

Charitable Fundraising Regulation 2008

[2008-354]



New South Wales

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Authorisation

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New South Wales

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Charitable Fundraising Regulation 2008



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Charitable Fundraising Regulation 2008*.

2 Commencement

This Regulation commences on 1 September 2008.

Note—

This Regulation replaces the *Charitable Fundraising Regulation 2003* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

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

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.

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

the Act means the *Charitable Fundraising Act 1991*.

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

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

Part 2 Fundraising appeals

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

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

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

5 Community support and expenditure schemes

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

- (a) the registered club applies profits to community development and support in accordance with the CDSE guidelines, and
- (b) the request for, or receipt of, money, property or other benefit relates to that application of profits.

(2) In this clause:

CDSE guidelines has the same meaning as it has in section 16 of the [Gaming Machine Tax Act 2001](#).

registered club has the same meaning as it has in the [Registered Clubs Act 1976](#).

6 Religious organisations exempt from Act

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

ACE Global Incorporated

Bible Society NSW

Buddhist Council of New South Wales Incorporated

Christian Broadcasting Association Limited (trading as FM103.2)

Church Missionary Society—New South Wales Incorporated

Coffs Coast Schools Ministry Incorporated
Cornerstone Community Incorporated
Creflo Dollar Ministries
Crystal Cathedral Ministries Australia Limited (trading as Hour of Power)
Evangelizing Commerce Incorporated
Far East Broadcasting Co (Australia)
Good News Broadcasting Association Limited
Grace Evangelical Church Newcastle Inc
IN Network Australia Incorporated
Jesse Duplantis Ministries
Kenneth Copeland Ministries Eagle Mountain International Church Ltd
Leading The Way With Dr Michael Youssef Australia Limited
Life Recovery Ministries Incorporated
Loyal Orange Institution of New South Wales
New South Wales Ecumenical Council Relief Institute Incorporated
Open Doors with Brother Andrew (Australia) Inc
Rose Mountain Incorporated
Shree Swaminarayan Temple (Sydney) Inc
Shoalhaven Employers of Christian Education Teachers Inc
Tahlee Ministries Incorporated
The E.U. Graduates Fund
The Journey Incorporated
The Servants of Jesus Community Ltd
The Trustees for the Answers with Bayless Conley Australia Trust
The Trustees for the Gospel Patrons Society Foundation
Voice of the Martyrs Limited

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

(1) For the purposes of section 9 (3) (a) of the Act, the following organisations and persons are authorised to conduct a fundraising appeal without being the holder of an authority:

- (a) councils,
- (b) committees of councils (whether or not all of the members of the committee are councillors of the council),
- (c) the trustees of a trust of which:
 - (i) a council is a trustee, or
 - (ii) the holder of the office of mayor, councillor, general manager, public officer or senior staff member of a council is a trustee by virtue of holding that office, or
 - (iii) a person nominated by a council is a trustee by virtue of being a person nominated by the council,

but only in respect of a fundraising appeal conducted for the trust.

(2) In this clause, **council**, **councillor**, **mayor**, **public officer** and **senior staff** have the same meaning as in the [Local Government Act 1993](#).

8 Universities exempt from obligation to hold authority to conduct fundraising appeals

For the purposes of section 9 (3) (a) of the Act, the following organisations are authorised to conduct a fundraising appeal without being the holder of an authority:

- (a) the Australian Catholic University,
- (b) the Charles Sturt University,
- (c) the Macquarie University,
- (d) the Southern Cross University,
- (e) the University of New England,
- (f) the University of New South Wales,
- (g) the University of Newcastle,
- (h) the University of Sydney,
- (i) the University of Technology, Sydney,
- (j) the University of Western Sydney,

(k) the University of Wollongong.

9 Lawful and proper expenses

- (1) For the purposes of section 20 (3) of the Act, an expense is a lawful and proper expense in connection with a fundraising appeal if:
 - (a) the Minister has, pursuant to this clause, determined that such an expense constitutes a lawful and proper expense in connection with that fundraising appeal, fundraising appeals of that class or description, or fundraising appeals generally, and
 - (b) it is not an expense referred to in subclause (5) (a)-(c), and
 - (c) it complies with the requirements of this clause.
- (2) The Minister may, subject to this clause, decide what constitutes a lawful and proper expense in respect of a particular fundraising appeal or any class or description of fundraising appeals or fundraising appeals generally.
- (3) The Minister, in deciding what constitutes a lawful and proper expense, must have regard to the provisions of this clause and to:
 - (a) the type and amount of expenses generally accepted as being associated with the manner of appeal concerned, and
 - (b) whether the ratio that the amount of the expense in question bears to the gross income obtained from the appeal is reasonable in the circumstances.
- (4) The Minister's decision has effect with respect to an authorised fundraiser when it is notified to the authorised fundraiser or when it is notified in the Gazette, whichever occurs first.
- (5) An expense is not a lawful and proper expense:
 - (a) if it is prohibited under any law, or
 - (b) if it is not supported by documentary evidence or is not otherwise verifiable as being properly incurred, or
 - (c) in the case of an expense paid or incurred by an organisation that is an authorised fundraiser, if it was not properly authorised by or on behalf of the organisation.
- (6) Commissions paid or payable to any person as part of a fundraising appeal must not exceed one-third of the gross money obtained by that person in the appeal.
- (7) If a fundraising appeal is conducted with a trader, expenses must be of a type and amount provided for, or described in, a written agreement between the authorised fundraiser and the trader.

10 Particulars to be shown in records of income and expenditure

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

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

Note—

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

11 Identification of face-to-face collectors

- (1) While participating in a fundraising appeal, a face-to-face collector must prominently display any identification card or badge that has been issued to the person in compliance with a condition of the authority to conduct the appeal.

Maximum penalty: 5 penalty units.

- (2) Subclause (1) does not apply if the fundraising appeal is taking place as part of a fundraising event or function and it is clear to a person attending the function or event that the fundraising appeal is being conducted by, or on behalf of, the holder of the authority to conduct the appeal.

12 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 requested to do so by the person being solicited, disclose to that person the fact that he or she is so employed and the name of his or her employer for the purposes of the appeal.

Maximum penalty: 5 penalty units.

13 Public access to information

- (1) On request by a person (the **applicant**) under section 47 of the Act, a person or organisation that is (or, within the previous 12 months, was) the holder of an authority

must furnish to the applicant a copy of the annual audited financial statements (also known as financial reports) in respect of all fundraising appeals conducted by the person or organisation during the 7 financial years prior to the request.

- (2) If the applicant's request relates to an organisation, the following must also be 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) For the purposes of section 47 (3) of the Act, the fee for furnishing financial statements or information:
 - (a) by or on behalf of the Minister is \$13.00 for the first page and \$1.00 for each additional page, and
 - (b) in any other case, is \$13.00 for the first page and \$1.00 for each additional page or such lesser amount as the person or organisation furnishing the information may determine.

14 Notification of changes to particulars of authorised fundraiser

- (1) An authorised fundraiser must furnish to the Minister in writing:
 - (a) if the authorised fundraiser is a natural person, details of any amendment, deletion or addition to the charitable objects or purposes for which the person wishes to raise funds under its authority, and
 - (b) if the authorised fundraiser is an organisation (whether or not incorporated), details of any changes to its constitution with respect to:
 - (i) the charitable objects or purposes of the organisation, or
 - (ii) the non-profit nature of the organisation with respect to the disposition of funds obtained through its fundraising appeals, or
 - (iii) the disposition of funds and assets obtained from fundraising appeals to a non-profit organisation with similar or identical charitable objects or purposes in the event of a winding-up of the organisation, and
 - (c) if the authorised fundraiser is an organisation with branches that are not authorised fundraisers in their own right, details of any change in the following particulars:
 - (i) the name, including the trading or business name, of any branch,

- (ii) the business address, postal address, 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
- (d) details of any change to the incorporated status of the authorised fundraiser, and
- (e) if there have been any modifications to the particulars of an existing trader, or if a new trader has been engaged, the following details:
- (i) if the trader is a natural person, the person's name, business address, postal address, e-mail address, website address, and telephone and facsimile numbers,
 - (ii) if the trader is an organisation, its full name (together with any trading or business name), its business address, postal address, 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
- (f) details of any change in the name, address or telephone or facsimile number of the auditor, and
- (g) confirmation of any decision by the authorised fundraiser to cease to conduct fundraising appeals.

Maximum penalty: 20 penalty units.

- (2) 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

15 Conditions of authority when application delayed

Subject to any variations under section 19 of the Act the conditions set out in Schedule 1 are conditions of any authority taken to have been granted under section 16 (6) of the Act.

16 Police authorised to act as inspectors

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

- (a) who holds the rank of sergeant or above, or
 - (b) who acts in the capacity of a police officer holding the rank of sergeant or above,
- is authorised to exercise all the functions of an authorised inspector under the Act.

17 Savings provision

Any act, matter or thing that, immediately before the repeal of the [Charitable Fundraising Regulation 2003](#), had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Conditions of authority taken to have been granted under section 16 (6) of the Act

(Clause 15)

Part 1 General conditions

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

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) into which the gross income obtained from a fundraising appeal is paid in accordance with section 20 (6) of the Act,
 - (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 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 appeals

- (1) An authorised fundraiser that is an unincorporated organisation must send to the Minister a return referred to in section 23 of the Act:
- (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 \$100,000:
 - (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 to the Minister, within one month after the close of each appeal conducted by the person, 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.
- (3) Disbursement from the account in amounts of \$260 or more must be by cheque drawn on the account or by electronic funds transfer.
- (4) For the purposes of section 20 (6) of the Act, money is not required to be paid into an account consisting only of money raised in fundraising appeals conducted by the same authorised fundraiser in the following circumstances:
 - (a) the money is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished,
 - (b) the money is collected by a branch or auxiliary of the authorised fundraiser and the money is paid into a general account bearing the name of the branch or auxiliary held at an authorised deposit-taking institution and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal is clearly distinguished,
 - (c) the money is collected by volunteers on behalf of the authorised fundraiser and is paid into a general account of the authorised fundraiser held at an authorised deposit-taking institution by way of credit card, cheque or electronic funds transfer and the authorised fundraiser obtains each volunteer's receipt book and reconciles it with any deposit made by that volunteer.

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) an income statement (also known as a statement of financial performance, a statement of income and expenditure or a profit and loss statement) that summarises the income and expenditure of each fundraising appeal conducted during the financial year, and
 - (b) a balance sheet (also known as a statement of financial position) 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 income statement and the balance sheet if, in the financial year concerned, the aggregate gross income obtained from any fundraising appeals conducted by it exceeds \$100,000:

- (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 that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied,
 - (d) details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged.
- (3) 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 income statement gives 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 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.
- (4) 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.
- (5) 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.

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 50 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.

9 Receipt 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 into which the gross income obtained from a fundraising appeal is paid in accordance with section 20 (6) of the Act.
- (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 an account into which the gross income obtained from a fundraising appeal is paid in accordance with 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.

(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) The authorisation given by an authorised fundraiser to a member, employee or agent 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).
- (2) The authorisation given by an authorised fundraiser to a member, employee or agent 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.
- (3) In an appeal conducted jointly with a trader, the person signing the authorisation for the purposes of subclause (1) (f) or (2) (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.
- (4) Despite subclause (2), 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
 - (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 Fundraising through direct marketing

If a fundraising appeal involves solicitation by way of direct marketing (including by telephone, electronic device such as a facsimile machine or direct mailing), the authorised

fundraiser must ensure that:

- (a) the content of all direct marketing communications is not misleading or deceptive or likely to mislead or deceive, and
- (b) if requested by the person being solicited, the person is informed of the source from which the authorised fundraiser obtained the person's name and other details, and
- (c) if requested by the person being solicited, the person's name and other details are removed as soon as practicable from the source of names or contacts used for the purposes of the appeal (or if removal of the name and details is not practicable, the name and details are to be rendered unusable), and
- (d) the name and other details of a person are not provided or sold to any other person or organisation without the express consent of the person to whom the information relates, and
- (e) each contract (entered into as a result of direct marketing) for the purchase of goods or services to the value of more than \$100, provides that the purchaser has the right to cancel the contract within a period of time that is not less than 5 business days (excluding weekends and public holidays), and
- (f) a purchaser that enters a contract referred to in paragraph (e) is notified, at the time of entering the contract, of the purchaser's right to cancel the contract and the time within which that right must be exercised, and
- (g) all direct marketing by telephone complies with the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* of the Commonwealth.

13 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.

14 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.

15 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 not be reasonably likely to cause offence to a person, and
 - (c) must be based on fact and must not be false or misleading.
- (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 or if a person, in the course of a trade or business, provides services directly related to the fundraising appeal (such as telemarketing services), 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 or person operates for purposes of the appeal, and
 - (ii) the normal place of business, the telephone number, the facsimile number, the e-mail address and the website address of the trader or person, and
 - (iii) 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
 - (iv) details of the extent of the benefit to be obtained by the trader or business from the appeal (*not* to be expressed as a percentage of the “net” income obtained from the appeal), and
 - (v) 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 or person 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) (iii), 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
 - (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 16 (1) (e) (i) or (3) (a).

16 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 the Arts, Sport and Recreation, that bears the words “COMMERCIALY OPERATED”, 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 (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 the Arts, Sport and Recreation, that bears 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**

17 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.

18 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.

- (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, except as provided by clause 20,
 - (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.

19 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.

20 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:

- (a) to be taken into the custody of the auditor for purposes of audit, or
- (b) for a purpose required by law or by a condition of the authority, or
- (c) to be taken to a place, the location of which has been notified in writing to the Department of the Arts, Sport and Recreation.

21 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 arise involving a member of the governing body or an office-holder or employee of the organisation.

22 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.

23 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.

24 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 3 years.

25 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 2005* (other than a road that is the subject of a declaration made under section 15 (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 2005* (other than a road related area that is the subject of a declaration made under section 15 (1) (b) of that Act relating to all of the provisions of that Act).

Part 2 Participation of children in fundraising appeals

Division 1 General

26 Definitions

In this Part:

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

parent, in relation to a child, means a person who has for the time being parental responsibility for the child.

27 Participation of children in fundraising appeals

- (1) A child must not participate in a fundraising appeal if the child has not attained the age of 8 years.
- (2) A child participant must not receive wages or commission or other material benefit (other than reimbursement for reasonable out-of-pocket expenses) if the child has not attained the age of 13 years.

Division 2 General conditions where children participate in fundraising appeals

28 Application of this Division

- (1) This Division 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.
- (2) 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.

29 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 during the appeal.

30 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.

31 Working with other children

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

32 Endangering of child

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

33 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.

34 Prohibition on entry to private homes and dealing with persons in motor vehicles

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.

35 Hours of participation

- (1) A child participant must 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.

36 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 Division without receiving a minimum break of 12 hours.

37 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.

38 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.

39 Toilet facilities

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

40 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.

41 Protection from elements

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

42 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.

Division 3 Additional conditions where children receive benefit for participation in fundraising appeal

43 Application of this Division

This Division 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.

44 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.

45 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 must 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.