c) a statement:
 - (i) that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied, and
 - (ii) that distinguishes between amounts spent on direct services in accordance with the charitable 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),
 - (d) details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged,

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- (e) a list of all forms of fundraising appeals conducted by the authorised fundraiser during the period covered by the financial statements,
 - (f) the following comparisons (expressed in each case both as a monetary figure and as a ratio or percentage):
 - (i) a comparison of the total costs of fundraising to the gross income obtained from fundraising,
 - (ii) a comparison of the net surplus from fundraising to the gross income obtained from fundraising,
 - (iii) a comparison of the total costs of services provided by the authorised fundraiser to the total expenditure,
 - (iv) a comparison of the total costs of services provided by the authorised fundraiser to the gross income received.
- (3) The statement of financial performance for fundraising appeals must show:
- (a) the aggregate gross income received, and
 - (b) the total expenditure associated with all fundraising appeals, and
 - (c) the net operating surplus or deficit.
- (4) The annual financial accounts of an authorised fundraiser that is an organisation 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 statement of financial performance gives a true and fair view of all income and expenditure of the organisation with respect to fundraising appeals, and
 - (b) the statement of financial position gives a true and fair view of the state of affairs of the organisation with respect to fundraising appeals conducted by the organisation, and
 - (c) the provisions of the Act, the regulations under the Act and the conditions attached to the authority have been complied with by the organisation, and
 - (d) the internal controls exercised by the organisation are appropriate and effective in accounting for all income received and applied by the organisation from any of its fundraising appeals.

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Schedule 1 Conditions applying to certain authorities

- (5) If the organisation is a company incorporated under the *Corporations Act 2001* of the Commonwealth, the declaration above is required in addition to the directors' declaration provided under section 295 of that Act.
- (6) The annual financial accounts of an authorised fundraiser that is 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.
- (7) The requirements of this clause do not oblige an authorised fundraiser that is an organisation to reproduce information that is already contained in its annual financial statements, but merely require the information to be separately itemised or to be shown as notes to its statement of financial performance or its statement of financial position.
- (8) The requirements of this clause are subject to the particular conditions of the authority concerned.

8 Ratio of expenses to receipts

- (1) An authorised fundraiser conducting a fundraising appeal for donations only (that is, without any associated supply 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 income obtained, whether the appeal is conducted house-to-house, in a public place, by telephone canvassing or in any other manner.
- (2) An authorised fundraiser conducting a fundraising appeal otherwise than for donations only (that is, with associated supply 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 income 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.

9 Receipting requirements

- (1) Receipts 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 money is received through a payroll deduction scheme, or
 - (d) the money is deposited directly into an account established at a bank, building society or credit union, or at any other institution prescribed (or of a class prescribed) under section 20 (6) of the Act, or
 - (e) the particular conditions of the authority provide otherwise.
- (2) Receipts used by a trader must be only those authorised and issued to the trader by the authorised fundraiser, details of which must be recorded in registers maintained by the trader and the authorised fundraiser.
- (3) Effective controls must be exercised over the custody and accountability of receipts, including the following controls:
 - (a) each receipt must be consecutively numbered as part of an ongoing series,
 - (b) each receipt (not being a ticket) must have the name of the authorised fundraiser printed on it.
- (4) If collection boxes or similar devices are employed for monetary donations, it is sufficient to issue a single receipt for the gross money cleared from each such box or device.
- (5) If money is received by direct debit from the donor's account into a bank, building society or credit union, or into any other institution prescribed (or of a class prescribed) under section 20 (6) of the Act, it is sufficient for the authorised fundraiser to issue a receipt to the donor, for the aggregate amounts received through the periodical payment, at intervals of not greater than 12 months.
- (6) The gross money received by any participant in a fundraising appeal must be counted in the presence of the participant and a receipt must then be issued to the participant for that amount.

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- (7) 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.
- (8) For the purposes of this clause, a receipt is taken to include a ticket.

10 Record systems for items used in fundraising appeals

A record system must be instituted and maintained for:

- (a) all identification cards or badges issued to participants 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.

11 Persons conducting or participating in a fundraising appeal on behalf of an authorised fundraiser

- (1) This clause applies when an authorised fundraiser authorises a member, employee or agent as mentioned in section 9 (1) (b) of the Act.
- (2) The authorisation given by an authorised fundraiser to a person who conducts or participates in a fundraising appeal otherwise than as a face-to-face collector:
 - (a) must be in writing, and
 - (b) must include the person's name, and
 - (c) must include the terms and conditions under which the authorisation is granted, and
 - (d) must include a description of the appeal or appeals to be undertaken, and
 - (e) must indicate the specific period for which the authorisation will apply, including the issue and expiry dates, and

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- (f) must be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body), and
 - (g) must be recovered by the authorised fundraiser from the person as soon as the person's authorised involvement in the appeal has ended.
- (3) The authorisation given by an authorised fundraiser to a person who participates in a fundraising appeal as a face-to-face collector:
- (a) must be in the form of an identification card or badge, and
 - (b) must be consecutively numbered, and
 - (c) must include the name of the authorised fundraiser and a contact telephone number, and
 - (d) must include the name of the face-to-face collector, and
 - (e) if the face-to-face collector receives a wage, commission or fee for services, must include the words "paid collector" and the name of the collector's employer, and
 - (f) must indicate its issue and expiry dates, and
 - (g) must be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body), and
 - (h) must be of sufficient size to ensure that the particulars on it may be easily read by members of the public, and
 - (i) must be recovered by the authorised fundraiser from the face-to-face collector as soon as the face-to-face collector's authorised involvement in the appeal is ended.
- (4) In an appeal conducted jointly with a trader, the person signing the authorisation for the purposes of subclause (2) (f) or (3) (g) may be the trader, but only if the trader is authorised to do so under a written agreement between the trader and the authorised fundraiser.
- (5) Despite subclause (3), the authorisation by Apex, the Country Women's Association, Lions, Quota, Rotary or Soroptimist (being community service organisations) of a member as a face-to-face collector may be in the form of the organisation's membership badge if:
- (a) the appeal concerned is of a type generally associated with the organisation, and

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- (b) the name and contact telephone number of the organisation is clearly shown at the place of solicitation on a banner or sign or similar display, and
- (c) the organisation maintains a register of membership badges on which is entered, in relation to each badge issued, a number assigned to and shown on the badge, the name of the person to whom it was issued, the date of issue and the date it was returned, and
- (d) the organisation recovers any membership badge it issues to a person as soon as the person ceases to be a member of the organisation.

12 Participation of children in fundraising appeals

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):
 - (i) the child has attained the age of 8 years, and
 - (ii) Part 1 of Schedule 2 is complied with, and
- (b) in the case of children who receive wages or commission or some other material benefit (other than reimbursement for reasonable out-of-pocket expenses):
 - (i) the child has attained the age of 13 years, and
 - (ii) Parts 1 and 2 of Schedule 2 are complied with.

13 Fundraising through telemarketing

If a fundraising appeal is conducted by soliciting through means of a telephone, the authorised fundraiser conducting the appeal must ensure that it is conducted in accordance with Part C of the *ADMA Code of Practice* published by the Australian Direct Marketing Association Limited, dated November 2001.

14 Use of collection boxes for monetary donations

- (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

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- (d) clearly labelled with the name of the authorised fundraiser.
 - (2) Proper supervision, security and control must be exercised over the use and clearance of the box or device.

15 Authorisation of expenditure

If the authorised fundraiser is an organisation, all payments made in connection with:

- (a) any expenditure involved with the conduct of a fundraising appeal, and
- (b) any disposition of funds and profits resulting from a fundraising appeal,

must be properly authorised by or on behalf of the organisation.

16 Advertisements, notices and information

- (1) Any advertisement, notice or information provided as part of a fundraising appeal:
 - (a) must clearly and prominently disclose the name of the authorised fundraiser, 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 or misleading, and
 - (d) must conform strictly to the provisions of any relevant law.
- (2) A person conducting or participating in a fundraising appeal must use his or her best endeavours, at all times, to answer honestly any question directed to the person in relation to the purpose of the appeal or the details of the appeal, or to arrange to find answers to questions that he or she is unable to answer. In particular, if it is requested, information is to be given as to how the gross income and any articles obtained from the appeal will be distributed and on the other matters referred to in subclauses (3) (a) and (4).
- (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:
 - (i) the full name under which the trader operates for purposes of the appeal, and the details of the trader's normal place of business, telephone and facsimile numbers, and e-mail and website addresses, and

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- (ii) details of the basis on which the benefit to be received by the authorised fundraiser is to be calculated or provided (*not* to be expressed as a percentage of the “net” income obtained from the appeal), and
 - (iii) 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” income obtained from the appeal), and
 - (iv) 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:
 - (i) the format and text of any advertisement or any notice must be approved by the authorised fundraiser, and
 - (ii) if the name of the trader is shown, it must be in the same print size as the name of the authorised fundraiser, and
 - (iii) if the logo of the authorised fundraiser is displayed (including any such logo in the form of a graphic or watermark), it must appear once only, and represent not more than 10 per cent of the surface area.
- (4) If a fundraising appeal involves the collection of donated goods or material, any advertisement, notice or information must also include particulars of what is to happen to any goods and material collected.
- (5) If a fundraising appeal referred to in subclause (3) involves the collection of donated goods and material:
 - (a) details of the basis for calculating or providing the benefit to be received by the authorised fundraiser, as referred to in subclause (3) (a) (ii), must be expressed in the advertisement, notice or information 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, and
 - (ii) if the collection device is a bin, an average dollar amount derived or expected to be derived from each bin for each month over a specified period of the appeal, and

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- (b) if the advertisement, notice or information is continuously displayed:
 - (i) the details referred to in paragraph (a) must be reviewed at least once every 12 months (starting from the date the advertisement, notice or information is first displayed), and the advertisement, notice or information updated if the review reveals a significant change in those details, and
 - (ii) the advertisement, notice or information must be updated if at any other time there is a significant change in those details.
 - (6) The requirements of this clause do not apply in relation to a notice referred to in clause 17 (1) (e) (i) or (3) (a).

17 Appeals for goods to be donated by way of collection bins or bags

- (1) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a bin, the following requirements must be complied with:
 - (a) each bin must be consecutively numbered, and the number displayed in a prominent manner on the bin,
 - (b) 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 whenever there is a significant change in the number of bins in use but otherwise at least once every 12 months (starting from the date the appeal commences),
 - (c) the trader must maintain a record of bins that includes the date, and the number and location of each bin,
 - (d) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the number and location of each bin,
 - (e) if the appeal is for the collection of donated articles of clothing:
 - (i) each bin must have continuously displayed on its chute a notice, to be obtained from the Department of Gaming and Racing, that bears the Department's logo and the words "COMMERCIALY OPERATED", and

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- (ii) the trader must maintain a record of the appeal (that relates to that appeal only), that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and
 - (iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in paragraph (d)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.
- (2) If a fundraising appeal involves the collection of donated goods or material jointly with a trader and the collection device is a collection bag, the following requirements must be complied with:
 - (a) the trader must maintain a record that includes the date, and the locality and the number of bags distributed as part of the appeal,
 - (b) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report that includes the date, and the locality and the number of bags distributed as part of the appeal,
 - (c) if the appeal is for the collection of donated articles of clothing:
 - (i) each bag, or any advertisement, notice or information distributed with each bag, must bear the words “COMMERCIALY OPERATED” in a clearly visible position, printed in accordance with the specifications set out in subclause (4), and
 - (ii) the trader must maintain a record of the appeal (that relates to that appeal only) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal, and
 - (iii) at least once a month during the appeal, the trader must provide to the authorised fundraiser a report (that may be combined with the report referred to in paragraph (b)) that includes the date, and the aggregate gross weight of unsorted clothing obtained from the appeal.
- (3) If a fundraising appeal is for the collection of donated articles of clothing by the authorised fundraiser (not jointly with a trader), the following requirements must be complied with:
 - (a) if the collection device is a bin, each bin must have continuously displayed on its chute a notice, to be obtained

from the National Association of Charitable Recycling Organisations Incorporated (NSW) or the Department of Gaming and Racing, that bears the Department's logo and the words "CHARITY OPERATED",

- (b) if the collection device is a collection bag, each bag, or any advertisement, notice or information distributed with each bag, must bear the words "CHARITY OPERATED" in a clearly visible position, printed in accordance with the specifications set out in subclause (4).
- (4) For the purposes of subclauses (2) (c) (i) and (3) (b), the words "COMMERCIALY OPERATED" and "CHARITY OPERATED" must:
 - (a) be in capital letters, in Helvetica, Arial or similar font style, and not less than 5 millimetres in height, and
 - (b) appear in black and white in the following format:

COMMERCIALY
OPERATED

CHARITY
OPERATED

18 Appeal connected with sale of goods or provision of services

If a trader conducts a fundraising appeal involving the supply of goods or services, records of the goods and services supplied 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 income obtained.

19 Lotteries and games of chance

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 authorised fundraiser must also comply with the provisions of the *Lotteries and Art Unions Act 1901* and any regulations under that Act.

20 Agreement with trader

- (1) If a fundraising appeal is conducted jointly with a trader the return to the authorised fundraiser must be governed by a written agreement between the authorised fundraiser and the trader.

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- (2) Such an agreement must include at least the following particulars:
- (a) the amount of the return to be obtained by the authorised fundraiser from the appeal, or the basis or method by which this will be calculated (*not* to be expressed as a percentage of the “net” income obtained from the appeal), 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 gross income obtained from the appeal,
 - (c) details of the type, and any limitation on the amount, of expenses to be borne by the trader and the authorised fundraiser as part of the appeal,
 - (d) the basic rights, duties and responsibilities of both parties,
 - (e) insurance risks to be covered by each party (for example, 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 authorised fundraiser, 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 the gross income obtained from 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 Act, 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.

21 Management

If the authorised fundraiser is an organisation:

- (a) it must be administered in relation to its fundraising activities by a governing body of not fewer than 3 persons, and
- (b) all business transacted by the governing body in relation to its fundraising activities must be properly recorded in the organisation's minutes.

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

Records may be removed from the authorised fundraiser's 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.

23 Conflicts of interest

If the authorised fundraiser is an organisation, it must establish:

- (a) a register of pecuniary interests, and
- (b) a mechanism for dealing with any conflicts of interest that may occur involving a member of the governing body or an office-holder or employee of the organisation.

24 Internal disputes

If the authorised fundraiser is an organisation, its constitution must establish a mechanism for resolving internal disputes within the membership of the organisation in relation to its fundraising activities.

25 Complaint handling mechanism

The authorised fundraiser must provide a mechanism that will properly and effectively deal with complaints made by members of the public and grievances from employees in relation to its fundraising activities.

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26 Retention of records

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.

27 Soliciting from occupants of motor vehicles

- (1) A fundraising appeal must not be conducted by soliciting persons occupying motor vehicles while they are being driven on a road or road related area (including motor vehicles that are temporarily stopped for any reason, such as at traffic lights or at an intersection).
- (2) In this clause:

road means a road within the meaning of the *Road Transport (General) Act 1999* (other than a road that is the subject of a declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act).

road related area means a road related area within the meaning of the *Road Transport (General) Act 1999* (other than a road related area that is the subject of a declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act).

Schedule 2 Conditions relating to participation of children in fundraising appeals

(Clause 14 (b))

Part 1 General

1 Application of this Part

- (1) In this Schedule:

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

parent, in relation to a child, means:

- (a) a parent, step parent or guardian of the child, or
 - (b) a person who has for the time being parental responsibility for the child.
- (2) This Part prescribes conditions with respect to the participation of children in fundraising appeals, whether or not a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.
- (3) An authorised fundraiser conducting an appeal:
- (a) must ensure that the relevant requirements of this Schedule are complied with in relation to any child participant, and
 - (b) must take all reasonable steps to ensure that any child participant in the appeal complies with the relevant requirements of this Schedule.

2 Parental consent and contact

- (1) An authorised fundraiser that proposes to allow a child to participate in an appeal conducted by it:
- (a) must take all reasonable steps to notify a parent of the child of its proposal before allowing the child to participate in the appeal, and
 - (b) must not allow the child to participate in the appeal if a parent of the child notifies it that the parent objects to the child participating in the appeal.

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- (2) The person or organisation conducting the appeal must take all reasonable steps to ensure that a child participant is able to contact his or her parents during the appeal.

3 Supervision

- (1) A child participant 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 child participants simultaneously.
- (3) A supervisor must be in close proximity to a child participant, 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 participant less than 11 years of age, the supervisor must be in constant contact with the child.

4 Working in pairs

Child participants must work at least in pairs.

5 Endangering of child

An authorised fundraiser conducting an appeal must ensure that the physical and emotional well-being of a child participant are not put at risk.

6 Insurance

Appropriate insurance must be secured for a child participant, 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 and other such risks.

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

An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant:

- (a) does not enter a private dwelling when soliciting door-to-door, and
- (b) does not solicit, sell to or collect from a person in a motor vehicle.

8 Hours of participation

- (1) A child participant may not participate in a fundraising appeal for more than 4 hours on any school day (that is, a day on which the child is required to attend school).
- (2) On days other than school days, a child participant must not participate in a fundraising appeal for more than 6 hours.
- (3) A child participant must not participate in a fundraising appeal on more than 5 days per week.
- (4) If participating in a fundraising appeal outdoors, a child participant must not start before sunrise and must not finish later than sunset.
- (5) A child participant must not be required or permitted to participate in a fundraising appeal later than 8.30 pm if the following day is a school day.

9 Minimum breaks between successive shifts

A child participant must not be required or permitted to participate further in a fundraising appeal after participating for any maximum period permitted by this Part without receiving a minimum break of 12 hours.

10 Maximum loads for lifting

A child participant 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.

11 Food and drink

- (1) An authorised fundraiser conducting an appeal must take all reasonable steps to ensure that a child participant receives appropriate and sufficient nutritious food.
- (2) Food should be available to a child participant at reasonable hours and drinking water at all times.

12 Toilet facilities

Toilet, hand-washing and hand-drying facilities must be accessible to each child participant.

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Schedule 2 Conditions relating to participation of children in fundraising appeals

13 Travel

- (1) A child participant must be accompanied:
 - (a) by a parent of the child, or
 - (b) by an adult authorised by a parent of 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.

14 Protection from elements

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

15 Punishment prohibited

A child participant is not to be subjected to any form of punishment, social isolation or immobilisation or subjected to any other behaviour likely to humiliate or frighten the child.

Part 2 Additional requirements—if child receives a wage or other benefit

16 Application of this Part

This Part prescribes additional conditions with respect to the participation of children in fundraising appeals, in circumstances in which a child participant receives a wage or commission or some other material benefit (other than reimbursement of reasonable out-of-pocket expenses) in respect of the appeal.

17 Letter of appointment

- (1) A letter of employment or engagement must be issued to a child participant, being a letter containing details of the terms and conditions under which he or she is employed or engaged.

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- (2) The letter must include:
- (a) details of the basis or method on or by which payment of wages or commission or some other material benefit will be calculated or provided, 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.

18 Record of employment

- (1) A record of employment must be maintained for each child participant 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 telephone 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 (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, the employer must make the records available to the authorised fundraiser.