



**Trade &  
Investment**  
Office of Liquor, Gaming & Racing

# **Regulatory Impact Statement**

## ***Charitable Fundraising Regulation 2015***

**May 2015**



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## 1 EXECUTIVE SUMMARY

The NSW Government recognises the importance of securing a responsible and viable not-for-profit (NFP) charity sector that is able to deliver vital social, education and health services to the community. The Government also appreciates the need for charities to be flexible and responsive to local and individual needs.

Community expectations demand proper regulatory oversight of the NFP charity sector to ensure the interests of donors and beneficiaries are protected and that the risk of any mismanagement, misconduct or fraud by charities is minimised. It is expected that charitable fundraising will be well regulated with proportionate laws that support a strong, effective and trusted sector which promotes public confidence and ensures charities can focus their efforts towards supporting worthy causes.

Charitable fundraising activities in NSW are regulated by the *Charitable Fundraising Act 1991*. The objectives of the Act are to promote the proper and efficient management and administration of charitable fundraising appeals, to ensure proper account keeping and auditing practices, and to prevent deception of the public.

The *Charitable Fundraising Regulation 2008* supports these objectives by prescribing integrity safeguards, accountability standards, and matters that help to provide protection against the risk of fraudulent activities so that the interests of the intended beneficiaries and the public are protected.

The Government is proposing to make a new *Charitable Fundraising Regulation 2015* to replace the existing 2008 Regulation, which is due for automatic repeal under the staged repeal program of the *Subordinate Legislation Act 1989* on 1 September 2015.

Options for addressing matters contained in the existing Regulation via alternative regulatory mechanisms, such as including the requirements in the *Charitable Fundraising Act 1991*, enabling the sector to develop self-regulatory arrangements, or taking no action and letting the regulation lapse, have been considered.

A qualitative cost benefit analysis of each option indicated that remaking the regulation would be the preferred option, noting that the Act requires certain matters to be prescribed by regulation, and certain enabling provisions in the Act would not operate in the absence of a regulation. It is therefore proposed to remake the existing Regulation, with some changes.

This consultative process provides an opportunity to examine potential options for easing the regulatory burden on charities conducting fundraising appeals, particularly for smaller charities that are often operated by volunteers. This includes a review of the standard conditions that are attached to a fundraising authority, which are titled *Charitable Fundraising Authority Conditions* (dated 8 December 2014).

This Regulatory Impact Statement (RIS) seeks comment on:

- the proposed *Charitable Fundraising Regulation 2015*,
- the *Charitable Fundraising Authority Conditions* dated 8 December 2014, and
- three proposals to reduce the regulatory burden and red tape for charities that are required to obtain a charitable fundraising authority when conducting fundraising appeals in NSW. These proposals are discussed in detail in Chapter 9.4 of this Regulatory Impact Statement.

Given the difficulties in quantifying the social and economic costs of making the proposed *Charitable Fundraising Regulation 2015*, particularly in relation to the economic value of community trust, the Regulatory Impact Statement uses a multi-criteria analysis method – known as the ‘balanced scorecard’ approach – to assess the costs and benefits of alternative options.

This approach enables each policy option to be compared and scored against a selected range of qualitative criteria, and an overall assessment to be made of the relative merits of each option. It concludes that the best option available to the community and the Government is to make the proposed *Charitable Fundraising Regulation 2015*.

## 2 PUBLIC CONSULTATION

The *Subordinate Legislation Act 1989* requires that before a regulation is made, consultation must take place with appropriate representatives of the public, relevant interest groups, and any sector of industry or commerce, likely to be affected by the proposed statutory rule.

Accordingly, this Regulatory Impact Statement has been prepared to inform the consultative process for the making of the proposed *Charitable Fundraising Regulation 2015*, and a review of the *Charitable Fundraising Authority Conditions* dated 8 December 2014.

The availability of these documents has been advertised through notices published in *The Sydney Morning Herald* and *The Daily Telegraph*, and by notice on the Office of Liquor, Gaming and Racing's website at [www.olgr.nsw.gov.au](http://www.olgr.nsw.gov.au). Notice has also been advertised in the NSW Government Gazette at <http://nsw.gov.au/gazette>.

Notice of the availability of these documents has been provided to relevant Government agencies and key stakeholder groups, including the Fundraising Institute of Australia, the Public Fundraising Regulatory Association, and the Australian Council of Social Service. Notice has also been provided to the 35 exempted religious organisations listed under clause 6 of the proposed Regulation. The full list of stakeholders that have been notified is contained in Chapter 10.

### 2.1 Submissions

Interested persons and organisations are invited to make a submission in response to this Regulatory Impact Statement, the proposed *Charitable Fundraising Regulation 2015*, and the *Charitable Fundraising Authority Conditions* dated 8 December 2014.

The Office of Liquor, Gaming and Racing will review all submissions received and, based on this review, the proposed Regulation and authority conditions may be amended as appropriate.

Submissions can be emailed to [charitable.fundraising@olgr.nsw.gov.au](mailto:charitable.fundraising@olgr.nsw.gov.au) or posted to:

Charitable Fundraising Regulation 2015  
Office of Liquor, Gaming and Racing  
NSW Trade & Investment  
GPO Box 7060, SYDNEY NSW 2001

The closing date for the receipt of submissions is Wednesday, 24 June 2015.

This Regulatory Impact Statement, consultation draft of the proposed *Charitable Fundraising Regulation 2015*, and *Charitable Fundraising Authority Conditions* (dated 8 December 2014) are available from [www.olgr.nsw.gov.au](http://www.olgr.nsw.gov.au) (under Charitable fundraising > Discussion papers).

### 2.2 Confidentiality of Submissions

The consultation process is public. All submissions received will be published on the website of the Office of Liquor, Gaming and Racing. Requests for submissions to be treated as confidential must be accompanied by supporting reasons, and will be considered in the light of Government principles and requirements relevant to the public release of, and access to, information, including those established by the *Government Information (Public Access) Act 2009*.

If the proposed Regulation is made, a copy of this Regulatory Impact Statement, together with copies of all written comments and submissions received, will be provided to the NSW Parliament's Legislation Review Committee.

## **2.3 Terms used in this Regulatory Impact Statement**

The following list contains terms that are used in this Regulatory Impact Statement and their meaning.

the Act	=	the <i>Charitable Fundraising Act 1991</i>
the existing Regulation	=	the <i>Charitable Fundraising Regulation 2008</i>
the proposed Regulation	=	the <i>Charitable Fundraising Regulation 2015</i>
the OLGR	=	the Office of Liquor, Gaming and Racing
a fundraising authority	=	an authority to fundraise (issued by the OLGR)



### 3 THE STAGED REPEAL PROGRAM

The *Charitable Fundraising Regulation 2008* is due to be repealed on 1 September 2015 in accordance with section 10 of the *Subordinate Legislation Act 1989*.

The Subordinate Legislation Act provides for regulations to have a limited life. In most cases, regulations are automatically repealed after five years. When a regulation is due for repeal, a decision must be made about whether to:

- postpone the repeal of the regulation, or
- remake the regulation (with or without changes), or
- allow the regulation to lapse without replacement.

Where it is proposed to remake a regulation, the Subordinate Legislation Act requires a Regulatory Impact Statement (RIS) to be prepared. The RIS must address the objectives sought to be achieved by the proposed regulation, and discuss the reasons for them.

Those objectives must:

- be reasonable and appropriate, and
- accord with the objectives, principles, spirit and intent of the enabling Act, and
- not be inconsistent with the objectives of other Acts, statutory rules and stated government policies.

The RIS must consider alternative options for achieving the stated objectives, including the option of not doing anything (i.e. allowing the regulation to lapse without replacement), and an evaluation must be made of the costs and benefits expected to arise from each option.

Implementation of the objectives by means of a regulation should not normally be undertaken unless the anticipated benefits to the community from the proposed regulation exceed the anticipated costs to the community. The option that involves the greatest net benefit or the least net cost to the community should normally be chosen from the options available.

In determining the costs and benefits, the impact on the economy, consumers, the public, relevant interest groups, and any sector of the industry and commerce that may be affected, need to be considered. These factors must be taken into account when considering all options.

All new and amending regulatory proposals must demonstrate that the NSW Government's better regulation principles have been applied. Those principles are:

1. The need for government action should be established.
2. The objective of government action should be clear.
3. The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options.
4. Government action should be effective and proportional.
5. Consultation with business and the community should inform regulatory development.
6. The simplification, repeal, reform or consolidation of existing regulation should be considered.
7. Regulation should be periodically reviewed, and if necessary, reformed to ensure its continued efficiency and effectiveness.

This RIS has been prepared in accordance with the requirements of the Subordinate Legislation Act and the NSW Government's better regulation principles.

## 4 BACKGROUND TO THE REGULATORY FRAMEWORK

The *Charitable Fundraising Act 1991* regulates charitable fundraising activities in NSW. It establishes a licensing scheme which requires a charitable organisation to obtain and hold an authority to conduct fundraising appeals. These organisations are referred to as authorised fundraisers.

The objects of the Act are:

- to promote proper and efficient management and administration of fundraising appeals for charitable purposes, and
- to ensure proper keeping and auditing of accounts in connection with such appeals, and
- to prevent deception of members of the public who desire to support worthy causes.

These objects are designed to address actual and potential market failures in the charitable fundraising sector. This can occur if fundraisers do not operate in the best interests of consumers (donors, potential donors, beneficiaries and potential beneficiaries) because of risks associated with the way fundraising appeals are conducted or a lack of governance controls are in place.

The Act helps to address these failures and protect the public interest by regulating or restricting:

- who may conduct or participate in charitable fundraising appeals,
- the manner in which fundraising appeals are conducted (for example, what activities can be undertaken, how activities are to occur, the advertising and disclosure of certain information), and
- how funds received from the community through fundraising appeals are accounted for and applied, including restricting expenses.

In summary, the intention of the Act is to:

- assist the ongoing viability of persons or organisations that conduct charitable fundraising activities, which contribute positively to the community and operate in the public interest,
- promote confidence in the conduct of charitable fundraising appeals so that there are positive community impacts (including impacts on donors and beneficiaries), and
- ensure the application of profits/proceeds for the purpose stated in conducting the charitable fundraising activity.

### 4.1 Regulation making powers

The Act contains regulation making powers that allow certain matters to be prescribed by regulation. These powers are contained in sections 5(3)(f), 7(1)(b), 9(3)(a), 16(6), 20(3), 22(2)(b), and 47(1) and (3) of the Act.

A general regulation making power also exists under section 55 of the Act, which allows the making of regulations not inconsistent with the Act, for or with respect to any matter that is required, necessary or convenient for carrying out or giving effect to the Act.

These powers are relied upon to make the proposed *Charitable Fundraising Regulation 2015*.

## 5 NEED FOR GOVERNMENT ACTION

Charitable fundraising organisations (known as charities) are part of the not-for-profit (NFP) sector. This sector is large and diverse and plays a vital role in Australian society.

The Productivity Commission's 2010 report on the NFP sector estimated that there are approximately 600,000 charities operating in Australia (Productivity Commission *Contribution of the Not-for-Profit Sector*, 2010 p.58).

Of these, the Australian Taxation Office (ATO) estimated that 189,219 organisations have an active tax status classified as an NFP by the ATO (ATO Non-profit profile, July 2011). Approximately 59,000 of these were considered 'economically significant' by the Australian Bureau of Statistics (ABS Non-Profit Institutions Satellite Account, 2006-2007).

As at 3 September 2012, the ATO estimated that 34 percent (18,943) of charities endorsed by the ATO (56,073) are registered in NSW (Australian Charities and Not-for-profits-Commission, *Not-For-Profit Reform and the Australian Government*, September 2013. P.12).

According to Australian Bureau of Statistics data, in 2012–13 national giving amounted to \$8.61 billion consisting of:

- donations, bequests and legacies - \$3,993m.
- donations from businesses - \$863m.
- donations from trusts and foundations - \$474m.
- sponsorships - \$1,381m.
- other fundraising - \$1,903m.

While not all participants in the NFP sector are fundraising organisations, many are. The fundraising sub-sector includes donors and potential donors, who are either individuals or corporations. Other key participants in this sub-sector are charities that conduct fundraising activities and deliver charitable services to the community; intermediaries that undertake fundraising activities in aid of charity but for a commercial benefit; and the beneficiaries of fundraising appeals and other donations.

Various regulatory frameworks impact on the NFP sector, including the fundraising sub-sector.

Depending on the structure of a charitable organisation, it is likely to be regulated by either the national corporations law framework (which covers public companies limited by guarantee) or the state based incorporated associations framework (which covers smaller, community based groups that are incorporated). Both corporations and incorporated associations function as legal entities that are separate from their members. It is not mandatory for an organisation to be incorporated to operate as a charity.

Charities conducting fundraising activities are also subject to the parallel regulatory system established by the *Charitable Fundraising Act 1991*.

While registration is voluntary, the Australian Government established the Charities and Not-for-profits Commission (ACNC) in 2012 as an independent national regulator of charities. The ACNC operates under the following objectives:

- to maintain, protect and enhance public trust and confidence in the sector through increased accountability and transparency,
- to support and sustain a robust, vibrant, independent and innovative not-for-profit sector, and
- to promote the reduction of unnecessary regulatory obligations on the sector.

These objectives are consistent with the regulatory objectives of the NSW charity laws to promote public confidence and trust in fundraising and, in doing so, to increase the public's willingness to support worthwhile causes.

In a report prepared by the ACNC titled *Charity Compliance Report December 2012 – December 2014*, the most common concerns raised by the public (which accounted for 67 per cent of concerns raised with the ACNC) about charities related to:

- charitable resources being used inappropriately for the private benefit of individuals controlling the charity or their associates,
- possible financial mismanagement and fraud within the charity,
- charities failing to follow their constitutions and not being transparent or accountable to members,
- charities that appear to be harm their beneficiaries, and
- sham charities soliciting funds, and fundraising scams generally.

The report also noted that 31 per cent of concerns raised with the ACNC related to NSW charities.

It is therefore appropriate that the government takes action to protect the interests of the public and ensure the integrity of fundraising activities in NSW.

The NSW charitable fundraising laws are designed to protect the charitable fundraising sector and the public against people or organisations who falsely represent themselves as charities, or as acting on behalf of charities. They also help ensure people running fundraising appeals do not misrepresent the purpose of their organisation or their appeal.

In recent years, the NSW Government has prioritised efforts to reduce regulatory costs and cut red tape for businesses and the community. This commitment is consistent with the Government's State Plan – NSW 2021 – including Goal 4 – Increase the competitiveness of doing business in NSW.

It is therefore also important that options are explored to reduce regulatory burden and red tape, where appropriate, for charities conducting fundraising appeals in NSW.

## **6 OBJECTIVES OF THE CHARITABLE FUNDRAISING REGULATION 2015**

It is proposed to make the *Charitable Fundraising Regulation 2015*, to commence on 1 September 2015, when the existing 2008 Regulation will be automatically repealed.

The primary objective of the proposed Regulation is to provide for certain matters that are required to be prescribed under the Act.

The proposed Regulation aims to meet the following broad objectives, which are consistent with the objectives in the Act:

- to provide protection against the risk of fraudulent activity in charitable fundraising,
- to promote integrity safeguards and accountability standards, and
- to ensure the interests of intended beneficiaries are protected.

The proposed Regulation is reasonable and appropriate, and accords with the objectives, principles, spirit and intent of the Act. The proposed Regulation is a proportional response to the issues sought to be addressed.

### **6.1 Matters to be included in the proposed Regulation**

The proposed Regulation is essentially a remake of the existing *Charitable Fundraising Regulation 2008*. However, it omits Schedule 1 of the existing Regulation to help ensure consistency with the standard conditions that are imposed on all fundraising authorities issued in NSW. Schedule 1 prescribes the standard conditions that apply to a charitable fundraising authority that is deemed to have been granted in the event that an application is not approved within a 60 day period.

Instead, the proposed Regulation amends clause 15 to refer to the approved standard conditions prepared by the Office of Liquor, Gaming and Racing (rather than prescribing them under Schedule 1 of the proposed Regulation). Further information is provided in Chapter 9.

The proposed Regulation has regard to matters such as the requirements relating to:

- the activities and appeals that do not constitute a fundraising appeal for the purposes of the Act,
- religious organisations that are exempt from the Act,
- the manner of determining what constitutes a lawful and proper expense in connection with a fundraising appeal,
- the particulars that are to be shown in the records of income and expenditure that a person or organisation conducting a fundraising appeal must keep,
- the identification and obligations of participants in fundraising appeals,
- the financial and organisational information that must be provided to the public on request, and the fee payable for that information,
- the changes in particulars that an authorised fundraiser must furnish to the Minister,
- the conditions deemed to apply to a fundraising authority taken to have been granted under section 16(6) of the Act,
- the authorisation of certain police officers as inspectors, and
- savings and formal matters.

Whilst not included in the consultation draft of the proposed Regulation, this RIS also considers several options to amend the proposed Regulation to ease the regulatory burden for smaller authorised fundraisers.

These proposals are discussed in Chapter 9.4.

## 7 OPTIONS FOR ACHIEVING THE OBJECTIVES

The *Subordinate Legislation Act 1989* requires alternative options for achieving the objectives of the proposed Regulation to be considered before a regulation may be made. Not proceeding with any action is one option that must be considered.

### 7.1 The options

There are five options for achieving the objectives referred to in Chapter 6.

- Option 1 Take no action.
- Option 2 Implement a system of industry self-regulation or co-regulation.
- Option 3 Address matters in the Act rather than by regulation.
- Option 4 Address matters by implementing administrative procedures.
- Option 5 Make the proposed Regulation.

### 7.2 Impact assessment

The social and economic costs and benefits of each option, including the making of the proposed *Charitable Fundraising Regulation 2015*, are difficult to quantify, particularly in relation to the economic value of community trust.

There is also significant diversity in the size and composition of the approximately 5,800 authorised fundraising organisations in NSW. Income raised from the conduct of fundraising appeals in a financial year may range from a few hundred dollars to millions of dollars. Some organisations may be operated by a handful of volunteers, while other larger organisations may employ large numbers of professional staff.

Record keeping practices vary widely according to the size and nature of the organisation. Smaller organisations may use simple manual systems, while larger organisations often use sophisticated accounting software.

In determining the cost impact of each option, it is not possible to calculate and assign a specific numerical value to the indirect and direct costs and benefits of each of the five options to stakeholders.

Accordingly, a multi-criteria analysis (MCA) method – known as the ‘balanced scorecard’ approach – was used to assess the costs and benefits of each option (Better Regulation Office, Department of Premier and Cabinet, *Guide to Better Regulation*, 2009 p.38).

This MCA method requires judgments about how proposals will contribute to a set of criteria that are chosen to judge the benefits and costs associated with the proposals. It is expressed in a table under each option which rates each criteria as negative 1, zero, or positive 1. A total score is then derived for each option.

The three objects of the Act and a further two objects have been identified as criteria to consider the benefits and costs associated with each option, including the making of the proposed Regulation.

One of the added objects aims to strike a balance between the level of regulation of fundraising appeals, with the public’s right to be informed of the costs of those appeals and the percentage of funds raised applied to the advertised charitable purpose. This is expressed as ‘Appropriate balance between fundraising and disclosure’.

The second object addresses the policy objective of reducing red tape, and is expressed as ‘Reduces red tape’.

### 7.2.1 Option 1 – Take no action

Option 1 would result in the current regulation lapsing on 1 September 2015. It would not be replaced by another regulation.

This option is not considered feasible. The Act requires that a range of matters be prescribed by regulation. To not prescribe these matters would result in the absence of regulatory provisions required to support the objectives of the Act. It would also hinder the achievement of the objectives referred to in Chapter 4.

Many of the provisions in the proposed Regulation are enabling provisions. For example, the proposed Regulation contains exemption provisions that apply to universities, local councils and prescribed religious organisations. These provisions also ensure that any application deemed to be granted under section 16(6) of the Act, in the event that an application is not approved within 60 days, is subject to the same standard conditions that are attached to a fundraising authority determined in the normal course of events.

These enabling provisions would not operate if no action is taken.

*Table 1 - multi-criteria analysis of option 1*

<b>Option 1 criterion</b>	<b>Score</b>	<b>Summary</b>
Proper and efficient management of appeals	-1	Regulation lapses and lessens general regulatory effect of the Act where it contemplates the making of regulations.
Keeping and auditing of accounts	-1	Regulation lapses and detail of the particulars to be shown in records of income and expenditure is not specified.  Also, deemed authority holders would not be required to comply with standard conditions imposed on a fundraising authority to help secure the integrity of charitable fundraising (currently contained in Schedule 1 of the existing Regulation).
Prevention of public deception	-1	Regulation lapses, increasing the risk of public deception, as face-to-face collectors would not be required to prominently display any identification card or badge. Fundraising participants would also not be required to disclose who they are employed by.
Appropriate balance between fundraising and disclosure	-1	Regulation lapses and the disclosure requirements in the existing Regulation would no longer apply. Fundraising participants would not be required to disclose who they are employed by.  Also, deemed authority holders would not be required to comply with standard conditions imposed on a fundraising authority to help secure the integrity of charitable fundraising (currently contained in Schedule 1 of the existing Regulation).

Option 1 criterion	Score	Summary
Reduces red tape	0	Regulation lapses, but authority holders would still be subject to the regulatory requirements of the Act. If the Regulation lapsed, it is likely that there would be an overall small reduction in red tape.  However, any reduction would be offset by an increase arising from some enabling provisions no longer applying. For example, the enabling provisions exempt certain religious bodies, councils and related bodies and public universities from having to obtain a fundraising authority to conduct fundraising appeals. If no regulation was made, these organisations would be required to obtain a fundraising authority and comply with its conditions.
	-4	<b>Not recommended as the preferred option</b>

### 7.2.2 Option 2 – Industry self-regulation or co-regulation

As with Option 1, this option would result in no regulation being made or a regulation being made that only provides for some of the matters currently dealt with by regulation.

This option is not considered feasible. While some matters in the proposed Regulation could possibly be dealt with by self-regulation or co-regulation, such as determining what constitutes a lawful and proper expense in connection with a fundraising appeal or the manner in which records are kept, a higher level of industry integrity and public confidence can be assured by mandating legal requirements, as is currently the case. This assurance provides a significant benefit to the community in terms of public confidence in donating to charitable causes.

It is also unlikely that there would be any reduction in costs for the NFP charity sector, as the sector would need to meet the cost of establishing a representative industry body to develop appropriate codes of practice, and implement monitoring and inspection systems to ensure compliance with those codes. The NFP charity sector does not currently have an established industry body that could readily undertake these responsibilities.

The Parliament has determined that it is appropriate that certain matters provided for by the Act are supported by regulations. This includes the enabling provisions that prescribe:

- the types of activities do not constitute fundraising appeals,
- exemptions for religious organisations and other appropriate organisations, such as universities and local councils, and
- the standard conditions that apply to a fundraising authority deemed to have been granted under section 16(6) of the Act.

Notwithstanding this, if the role of government was reduced in the regulatory framework, the effectiveness of any self-regulatory or co-regulatory framework would be uncertain. This uncertainty could lead to a loss of public confidence in the conduct of charitable fundraising activities in NSW.



Table 2 - multi-criteria analysis of option 2

Option 2 criterion	Score	Summary
Proper and efficient management of appeals	-1	While there are particular matters in the proposed Regulation that could be achieved by self-regulation or co-regulation, a higher level of industry integrity and public confidence can be assured by mandating statutory requirements.  The NFP charity sector does not currently have a sector wide industry body that could undertake regulatory responsibilities.
Keeping and auditing of accounts	-1	It is likely that many organisations would keep accounts and audit them appropriately under a co-regulatory or self-regulatory system.  However, it is probable that an indeterminate number may not do so in the absence of a regulatory requirement.
Prevention of public deception	-1	There is no certainty that appropriate standards would be in place to avoid an increased risk of public deception.
Appropriate balance between fundraising and disclosure	-1	There is no certainty that appropriate levels of disclosure would be in place to ensure the public is informed of fundraising costs and the percentage of funds raised that were applied to charitable purposes.
Reduces red tape	0	It is likely there would be a relaxation of the regulatory regime which could result in an overall small reduction in red tape.  However, any reduction would be offset by an increase arising from some enabling provisions no longer applying. For example, the enabling provisions exempt certain religious bodies, councils and related bodies and public universities from having to obtain a fundraising authority to conduct fundraising appeals.  If no regulation was made, these organisations would be required to apply for, and comply with, a fundraising authority and the conditions attached to it.
	-4	<b>Not recommended as the preferred option</b>

### 7.2.3 Option 3 – Address the matters through the Act

As with option 1, this option would result in no regulation being made. Instead, the matters addressed by the existing regulation would be addressed by the Act itself.

Parliament has determined that substantive matters of regulation for the charitable fundraising sector should be dealt with by principal legislation (i.e. an Act) and that lesser, routine matters be provided for in subordinate legislation (e.g. a regulation).

It is clear from the wording of the Act that regulations were envisaged to give effect to the Act. There is no expressed intention that the matters which are covered by the existing Regulation were to be specified in the Act at some later point in time.

Maintaining these provisions in a regulation instead of the Act allows for a degree of flexibility in the regulatory framework. Should changes or enhancements be required, effecting such changes by regulation is a simpler and more efficient process than that involved amending the Act.

Dealing with changes by regulation means that amendments can be made quickly and at less cost than is the case for principal legislation. Also, scrutiny of subordinate legislation by the Legislation Review Committee of the NSW Parliament, along with the ability of Parliament itself to disallow regulations, ensures that there is an appropriate review procedure.

Table 3 - multi-criteria analysis of option 3

Option 3 criterion	Score	Summary
Proper and efficient management of appeals	0	<p>The advantage of regulating matters relating to the proper and efficient management of appeals by subordinate legislation (i.e. a regulation) is that it allows for a greater degree of flexibility and responsiveness.</p> <p>If these matters were addressed through the Act, an amending Bill would be required to make any changes.</p> <p>This would create a disproportionate regulatory burden, especially where the amendment was minor or is required at times when Parliament is not sitting, such as exempting an organisation from the requirement to hold a charitable fundraising authority.</p>
Keeping and auditing of accounts	0	<p>It is preferable for particulars that must be kept of records of income and expenditure to be prescribed by regulation rather than being listed in the Act.</p> <p>Including those requirements in the Act would reduce the ability to amend those particulars immediately if it becomes apparent that further or lesser details are needed for auditing purposes.</p> <p>Including these requirements in the Act would create a disproportionate regulatory burden, and would reduce the capacity of regulators to promptly amend those requirements as necessary.</p>
Prevention of public deception	0	<p>Including matters prescribed by the Regulation in the Act would not increase the risk of public deception. However, including these requirements in the Act would reduce the capacity of regulators to promptly amend those requirements where issues relating to public deception need to be addressed quickly.</p>
Appropriate balance between fundraising and disclosure	0	<p>Addressing matters prescribed by the Regulation in the principal Act would not alter the balance between fundraising and disclosure, provided the disclosure requirements were applied under the Act.</p> <p>Including these requirements in the Act would create a disproportionate regulatory burden, and would reduce the capacity of regulators to promptly amend those requirements as necessary.</p>

Option 3 criterion	Score	Summary
Reduces red tape	-1	Addressing matters prescribed by the Regulation in the principal Act would add to its complexity, and would not reduce red tape.  Any changes to the requirements would need to be achieved by an amending Bill, which would create increased regulatory costs for government.  The additional time needed to amend the Act may have an adverse impact on the charitable fundraising sector and the wider community.
	-1	<b>Not recommended as the preferred option</b>

#### 7.2.4 Option 4 – Address matters through administrative procedures

As with option 1, this option would result in no regulation being made. Instead, the matters addressed by the existing regulation would be addressed through administrative procedures.

This option is not considered feasible. There are limits to the matters that can be dealt with administratively as the Act, in some circumstances, requires that regulations be made. For example, the Act permits the making of regulations to prescribe:

- the types of activities that do not constitute fundraising appeals,
- exemptions for religious organisations and other appropriate organisations, such as universities and local councils,
- what constitutes a lawful and proper expense in connection with a fundraising appeal,
- the manner in which records are kept, and
- the standard conditions that apply to a fundraising authority deemed to have been granted under section 16(6) of the Act.

If these matters were not prescribed by the proposed Regulation, it would impose costs on some NFP organisations, including charities that conduct fundraising appeals, and could lead to a loss of public confidence in the conduct of charitable fundraising in NSW.

For example, it would impact on NFP organisations that receive funding under the Government's ClubGRANTS program, as they would be required to obtain a fundraising authority to receive ClubGRANTS funds. This is because the regulations (clause 5 of the existing Regulation) provide that a request for, or receipt of, funding from a registered club under the ClubGRANTS Scheme is not considered to form part of a fundraising appeal. Without this provision, the request of, or receipt of, ClubGRANTS funds would be considered to form part of a fundraising appeal, and this would require a fundraising authority to be held by an organisation.

It would also impact on those organisations that benefit from being exempted (via the regulations) from holding a fundraising authority, such as universities, local councils and prescribed religious organisations.

Additionally, it would result in charities that are deemed to have been granted a fundraising authority under section 16(6) of the Act, not having to comply with the standard conditions that are imposed on fundraising authorities that are granted. These conditions impose integrity safeguards and accountability standards on charities to provide protection against the risk of fraud and to ensure the interests of intended beneficiaries are protected.

Even where it is possible that some matters in the proposed Regulation may be able to be addressed administratively, there may be little assurance that appropriate standards will be achieved without lawful sanctions for non-compliance. This option would also not provide the same degree of regulatory certainty for charities and the community that would be provided by the proposed Regulation.

Many of the provisions in the proposed Regulation are enabling provisions that could not be achieved by taking administrative action.

Table 4 - multi-criteria analysis of option 4

Option 4 criterion	Score	Summary
Proper and efficient management of appeals	-1	<p>There are limitations on matters that can be addressed administratively as the Act contemplates the making of regulations in certain circumstances.</p> <p>Also, it is also not possible to impose the standard conditions attached to a fundraising authority where it is deemed to have been granted to an organisation under section 16(6) of the Act.</p> <p>While it is possible that some matters could be addressed administratively, there is a risk that appropriate standards will not be met or maintained in the absence of sanctions.</p>
Keeping and auditing of accounts	-1	<p>Addressing these matters administratively would not provide regulatory certainty or promote public confidence in record keeping practices.</p> <p>Also, it is also not possible to impose the standard conditions attached to a fundraising authority where it is deemed to have been granted to an organisation under section 16(6) of the Act.</p>
Prevention of public deception	-1	<p>The proposed regulation currently contains penalties for persons conducting fundraising who do not disclose who they are employed by, and for face-to-face collectors who do not display identification. Penalties cannot be imposed administratively, and these matters would need to be addressed by regulation.</p>
Appropriate balance between fundraising and disclosure	0	<p>Addressing matters in the Regulation administratively would make it more difficult to enforce disclosure requirements, and for regulators to ensure that persons conducting appeals act with integrity.</p>
Reduces red tape	0	<p>It is likely there would be a relaxation of the regulatory regime which could result in an overall small reduction in red tape.</p> <p>However, any reduction would be offset by an increase arising from some enabling provisions no longer applying. For example, the enabling provisions exempt certain religious bodies, councils and related bodies and public universities from having to obtain a fundraising authority to conduct fundraising appeals.</p> <p>If no regulation was made, these organisations would be required to apply for, and comply with, a fundraising authority and the conditions attached to it.</p>
	-3	<b>Not recommended as the preferred option</b>

### 7.2.5 Option 5 – Make the proposed Regulation

This option would result in the proposed Regulation being made to replace the existing regulation when it lapses on 1 September 2015.

This approach is consistent with the intention of the Parliament as reflected in the provisions of the Act. In some instances, regulations are the only means of achieving the efficient operation of substantive provisions. In other instances, the proposed Regulation will complement relevant provisions of the Act.

By making a regulation, charities will have certainty about the standard of conduct expected of them and their accountability to the public.

A regulation provides confidence that provisions of the Act can be legally enforced. A regulation is also the only means by which certain exceptions to provisions of the Act may be made (e.g. the receipt of ClubGRANTS funds is not considered to be part of a fundraising appeal).

The option of maintaining the status quo through the making of a regulation to support the objects of the Act will have minimal impact and ensure stability of charitable fundraising environment in NSW.

It also recognises that many of the provisions in the proposed Regulation are enabling provisions that provide benefits to the charities and the wider community, and that these enabling provisions could not be achieved by most of the other options.

Table 5 - multi-criteria analysis of option 5

Option 5 criterion	Score	Summary
Proper and efficient management of appeals	1	<p>Making the proposed Regulation will allow appropriate provisions to continue where the Act contemplates the making of regulations e.g. the exemption of certain activities from being considered fundraising appeals or the exemption of certain organisations from having to obtain a fundraising authority.</p> <p>The option of maintaining the status quo through the making of the proposed Regulation to support the objects of the Act will have minimal impact and ensure stability of the charitable fundraising environment in NSW.</p>
Keeping and auditing of accounts	1	<p>The particulars in records of income and expenditure under section 22 of the Act will be prescribed, as envisaged by the Act.</p> <p>Also, deemed authority holders would continue to be required to comply with record and account keeping requirements that form part of the standard conditions attached to a fundraising authority (currently Schedule 1 of the existing Regulation).</p>
Prevention of public deception	1	<p>Existing provisions which impose obligations on face-to-face collectors and fundraising participants would continue to operate e.g. display identification and disclose who they are employed by.</p> <p>The sanctions for not complying with these requirements would also be maintained to discourage public deception.</p>

Option 5 criterion	Score	Summary
Appropriate balance between fundraising and disclosure	1	<p>In addition to the disclosure obligations imposed on fundraising participants, the proposed Regulation would continue to require authority holders to provide financial reports in respect to fundraising appeals to any person upon request. The costs of complying with any such requests are offset by a prescribed fee.</p> <p>Also, deemed authority holders would continue to be required to comply with record and account keeping requirements that form part of the standard conditions attached to a fundraising authority (currently Schedule 1 of the existing Regulation).</p>
Reduces red tape	0	<p>Opportunities for reducing regulatory burden by amending the Regulation can be achieved, where appropriate. Proposals to reduce red tape are discussed in Chapter 9.4 of this RIS.</p> <p>Red tape reductions would also be achieved by maintaining the enabling provisions of the Regulation. This includes enabling certain religious bodies, councils and related bodies and public universities to be exempt from holding a fundraising authority.</p>
	-4	<b>Not recommended as the preferred option</b>

### 7.3 Conclusion

The recommended option, which is the preferred option for supporting the objects and provisions of the Act, is to make the proposed Regulation (i.e. option 5).

It is considered that the making of the proposed Regulation provides the most appropriate means of achieving objectives that will help to:

- provide protection against the risk of fraudulent activity in charitable fundraising,
- promote integrity safeguards and accountability standards, and
- ensure the interests of intended beneficiaries are protected.

## 8 SUMMARY OF PROPOSED CHANGES FROM 2008 REGULATION

It is proposed to remake the existing Regulation, with some changes. This includes updating the reference to the former Community Development and Support Expenditure (CDSE) scheme in clause 5 to ClubGRANTS, which is established under section 16 of the *Gaming Machine Tax Act 2001*.

The proposed *Charitable Fundraising Regulation 2015* repeals Schedule 1 of the existing Regulation, which prescribes the standard set of conditions attached to a fundraising authority deemed under section 16(6) of the Act. Clause 15 of the proposed Regulation instead refers to the conditions prepared by the Office of Liquor, Gaming and Racing.

Clause 13 of the proposed Regulation proposes a minor increase in the fee where requests are made to provide audited financial reports. The increase is consistent with the 34.4 per cent increase in the consumer price index (CPI) inflation rate between 2003 and 2014 and more accurately reflects the administrative costs imposed on authorised fundraisers and the Minister in furnishing such records.

Clause in 2008 Regulation	Clause in 2015 Regulation	2015 Regulation	Change
1	1	How regulation is to be cited	
2	2	Commencement date	
3	3	Definitions of various terms used throughout the Regulation	No change
4	4	Enlivens section 5(3)(f) of the Act, which allows a regulation to prescribe additional circumstances as not constituting a fundraising appeal.  Exempts a genuine fee or charge for the provision of educational facilities or services, child-minding services, goods or services supplied through a supported employment service for people with disabilities, nursing or medical services, or other care or welfare services.	No change
5	5	Exempts a request or receipt of specified benefits from a registered club where that request or receipt relates to the ClubGRANTS Scheme administered under the <i>Gaming Machine Tax Act 2001</i> .	Delete "CDSE" and insert "ClubGRANTS" to reflect the name of the scheme.
6	6	Lists religious bodies or organisations exempted from the operation of the Act for the purposes of section 7(1)(b).  These are entities that are not a recognised denomination under the Commonwealth <i>Marriage Act 1961</i> where an exemption has been prescribed.	No change
7	7	Provides that local councils and associated committees or trusts are authorised to conduct appeals without holding an authority to fundraise.	No change
8	8	Lists 11 public universities that are authorised to conduct appeals without holding an authority to fundraise.	No change

Clause in 2008 Regulation	Clause in 2015 Regulation	2015 Regulation	Change
9	9	Provides that the Minister must consider certain criteria in determining what constitutes lawful and proper expenses, such as the type and amounts claimed being of a reasonable nature.  Clause 9(6) provides that any commissions payable must not exceed one third of the gross money obtained by a person in an appeal.	No change
10	10	Provides that particulars are required for all items of gross income received or receivable, all items of expenditure incurred and the application or disposition of any proceeds obtained from the appeal.	No change
11	11	Requires face-to-face collectors to wear identification cards or badges unless the appeal is part of an event or function where the identity of the authorised fundraiser is clear.	No change
12	12	Requires that where a participant in an appeal (except a face-face collector) is remunerated, they must disclose to persons being solicited that they are being employed and the name of their employer for the purposes of the appeal.	No change
13	13	Provides that audited financial reports for the previous seven years, copies or extracts of an organisation's objects and constitutions and/or details of governing body members are to be made available for a fee of \$17.50 for the first page and \$1.50 for every subsequent page.	A minor increase in the fee (consistent with the effect of inflation since 2003) for the production of audited financial reports.
14	14	Requires authorised fundraisers to furnish the Minister with changes to certain basic particulars, such as the name and address, the organisation's constitution, and details of branches and traders within 28 days after the change event.	No change
15	15	Requires that persons or organisations deemed to hold a fundraising authority under section 16(6) of the Act comply with the 'Charitable Fundraising Authority Conditions' dated 8 December 2014 (formerly prescribed under Schedule 1).	Inserted reference to 'Charitable Fundraising Authority Conditions' dated 8 December 2014.
16	16	Provides that any police officer of or above the rank of sergeant (or acting in that capacity) may exercise the functions of an authorised inspector.	No change
17	17	Savings provision	
Sch 1 – Part 1	Repealed	This Part has been omitted. The conditions are referred to under clause 15 of the proposed Regulation.	Repealed
Sch 1 - Part 2	Repealed	This Part has been omitted. The conditions are referred to under clause 15 of the proposed Regulation.	Repealed



## **9 ANALYSIS OF PROPOSED CHARITABLE FUNRAISING REGULATION 2015**

This Chapter examines the costs and benefits of each clause in the proposed *Charitable Fundraising Regulation 2015*. It also seeks comment on proposals to reduce regulatory burden and red tape for fundraisers that raise small amounts of funding annually. These proposals are detailed in Chapter 9.4.

Many of the provisions in the *Charitable Fundraising Act 1991* and the proposed Regulation are intended to ensure the integrity of charities and fundraising appeals, and thereby maintain community confidence in charitable fundraising activities.

### **9.1 Part 1 – Preliminary**

#### **9.1.1 Clauses 1 to 3 - Preliminary**

Clause 1 states how the proposed Regulation is to be cited. It is to be named the *Charitable Fundraising Regulation 2015*.

Clause 2 states the proposed Regulation will commence on 1 September 2015.

Clause 3 contains definitions of various terms used throughout the proposed Regulation.

#### Costs and Benefits

There are no costs associated with Part 1 of the proposed Regulation. These provisions are interpretation tools which benefit stakeholders as they promote a proper understanding and functioning of the Regulation.

### **9.2 Part 2 – Fundraising appeals**

#### **9.2.1 Clauses 4 and 5 – what constitutes a fundraising appeal**

Section 5 of the Act states that the soliciting or receiving by a person of any money, property or other benefit constitutes a fundraising appeal if, before or in the course of any such soliciting or receiving, the person represents that it is for, or includes, a charitable purpose.

The section also lists circumstances that do not constitute a fundraising appeal. These circumstances involve:

- a request or receipt of an amount required in good faith as a fee for renewal of membership of an organisation,
- an appeal by an organisation to members of the organisation,
- a request that any property be devised or bequeathed,
- an appeal conducted exclusively or predominantly among persons sharing a common employer or place of work in connection with another of those persons, and
- an appeal to any government authority.

Section 5(3)(f) allows a regulation to prescribe additional circumstances that do not constitute a fundraising appeal.

Clause 4 prescribes a request for, or the receipt of, money from a person if the money payable is a genuine fee or charge for the provision of educational facilities or services, child-minding services, goods or services supplied through a supported employment service for people with disabilities, nursing or medical services or other care or welfare services.

Clause 5 prescribes an appeal where there is a request or receipt of specified benefits from a registered club where that request or receipt relates to the ClubGRANTS Scheme (formerly known as the Community Development Support and Expenditure (CDSE) Scheme) administered under the *Gaming Machine Tax Act 2001*.

### Costs and Benefits

Fees or charges for the use of facilities or services under clause 4 are not generally regarded as charitable fundraising activities, and are considered to be a fee or charge paid to receive the service. A request for funding from a registered club under the ClubGRANTS Scheme is not considered to form part of a fundraising appeal.

These exclusions provide a benefit to fundraising organisations and the wider community. If these types of fundraising activities were considered fundraising appeals, there would be cost increases for fundraisers and for the exempted fundraisers who conduct these types of activities.

There would also be an increase in red tape for affected organisations. Exempted fundraisers would have to obtain a charitable fundraising authority in these circumstances.

There is also a benefit to government in reduced regulatory costs under the charitable fundraising regulatory regime.

### **9.2.2 Clause 6 – Religious organisations exempt from the Act**

Section 7(1)(b) of the Act allows the regulations to prescribe religious bodies or religious organisations as exempt from the Act, apart from section 48 (which provides that a person who receives remuneration or benefit from a non-profit organisation with one or more charitable objects may still hold office or membership of the governing body provided certain circumstances are met). This enables an exemption from the requirements of the Charitable Fundraising Act to be prescribed for religious bodies or organisations of a religious character that are not a recognised denomination under section 26 of the *Marriage Act 1961* (Cth).

The proposed Regulation lists 35 exempt religious bodies. An organisation or body is regarded as being religious if its objects and activities suggest the promotion of some religious object and if the beliefs and practices of members constitute a religion.

The effect of this exemption is that exempted religious bodies or organisations are not required to obtain a charitable fundraising authority to undertake fundraising activities.

### Costs and Benefits

There are no direct economic and social costs associated with this clause. If any issue arises with a religious body or organisation improperly accounting for or applying monies collected from the public, the Minister may exercise a legislative discretion to issue a notice declaring the exemption no longer applies in a particular case.

The listed organisations receive a direct benefit from the exemption, which would otherwise result in an increase in costs and red tape due to compliance with the Act and conditions attached to a fundraising authority.

To not prescribe these organisations as religious bodies and organisations would result in increased compliance costs, without any significant benefit to the community.

Notwithstanding this, notice of the release of this RIS and the consultation draft of the proposed Regulation is being provided to each exempted organisation to help determine whether it is appropriate that they remain on the list of exempt religious organisations.

### **9.2.3 Clauses 7 and 8 – Exempt bodies**

Section 9(3)(a) of the Act enables an organisation or person or a class of organisations or persons, to conduct fundraising appeals without holding a fundraising authority, if authorised by the regulations.

Clause 7 states that the following classes of organisations or persons may be authorised to conduct appeals without holding a fundraising authority:

- Local councils,

- Council committees,
- Trustees of trusts where a local council is a trustee,
- Trustees of trusts where the holders of various council offices are trustees by virtue of holding that office, and
- Trustees of trusts where a person nominated by a local council is a trustee by virtue of being nominated by the council.

Clause 8 provides that 11 public universities are authorised to conduct appeals without holding a fundraising authority.

#### Costs and Benefits

There are no direct economic and social costs associated with this clause. There is a direct benefit to local councils and committees and trustees associated with councils along with the 11 listed public universities.

If this exemption was not in place, it is likely that these entities would incur costs associated with the charitable fundraising regulatory regime, without any significant benefit to the community.

Local councils and related entities, as government bodies with governance and reporting obligations, have appropriate systems and internal controls in place to ensure financial accountability for funds raised for a charitable purpose. Therefore, it is unnecessary for those entities to obtain a fundraising authority and be subject to additional accountability controls.

The 11 public universities also have their own systems and internal controls and are subject to governance and reporting obligations. Their financial statements and accountability are also reviewed annually by the NSW Auditor General in accordance with the independence requirements of the Australian Auditing Standards and the *Public Finance and Audit Act 1983*.

There is also a benefit to government in reduced regulatory costs under the charitable fundraising regulatory regime.

#### **9.2.4 Clause 9 – Lawful and proper expenses**

Section 20(3) of the Act states that the regulations may specify what constitutes a lawful and proper expense in connection with fundraising appeals. Clause 9 provides that the Minister must consider certain criteria in determining what constitutes lawful and proper expenses, such as the type and amounts claimed being of a reasonable nature.

The control of expenditure ensures a fair return and is consistent with the objects of the Act to minimise the risk of public deception, and to promote proper and efficient management and administration of fundraising appeals.

#### Costs and Benefits

Clause 9(7) requires that any expense incurred as part of an appeal jointly conducted with a trader must be included in a written contract with the fundraiser. This provides an economic benefit and certainty for the fundraiser. In the absence of this requirement, there could be uncertainty as to which party is liable for particular expenses, and this could result in increased costs for the fundraiser. Although the majority of traders act responsibly, in the absence of this requirement, there is an increased risk that some fundraisers may be found liable for all expenses of an appeal conducted with a trader.

Although these requirements may involve some costs to appeals conducted with traders, they are unlikely to increase costs for fundraisers. Further, any cost to fundraisers in obtaining a written contract is outweighed by the benefit of ensuring that both fundraisers and traders possess a clear understanding of the expenses for which they will be responsible in advance of the appeal.

The requirement that the ratio of expenses to gross proceeds from an appeal be reasonable in the circumstances provides important social benefits to the community that outweigh any possible social costs.

It provides a safeguard that is consistent with community expectations that donations are applied towards a charity's stated objectives.

It would not be appropriate to change the requirement that the commission payable to a collector must not exceed one third of the gross income paid to that collector. Increasing this cap would result in less donations being received by the relevant charity, while any decrease in commissions caused by reducing the cap may result in being a disincentive for people to participate in fundraising appeals. This may in turn risk the level of funding received by charities.

Prohibiting any commissions would be a significant risk for charities, as they would need to rely on volunteer collectors to undertake all fundraising activities. Capping commissions at one third of gross appeal proceeds has provided an appropriate balance between the costs and benefits for the charitable fundraising sector. However, specific comment on the maintenance of this level is sought through this RIS process.

### **9.2.5 Clause 10 – Records of income and expenditure**

Section 22 of the Act provides that a person or organisation that conducts or has conducted a fundraising appeal must keep records of income and expenditure in relation to each appeal. The records must be in writing, include any particulars required by the regulations, be kept at the registered office of the person conducting the appeal and be retained for seven years, which is consistent with the timeframe applying to charitable fundraising organisations registered with the Australian Charities and Not-for-profits Commission.

Clause 10 details the particulars that are to be included in records under section 22(2)(b) of the Act. This includes particulars of all items of gross income, particulars of all items of gross expenditure (including the application or disposition of any proceeds obtained from the appeal), and details of relevant transactions relating to those particulars.

These particulars include all invoices, vouchers and other documents relating to each fundraising appeal.

#### Costs and Benefits

Although there are some costs associated with the requirement to maintain these records, most charitable fundraising organisations would maintain these records as part of sector best practice. Any costs to charitable fundraising organisations are offset by benefits of ensuring the accountability and transparency of fundraising appeals and minimising the risk of deception or fraud.

### **9.2.6 Clause 11 – Collector identification**

Clause 11(1) establishes a requirement whereby persons participating in a fundraising appeal by means of 'face-to-face' solicitations must prominently display an identification card or badge issued to the person for the appeal. A maximum penalty of \$550 applies where this requirement is not met.

Clause 11(2) provides an exemption to this requirement where it is clear to a person attending a fundraising event or function that the event or function is being conducted by or on behalf of a licensed fundraiser.

#### Costs and Benefits

There is a small financial cost associated with requiring face-to-face collectors to wear identification, as it requires fundraising organisations to ensure collectors display an identification card or badge, unless the appeal is being conducted under clause 11(2).

However, this cost is offset by the benefits for the charitable fundraising organisation, as potential donors would be more inclined to support a cause if they are aware of the identity of the person conducting the fundraising, the bona fides of the appeal being conducted, and the benefiting organisation being represented.

The community also benefits from face-to-face collectors displaying identification as it provides greater confidence for people making a donation.

It is appropriate that an offence apply where this requirement has not been met as it is an appropriate regulatory response that enables enforcement action to be taken where there is non-compliance. It allows regulatory discretion to be exercised which can include a warning being issued in appropriate circumstances.

Clause 11(2) provides a red tape reduction benefit by not applying identification requirements where collectors conduct fundraising as part of a fundraising event or function, and it is apparent that the fundraising is being conducted on behalf of the charitable organisation.

### **9.2.7 Clause 12 – Obligations of participants**

Clause 12 requires that persons conducting or participating in fundraising appeals who receive a wage commission or fee are subject to certain disclosure obligations. These persons, other than face-to-face collectors, must disclose that they are employed and the name of their employer.

#### Costs and Benefits

There may be a cost to fundraisers, as people may be reluctant to donate if they are aware that a portion of the donation for a fundraising appeal is being used to pay people involved in fundraising.

Any costs are outweighed by the benefit of improving the transparency of fundraising efforts, whereby people donating to a fundraising appeal are informed where a person receives a wage, commission or fee.

### **9.2.8 Clause 13 – Public access to information**

Section 47 of the Act provides for prescribed documentation and particulars to be supplied to the public. It also enables fees to be prescribed by regulation, for furnishing certain information. This information may be obtained from the authorised fundraiser or from the Minister.

Clause 13 states that on request by any person, the authorised fundraiser is required to provide to the applicant copies of annual audited accounts (also known as financial reports) prepared in relation to fundraising appeals conducted in the seven years prior to the request.

Where an authorised fundraiser is an organisation, the prescribed information also includes a copy of, or an extract from, the organisation's objects and constitution (including any amendments) and the names, qualifications and occupation of members of the governing body of the organisation.

The fee prescribed for copies of documentation provided either by the fundraiser or the Minister is \$17.50 for the first page and \$1.50 for each subsequent page, or such lesser amount as may be determined by the fundraiser or the Minister.

The fees represent a minor increase of \$4.50 (from \$13.00) for the first page and \$0.50 (from \$1.00) from the fees set out in the existing regulation. The existing fees have remained the same for at least the last 12 years and are payable directly to an authorised fundraiser or the Minister.

### Costs and Benefits

It is appropriate that people can obtain prescribed information at a reasonable cost, which offsets the costs involved in gathering and providing the information to the person. It is also consistent with an object of the Act to ensure the proper keeping and auditing of accounts by charitable fundraising organisations.

It is also appropriate that the fees payable to authorised fundraisers and the Minister are subject to a minor increase to help reflect the true cost in furnishing information to members of the public. The increase is consistent with the 34.4 per cent increase in the consumer price index (CPI) inflation rate between 2003 and 2014 and more accurately reflects the administrative costs imposed on authorised fundraisers and the Minister in furnishing such records.

#### **9.2.9 Clause 14 – Notification of change in particulars**

This clause requires authorised fundraisers to provide the Minister with any changes to an organisation's details or governance, including its name and address, constitution, or its branches and traders. Any changes must be notified within 28 days, or within such further time as the Minister may allow.

### Costs and Benefits

It is appropriate that charitable fundraising organisations be required to notify the industry regulator of any changes to its organisation or governing rules to ensure up to date records are held and is consistent with notification requirements applying to entities in other regulated sectors.

Any cost incurred by the organisation is outweighed by the benefit of maintaining the integrity of the OLGR's records relating to the charitable fundraising sector, which ensures accurate data is available for compliance and monitoring activities or where public requests are made by persons seeking information on a particular charitable fundraising organisation.

However, it is appropriate that these provisions be reviewed to ensure the notification requirements continue to be appropriate, or whether there is any benefit in requiring certain particulars to be provided.

Comment is therefore invited from stakeholders on the appropriateness and validity of maintaining all of the provisions prescribed in clause 14 of the proposed Regulation.

### **9.3 Part 3 – Miscellaneous**

#### **9.3.1 Clause 15 – Authority conditions when application delayed**

Section 16(6) of the Act provides that where an application for a fundraising authority is not dealt with within 60 days (or if further information was sought within 60 days) the authority is taken to have been granted, subject to conditions prescribed by regulation.

Clause 15 provides that persons or organisations that are deemed to hold an authority under section 16(6) of the Act comply with the conditions set out in a document prepared by OLGR (and published on its website) titled "Charitable Fundraising Authority Conditions", dated 8 December 2014. When these conditions are subsequently updated, the Regulation will need to be amended accordingly.

These conditions are those imposed where a charitable fundraising authority has been granted under section 13A of the Act.

### Costs and Benefits

There are costs associated with attaching conditions to a fundraising authority taken to have been granted under section 16(6) of the Act in the event that an application is not approved within a 60 day period.

However, these conditions would ordinarily be applied to a fundraising authority that is granted under normal circumstances in accordance with section 13A of the Act.

Failure to attach these conditions to a deemed fundraising authority would remove many of the integrity safeguards and accountability standards in place to help provide protection against the risk of fraudulent activity and ensure the interests of intended beneficiaries are protected.

Therefore, clause 15 ensures a consistent regulatory approach to the conditions applying to a deemed fundraising authority under section 16(6) of the Act and a fundraising authority approved under section 13A of the Act.

### **9.3.2 Clause 16 – Police authorised to act as inspectors**

Section 49(3) of the Act enables the Minister to authorise police officers to exercise the functions of an authorised inspector. Clause 16 proposes that any police officer of or above the rank of sergeant may exercise the functions of an authorised inspector.

#### Costs and Benefits

There is no cost associated with these regulatory arrangements for charitable fundraising organisations. There is a benefit in terms of providing regulatory certainty that senior police can exercise the functions of an inspector under the Act.

### **9.3.3 Clause 17 – Savings provision**

As a savings provision, this clause provides that any act, matter or thing that, immediately before the repeal of the 2008 Regulation, had effect under that Regulation continues to have effect under the 2015 Regulation.

#### Costs and Benefits

This is a machinery matter with no associated direct or indirect costs or benefits.

## **9.4 Proposals to reduce regulatory burden and red tape**

### **9.4.1 Exemption from annual auditing requirements**

Section 24 of the Act requires the accounts of a fundraiser to be audited annually by a qualified auditor or other person with qualifications or experience approved by the Minister. The auditor is required to offer an independent opinion on whether the financial report gives a true and fair view.

For small charities with fundraising income of less than \$50,000 per year, approval has been given, in accordance with section 24(1) of the Act, for a person with no formal accounting training, but who possesses other suitable qualifications and experience to conduct audits. This includes a person with:

- experience and expertise in the field of commercial or government finance, and
- sound accounting knowledge and experience.

However, where the proposed auditor is not a registered company auditor, application must be made to OLGR for approval to engage a person as an auditor.

These arrangements were introduced in November 2013 to assist small charities, particularly in regional and rural areas, that experience difficulties in engaging qualified auditors. They also provided relief from the significant costs of engaging a professional auditor.

To provide further relief from the auditing requirements and reduce red tape for the sector, it is proposed to utilise the exemption power under section 25 of the Act to exempt small charities with fundraising income of less than \$100,000 per year from the auditing

requirements under section 24 of the Act, unless they are directed to have their accounts audited by the Minister (or the Minister's delegate).

This would be consistent with the auditing requirements under the *Associations Incorporation Act 2009*, which does not mandate auditing, but instead provides that the Chief Executive of the Office of Finance and Services may direct an association to have its financial records and accounts audited.

This would provide a significant red tape reduction for low risk small charities that raise less than \$100,000 a year, whilst still allowing remedial action to be taken where alleged misconduct is required to be investigated by regulators.

It is acknowledged that an audit plays a vital role in relation to public and stakeholder confidence and as a source of independent advice on accounting, risks, taxation, compliance and regulatory advice. However, the benefits derived from an audit need to be balanced against the costs, particularly in the context of small charities where the cost of audit can be a high proportion of a charity's gross income and/or assets.

Comment is invited on this proposal or whether other options should be considered. Submissions should be supported by appropriate reasons and clearly indicate the impact of any proposed action.

#### **9.4.2 Exemption for small charities from having to obtain a fundraising authority**

A 2012 Commonwealth Treasury discussion paper, *Charitable fundraising regulation reform*, sought sector feedback on the cost of applying for and complying with fundraising regimes across multiple jurisdictions. Based on the available data and feedback, it is estimated that applying for and maintaining registration in NSW for a charitable fundraising authority (including the preparation of financial accounts) requires 40 hours of volunteer time per year. This time is costed at the rate of \$16.10 per hour, which is the rate used by the NSW Department of Premier and Cabinet for volunteering activities.

It is proposed to utilise the exemption power under section 9(3)(a) of the Act to prescribe a low risk class of fundraisers that will be exempt from the obligation to hold an authority to fundraise. This exemption would apply for fundraisers that raise less than \$10,000 gross in a financial year from charitable fundraising, are not paid for conducting the fundraising, and use only unpaid volunteers.

The receipt of state, federal or local government funding and grants would not constitute a fundraising appeal, and would thereby not be included in the calculation of gross fundraising income.

The exemption would operate in a similar manner to exemptions provided in the Australian Capital Territory for organisations that raise less than \$15,000, and in Victoria for organisations that raise no more than \$10,000.

Charities exempted under this proposal, although not required to register with OLGR, would continue to be subject to key regulatory requirements in conducting an appeal such as:

- keeping records of income and expenditure,
- being subject to investigation or audit by OLGR, and
- having an administrator appointed by the Minister should maladministration be found.

These requirements, which are contained in sections 22, and Divisions 1 and 3 of Part 3 of the Act, apply to any person or organisation that conducts or has conducted a fundraising appeal in NSW, regardless of whether or not a fundraising authority is required to be held or not.

Charities exempted from the proposed requirement to hold a fundraising authority would benefit from not having to apply for registration (or renewal), or not having to prepare audited financial accounts.



However, an exempted charity would not be able to engage a trader (a commercial operator such as a telemarketer or professional fundraiser) without holding a charitable fundraising authority. This will help to maintain transparency by ensuring the public is made aware that a trader is financially contracted by a charity to conduct fundraising activities on its behalf.

Should misconduct, fraud, benefit by deception or other criminal activities occur or be suspected, the matter can be referred to the NSW Police Force. As noted above, action can also continue to be taken under section 10 of the Act against a person that participates in a fundraising appeal that is being conducted unlawfully.

The requirement that appropriate financial records be maintained under section 22 of the Act would continue to require financial reports to be prepared or a fundraising compliance audit to be undertaken if required.

To complement this proposed reform, a publication outlining regulatory responsibilities and promoting best practice for voluntary reporting by exempted fundraisers would be published by OLGR.

Comment is invited on this proposal or whether other options should be considered. Submissions should be supported by appropriate reasons and clearly indicate the impact of any proposed action.

#### **9.4.3 Review of standard conditions imposed on an authority to fundraise**

Each fundraising authority issued in NSW is subject to a standard set of conditions to help secure the integrity of charitable fundraising.

These conditions are referred to as the 'Charitable Fundraising Authority Conditions'. The latest version of these conditions was approved on 8 December 2014 and is published on OLGR's website at [www.olgr.nsw.gov.au](http://www.olgr.nsw.gov.au) (under Charitable fundraising > Resources).

Currently, an earlier version of these conditions is prescribed under Schedule 1 of the existing Regulation for a fundraising authority deemed to have been granted under section 16(6) of the Act. The proposed Regulation omits Schedule 1, and instead, refers to the approved conditions under clause 15.

These conditions relate to financial reporting, disclosure, record keeping and internal control requirements, and also include a number of controls to protect the welfare of children who participate in fundraising appeals.

There are financial costs for fundraisers in complying with these conditions. This may include, for example:

- the cost of maintaining such financial accounts and records as are required by the conditions,
- the cost of preparing reports on the outcome of appeals or appeals,
- the cost of obtaining any required notices or collection boxes/devices, and
- any cost associated with establishing mechanisms for resolving internal disputes and dealing with employee and public complaints.

It may also include the cost of seeking professional advice and/or assistance to ensure the organisation is meeting each of the conditions.

In addition, there are also financial and administrative costs to government in monitoring sector compliance.

However, these costs are outweighed by the benefit to both the charitable fundraising sector and the public in improving transparency and donor confidence, as well as the safeguards for children participating in appeals.

It is proposed to undertake a review of these conditions as part of the consultation process for this RIS and the proposed Regulation. The focus of this review will be to remove any

redundant conditions, while also identifying opportunities to reduce any unnecessary regulatory burden and red tape.

Comment is therefore invited on the existing conditions, including any conditions that should be amended or removed. Submissions should be supported by appropriate reasons and clearly indicate the impact of any proposed action.

## 10 CONSULTATION PROGRAM

Notice of the release of this RIS been provided to the 35 exempted religious organisations listed under clause 6 of the proposed Regulation for the purpose of establishing whether they should continue to be exempted from having to obtain an authority to fundraise.

The following organisations have also been informed of the release of this RIS and the consultation draft of the proposed *Charitable Fundraising Regulation 2015*:

### **Industry, Community Organisations and Advisory Bodies:**

- Australian Council of Social Service (ACOSS)
- ClubsNSW
- Council of Social Services in NSW (NCOSS)
- Centre for Volunteering
- Ethnic Communities' Council of NSW
- Fundraising Institute of Australia
- Local Government & Shires Associations of NSW
- National Roundtable of Non-Profit Organisations
- Public Fundraising Regulatory Association

### **Government Agencies:**

- Australian Charities and Not-for-profits Commission
- Community Relations Commission
- Department of Education and Communities
- Department of Family and Community Services
- Department of Justice
- Department of Premier and Cabinet
- Information and Privacy Commission NSW
- Office of Local Government
- NSW Fair Trading
- NSW Ministry of Health
- NSW Office of the Children's Guardian
- NSW Police Force
- NSW Treasury
- The Audit Office of NSW



New South Wales

# Charitable Fundraising Regulation 2015

under the

Charitable Fundraising Act 1991

[*The following enacting formula will be included if the Regulation is made:*]

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

Minister for Racing

## Explanatory note

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

This Regulation makes provision with respect to the following:

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

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

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## Charitable Fundraising Regulation 2015

under the

Charitable Fundraising Act 1991

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Charitable Fundraising Regulation 2015*.

#### 2 Commencement

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

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

#### 3 Definitions

(1) In this Regulation:

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

***face-to-face collector*** means a person who participates in a fundraising appeal by face-to-face solicitation.

***the Act*** means the *Charitable Fundraising Act 1991*.

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

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

## Part 2 Fundraising appeals

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

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

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

### 5 Community support and expenditure schemes

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

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

(2) In this clause:

*ClubGRANTS guidelines* has the same meaning as it has in section 16 of the *Gaming Machine Tax Act 2001*.

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

### 6 Religious organisations exempt from Act

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

ACE Global Incorporated

Answers with Bayless Conley Australia Trust

Australian Asian Church Incorporated

Bible Society NSW

Buddhist Council of New South Wales Incorporated

Church Missionary Society—Australia as the operator of a public benevolent institution

Coffs Coast Schools Ministry Inc

Cornerstone Community

Creflo Dollar Ministries

Evangelizing Commerce Incorporated

Far East Broadcasting Co (Australia)

Good News Broadcasting Association Limited

Grace Evangelical Church Newcastle Inc

Hope Media (trading as Hope 103.2)

Hope Mission Centre

Hour of Power Australia Limited  
Hwa Tsang Monastery Inc  
IN Network Australia Inc  
Jesse Duplantis Ministries  
Kenneth Copeland Ministries Eagle Mountain International Church Ltd  
Leading The Way With Dr Michael Youssef Australia Limited  
Life Recovery Ministries Inc  
Loyal Orange Institution of New South Wales  
New South Wales Ecumenical Council Relief Institute Inc  
Open Doors Australia Inc  
Rose Mountain Incorporated  
Seventh Day Baptists (Australia) Pty Ltd  
Shoalhaven Employers of Christian Education Teachers Inc  
Shree Swaminarayan Temple (Sydney) Inc  
Tahlee Ministries Incorporated  
The E.U. Graduates Fund  
The Journey Inc  
The Servants of Jesus Community Ltd  
The Trustees for Gospel Patrons Society Foundation  
Voice of the Martyrs Limited

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

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

**8 Universities 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) Charles Sturt University,
- (c) Macquarie University,



- (d) 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, email or mail), and
- (b) who receives a wage, commission or fee for doing so,

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

Maximum penalty: 5 penalty units.

## 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 provide to the applicant a copy of the annual audited financial statements (also known as financial reports) in respect of all fundraising appeals conducted by the person or organisation during the 7 financial years prior to the request.
- (2) If the applicant's request relates to an organisation, the following must also be provided on request:
  - (a) a copy of or extract from the organisation's objects and constitution, including any amendments,
  - (b) the names, 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 providing financial statements or information is:
  - (a) if provided by or on behalf of the Minister—\$13.00 for the first page and \$1.00 for each additional page, and

- (b) in any other case—\$13.00 for the first page and \$1.00 for each additional page or such lesser amount as the person or organisation providing the information may determine.
- (4) In this clause, *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.

#### **14 Notification of changes to particulars of authorised fundraiser**

- (1) An authorised fundraiser must, within 28 days (or within such further time as the Minister may allow) after the relevant change or event, provide to the Minister in writing:
  - (a) if the authorised fundraiser is a natural person, details of any amendment, deletion or addition to the charitable objects or purposes for which the person wishes to raise funds under its authority, and
  - (b) if the authorised fundraiser is an organisation (whether or not incorporated), details of any changes to its constitution with respect to:
    - (i) the charitable objects or purposes of the organisation, or
    - (ii) the non-profit nature of the organisation with respect to the disposition of funds obtained through its fundraising appeals, or
    - (iii) the disposition of funds and assets obtained from fundraising appeals to a non-profit organisation with similar or identical charitable objects or purposes in the event of a winding-up of the organisation, and
  - (c) if the authorised fundraiser is an organisation with branches that are not authorised fundraisers in their own right, details of any change in the following particulars:
    - (i) the name, including the trading or business name, of any branch,
    - (ii) the business address, postal address, email address, website address, address of the registered office and the telephone and facsimile numbers of any branch,
    - (iii) the name of any branch that is no longer under the direction and control of the governing body of the authorised fundraiser,
    - (iv) the name of any branch that has ceased to operate, and
  - (d) details of any change to the incorporated status of the authorised fundraiser, and
  - (e) if there have been any modifications to the particulars of an existing trader, or if a new trader has been engaged, the following details:
    - (i) if the trader is a natural person, the person's name, business address, postal address, email address, website address, and telephone and facsimile numbers,
    - (ii) if the trader is an organisation, its full name (together with any trading or business name), its business address, postal address, email address, website address, and its telephone and facsimile numbers,
    - (iii) if the trader is an organisation, the full name of each director and owner of the trade or business,
    - (iv) the period for which the trader is authorised to conduct the appeal according to the written contract,
    - (v) the type of appeal or appeals to be undertaken, and
  - (f) details of any change in the name, address or telephone or facsimile number of the auditor, and

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# public consultation draft

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Charitable Fundraising Regulation 2015 [NSW]  
Part 2 Fundraising appeals

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(g) confirmation of any decision by the authorised fundraiser to cease to conduct fundraising appeals.

Maximum penalty: 20 penalty units.

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

## **Part 3 Miscellaneous**

### **15 Conditions of authority**

Subject to any variations under section 19 of the Act, the conditions set out in the document prepared by the Office of Liquor, Gaming and Racing titled “Charitable Fundraising Authority Conditions”, dated 8 December 2014 and published on the website of the Office of Liquor, Gaming and Racing 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**

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