

# Charitable Fundraising Regulation 1998

[1998-495]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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New South Wales

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# Charitable Fundraising Regulation 1998



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Charitable Fundraising Regulation 1998*.

### 2 Commencement

This Regulation commences on 1 September 1998.

### 3 Definitions

In this Regulation:

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

The explanatory note and table of contents do not form part of this Regulation.

## Part 2 Fundraising appeals

### 5 Meaning of “fundraising appeal”

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 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.

#### **5A Appeals to certain registered clubs not to constitute fundraising appeals**

- (1) For the purposes of section 5 (3) (f) of the Act, an appeal by an organisation to 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 with the approval of the Minister 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 duty period.
- (3) In this clause:

**duty period** has the same meaning as in Division 2 of Part 10 of the [Registered Clubs Act 1976](#).

**registered club** means a club registered under that Act.

#### **6 Religious organisations exempt from Act**

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

Buddhist Council of New South Wales Incorporated

Christian Broadcasting Association Limited

Christian Mission to the Communist World Limited

Crystal Cathedral Ministries Australia Limited

Far East Broadcasting Company, Australia

Loyal Orange Institution of New South Wales

North West Frontier Fellowship (Australian Home Council)

NSW Auxiliary of the British and Foreign Bible Society

Open Doors with Brother Andrew (Australia) Inc.

## **7 Lawful and proper expenses**

- (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) 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, 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 authorised fundraiser and the trader.

## **8 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,

- (b) particulars of all items of expenditure incurred, including particulars of the application or disposition of any proceeds obtained from the appeal.

### **9 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.

### **10 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.

### **11 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 statements of fundraising appeals conducted by the authorised fundraiser during the 7 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 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 \$5.50 for the first page and 50 cents 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 \$5.50 for the first page and 50 cents for each additional page.

## **12 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, address of the registered 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, the postal address, the address of the registered office and the telephone and facsimile numbers of any branch,
    - (iii) any branch that is no longer under the direction and control of the governing body of the applicant organisation,
    - (iv) 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 and postal address and telephone and facsimile numbers,
- (ii) if the trader is an organisation, its full name (together with any trading or business name), its business and postal addresses 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 (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 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.

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

A person or organisation having 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 one month after the date of the decision to revoke it,
- (b) if the authorised fundraiser has ceased to exist, in which case it must be returned not later than one month after the fundraiser has ceased to exist.

Maximum penalty: 20 penalty units.

## **Part 3 Miscellaneous**

### **14 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.

### **15 Evidence by certificate**

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

### **16 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.

### **17 Repeal**

- (1) The *Charitable Fundraising Regulation 1993* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Charitable Fundraising Regulation 1993*, had effect under that Regulation continues to have effect under this Regulation.

## **Schedule 1 Conditions applying to certain authorities**

(Clause 16 (a))

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

- (1) An authorised fundraiser is permitted to conduct a fundraising appeal or appeals for the period of time specified in the application for its authority.
- (2) If no such period is specified, an authorised fundraiser is permitted to 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 all income or articles received 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 maintain such books of account and records as are necessary to ensure proper accountability for all fundraising appeals, including the following documents:
  - (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 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 subcommittee 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: section 23**

- (1) An authorised fundraiser that is an unincorporated organisation must send a section 23 return to the Minister:
  - (a) within 2 months after its authority expires or otherwise ceases to have effect or, 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 from any appeals conducted by it exceeds \$10,000:
    - (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 each financial year,

whichever occurs sooner.

(2) An authorised fundraiser that is a 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 proceeds from any fundraising appeal are 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 between 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 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.

## **7 Annual financial accounts**

(1) The annual accounts of an authorised fundraiser that is an 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 fundraising appeals as at the end of the financial year.

(2) The annual accounts of an authorised fundraiser that is an organisation must also contain the following information as notes accompanying the statement of income and expenditure and the balance sheet:

(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,
  - (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 from fundraising,
    - (ii) a comparison of the net surplus from fundraising to the gross income 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 total income received.
- (3) 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 fundraising appeals, and
  - (c) the net operating surplus or deficit.
- (4) The annual 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 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 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.
- (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 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 requires the information to be separately itemised or to be shown as notes to its profit and loss accounts or its balance sheets.
- (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 proceeds 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 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.

## **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 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 documents:
  - (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 total proceeds cleared from each such box or device.
- (5) 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.
- (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.
- (7) 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 for 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
  - (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 for 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 is in receipt of 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.

## **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 are in receipt of 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 telephone canvassing or other direct marketing**

- (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 authorised fundraiser conducting the appeal.
- (2) In all cases, the code of practice must include the following precepts:
  - (a) that the authorised fundraiser must nominate a person to be responsible for ensuring the code of practice is complied with,
  - (b) that, when requested, the authorised fundraiser must identify the source from which the name, telephone number or address of the person being solicited was obtained,
  - (c) that, if any person being solicited requests the removal of his or her name from the list or database used for the purposes of the appeal, the request must be promptly complied with,
  - (d) that 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) that 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 solicitation is by telephone:

- (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 and must courteously and promptly accept any refusal of the invitation or offer.

(4) If solicitation is by means of material distributed by direct mail:

- (a) the material 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) the material 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.

#### **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
- (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 advertising, 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) When requested, any person conducting or participating in a fundraising appeal must use his or her best endeavours, at all times, to answer honestly any question relating 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.
- (3) 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 (4) (a).
- (4) 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 details of the trader's normal place of business and telephone and facsimile numbers, and
    - (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" proceeds 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" proceeds 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, it must appear once only, and represent not more than 10 per cent of the surface area.

### **17 Appeals for donated goods**

- (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:
    - (i) each bin must be consecutively numbered, and the number displayed in a prominent manner on the bin, and
    - (ii) 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 intervals of not greater than 12 months after the commencement of the appeal, and
    - (iii) a record of bins must be maintained by the trader that includes 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.

### **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 proceeds 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 fair and reasonable and governed by a written agreement between the authorised fundraiser and the trader.
- (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, 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 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 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 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 by a governing body of not fewer than 3 persons, and
- (b) all business transacted by the governing body must be properly recorded in the organisation's minutes.

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

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.

## **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.

## **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.

## **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 16 (b))

### Part 1 General

#### 1 Application of this Part

- (1) In this Schedule, a child who participates in a fundraising appeal is referred to as a **child participant**.
- (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 is in receipt of 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 requirements of this Schedule are complied with in relation to any child participating in the appeal, and
  - (b) must take all reasonable steps to ensure that any child participating in the appeal complies with the 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.

(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, guardian or any other person responsible for the child during the appeal.

(3) In this clause, **parent**, in relation to a child, includes any guardian or other person responsible for the child.

### **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 children.

(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**

Children participating in a fundraising appeal 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 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 etc**

A child participant must not be required or permitted to participate further in a fundraising appeal 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 participating in a fundraising appeal.

## **13 Travel**

- (1) A child participant 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.

#### **14 Protection from the 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 corporal 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 is in receipt of 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.
- (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 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, the employer must make the records available to the authorised fundraiser.