



# Regulatory Impact Statement

## Proposed Charitable Fundraising Regulation 2020



**August 2020**

## **Disclaimer**

This publication avoids the use of legal language, with information about the law summarised or expressed in general statements. The information in this document should not be relied upon as a substitute for professional legal advice.

For access to legislation in force in NSW go to the official NSW Government website for online publication of legislation at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

## **Copyright Information**

© State of New South Wales

You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose provided that you attribute the Department of Customer Service as the owner. This publication is licensed under the Creative Commons Attribution 4.0 licence. For more information, visit [www.customerservice.nsw.gov.au/copyright](http://www.customerservice.nsw.gov.au/copyright)

# Contents

---

<b>CONTENTS</b>	<b>3</b>
<b>1. BACKGROUND INFORMATION</b>	<b>1</b>
1.1 Why the Regulation is being remade	1
1.2 Bergin Inquiry	1
1.3 Matters outside the scope of this consultation	2
<b>2. CONSULTATION PROGRAM</b>	<b>3</b>
Public consultation on the proposed Regulation & RIS	3
How to make a submission	3
Confidential submissions	3
Evaluation of submissions	4
Commencement of proposed Regulation	4
<b>3. OBJECTIVE AND RATIONALE OF THE REGULATION</b>	<b>5</b>
3.1 Need for government intervention	5
Public expectation	5
3.2 Options for achieving objectives	5
3.3 Criteria used to assess the regulatory options	6
<b>4. IMPACT ASSESSMENT OF OPTIONS</b>	<b>7</b>
4.2 Assessment of Option 1 – Take no action	7
4.3 Assessment of Option 2 – Maintain the status quo	9
4.4 Assessment of Option 3 – Remake the Regulation	10
4.5 Cost-benefit analysis	11
<b>5 DISCUSSION OF THE PROPOSED REGULATION</b>	<b>14</b>
5.1 Definitions of key terms – clause 3	14
5.2 Parents and citizens associations are authorised to conduct fundraising appeals without holding authorities – clause 8	15
5.3 Grounds to suspend and cancel an authority to fundraise - clause 9	16
5.4 Fit and proper person test - clause 10	16
5.5 ACNC registration revocation is constituted as grounds for suspension or cancellation of authorities – clause 11	17
5.6 Procedures and review of suspension or cancellation of authorities – clauses 12 & 13	17
5.7 Funds and expenses – clauses 14, 15 & 16	18
5.8 Record keeping requirements – clauses 17 & 18	19

<b>5.9 Financial reporting – clause 19</b>	<b>21</b>
<b>5.10 Auditing requirements – clause 20</b>	<b>22</b>
<b>5.11 Written agreements between traders and authority holders – clause 21</b>	<b>23</b>
<b>5.11 Notification of additional matters to the Secretary – clause 23</b>	<b>24</b>
<b>5.13 Religious organisations exempt from Act – clause 27</b>	<b>25</b>
<b>5.14 Standard Conditions of an Authority – clause 22 &amp; Schedule 1</b>	<b>26</b>
<b>5.18 Other issues not raised in this RIS</b>	<b>28</b>
<b>APPENDIX 1 - SUMMARY OF REGULATION MAKING POWERS</b>	<b>29</b>
<b>APPENDIX 2 - SUMMARY OF MAIN CHANGES TO REGULATION</b>	<b>30</b>
<b>APPENDIX 3 - LIST OF TARGETED STAKEHOLDERS</b>	<b>33</b>

# 1. Background Information

---

## 1.1 Why the Regulation is being remade

The Charitable Fundraising Regulation 2020 (the proposed Regulation) has been drafted to replace the Charitable Fundraising Regulation 2015 (the current Regulation).

Under the *Subordinate Legislation Act 1989* most regulations are scheduled for automatic repeal after 5 years. This is to ensure that each regulation remains relevant and fit for purpose. Regulations that are due for repeal can be remade (either with or without amendments), postponed or allowed to lapse.

The proposed Regulation will support the Act and the package of reforms aim to maintain public confidence in this important community activity and reduce the regulatory burden for charitable fundraisers. This Regulatory Impact Statement (RIS) sets out the rationale and objectives of the proposed Regulation, options for achieving the objectives, including an assessment of the costs and benefits. The RIS seeks feedback from stakeholders and the community.

Additionally, the NSW Parliament passed amendments to the primary legislation – the *Charitable Fundraising Act 1991* (the Act) - in October 2018. These reforms were part of the NSW Government's response to the Bergin Inquiry into the fundraising activities of the Returned Services League of Australia - NSW Branch (RSL NSW), RSL DefenceCare and RSL LifeCare (the Bergin Inquiry) – see below.

## 1.2 Bergin Inquiry

On 5 May 2017, the Honourable Patricia Bergin SC was appointed under the Act to inquire into the misuse of funds, remuneration non-compliance and misleading conduct among notable bodies in the charitable fundraising industry. A report detailing the findings of the inquiry was furnished in January 2018 (the Bergin Report).

The Bergin Report outlined 29 recommendations, 23 of which directly related to reform in the Charitable Fundraising regime. These recommendations aim to improve governance and the regulatory framework without increasing red-tape. The Bergin Report also sought to eradicate measures that would impede future attempts at interjurisdictional harmonisation.

The *Charitable Fundraising Amendment Act 2018* (the Amendment Act) passed in October 2018 to facilitate the implementation of the Bergin inquiry recommendation. The amendments centred on improving oversight of charities, facilitating legislative harmonisation, streamlining administrative processes and reducing regulatory burden and implementing accountability measures, thereby increasing public confidence in the charitable fundraising sector.

The amendments also aimed to reduce regulatory burden for charities and improves compliance oversight through new penalties and powers for NSW Fair Trading, so it can properly investigate the minority of charities that do the wrong thing.

### **1.3 Matters outside the scope of this consultation**

Matters covered by the Act are not the subject of the consultation process. This RIS only deals with matters within the scope of the proposed regulation.

## 2. Consultation Program

---

### Public consultation on the proposed Regulation & RIS

The proposed Regulation and this RIS are available on the 'Have Your Say' page of the Fair Trading website at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au).

A notice advising the commencement of public consultation and the availability of the proposed Regulation and RIS was published in the NSW Government Gazette, and in the Daily Telegraph and the Sydney Morning Herald.

Copies of the proposed Regulation and this RIS have been provided directly to some key stakeholder groups and organisations. A list of these stakeholders is provided at **Appendix 2**.

### How to make a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this RIS.

We would prefer to receive submissions by email and request that any documents provided to us are produced in an 'accessible' format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>. You may also provide comments via an online form.

Please forward submissions by:

Online: <https://www.fairtrading.nsw.gov.au/consultation-tool>

Email: [charitablereforms@customerservice.nsw.gov.au](mailto:charitablereforms@customerservice.nsw.gov.au)

or by mail to:

Charitable Fundraising Regulation 2020  
Policy & Strategy, Better Regulation Division  
Level 22, 4 Parramatta Square  
12 Darcy Street  
PARRAMATTA NSW 2150

**The closing date for submissions is 2 September 2020.**

### Confidential submissions

All submissions are made publicly available on the Department's website. If you do not want your personal details or any part of your submission published, please indicate this clearly in your

submission together with reasons. Automatically generated confidentiality statements in emails are not sufficient.

You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*).

It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of NSW Parliament, with the final version of the Regulation.

## **Evaluation of submissions**

All submissions received will be considered and assessed. The proposed Regulation may be amended, if necessary, to address issues identified in the consultation process. If further information is required, targeted consultation may be undertaken.

## **Commencement of proposed Regulation**

Once the Regulation has been finalised it will be submitted to the Governor for approval.

The final Regulation will then be published on the NSW Government website for online publication of legislation at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) prior to commencing.

## 3. Objective and rationale of the Regulation

---

### 3.1 Need for government intervention

The primary objective of the proposed Regulation is to provide support and administrative detail for the proper and effective operation of the Act.

The proposed Regulation is a continuation of an ongoing regulatory scheme that has been in existence since the introduction of the Act. The regulatory framework assists persons and organisations conducting charitable fundraising activities, which contributes positively to the community and operate in the public interest. However, the Bergin Report found that there are issues regarding transparency and accountability within the charitable sector that need to be addressed. The proposed Regulation includes measures that respond to these issues in an appropriate and proportionate way.

#### Public expectation

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.

The Regulation supports the objects of the Act by:

- providing administrative support;
- providing guidance to charitable fundraisers and members of the public;
- helping clarify the role and responsibility of the Regulator;
- assisting the ongoing viability of persons or organisations conducting charitable fundraising activities, which contribute positively to the community and operate in the public interest;
- promoting confidence in the conduct of charitable fundraising appeals so that there are positive community impacts (including impacts on donors and beneficiaries); and
- ensuring the application of profits/proceeds for the purpose stated in conducting the charitable fundraising activity.

The Department of Customer Service takes a 'stewardship' approach to the administration of all legislation for which it is responsible. The Department also monitors the operation of the charitable fundraising laws to ensure they remain fit for purpose and takes action when warranted.

### 3.2 Options for achieving objectives

In determining how best to achieve the objects of the Act, the following three options were considered.

### **Option 1: Take no action**

Allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

### **Option 2: Maintain the status quo**

Remake the existing Regulation without amendment to maintain the current regime.

### **Option 3: Make the proposed Regulation**

Remake the existing Regulation with amendments to modernise and improve the regulatory regime, and to facilitate the introduction of the charitable fundraising law reform package.

## **3.3 Criteria used to assess the regulatory options**

The following criteria have been used to evaluate the above options:

- the extent to which the option:
  - provides protection against the risk of fraudulent activity in charitable fundraising,
  - promotes integrity safeguards and accountability,
  - ensures the interests of intended beneficiaries are protected,
  - supports the objectives of the Act and
  - reduces red tape and regulatory burden
- the cost effectiveness of each option, in terms of costs and benefits to business, consumers and government.

## 4. Impact assessment of options

### 4.1 Summary and preferred option

Option 3 is the preferred option. Making the proposed Regulation will help achieve the Act's objectives by introducing provisions to effectively strengthen protection for the public, enhance accountability and transparency of charitable fundraising activities, and facilitate the Regulator's compliance and enforcement activities.

It is considered that the making of the proposed Regulation provides the most appropriate means of achieving the Act's 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.

**Table 1: Summary of costs and benefits of each option**

Option	Costs	Benefits	Overall benefit	
1	Take no action	High	<u>Medium</u>	Negative
2	Maintain status quo	Low	Low	Negative
3	Make proposed Regulation	Low	Medium	Positive

**Table 2: Summary of benefits of each option**

Evaluation criteria	Option 1: Take no action	Option 2: Maintain status quo	Option 3: Make new Regulation
Reduces regulatory burden	Yes	No	Yes
Enhances transparency & accountability	No	No	Yes
Supports consumer protection measures	No	Yes	Yes

### 4.2 Assessment of Option 1 – Take no action

Option 1, taking no action, would result in the existing Regulation lapsing later this year. It would not be replaced by another regulation.

The Act (as amended) requires a range of matters to be prescribed by regulation in order to operate effectively. Not prescribing these matters would result in the absence of regulatory provisions required to support the Act's objectives and provide essential guidance to charitable fundraisers and members of public.

Under Option 1, the requirements in the Act would remain in force. However, charitable fundraisers would have to determine how best to comply with those requirements in the absence of the general

guidance and administrative clarification usually provided by regulations. This could have a number of significant consequences, including (but not limited to):

- ongoing confusion in the sector with charitable fundraisers uncertain how to comply with their obligations
- drain on charitable fundraisers' resources as they would need to develop procedures to ensure they could comply with the Act
- reduction in funds flowing through to beneficiaries
- exit of fundraisers from the sector as likely increases in compliance costs make operations less financially viable.

For these reasons, Option 1 is not preferred.

**Table 3 – Assessment of Option 1**

	<b>Charities</b>	<b>Consumers and general public</b>	<b>Government</b>
<b>Costs</b>	<ul style="list-style-type: none"> <li>• Confusion as to when an authority is required</li> <li>• Little guidance on how to satisfy the requirements in the Act</li> <li>• Currently exempt organisations under the Regulations will lose that exemption</li> </ul>	<ul style="list-style-type: none"> <li>• Significantly reduced regulations around financial reporting for charities may give rise to higher risks of consumer abuse and misappropriation of funds</li> </ul>	<ul style="list-style-type: none"> <li>• Increased demand for help from charities due to unclear requirements for compliance</li> <li>• Increased complaints from the public due to decreased transparency of charities' activities</li> <li>• Bergin Report recommendations would not be effectively implemented</li> <li>• Increased government spending to investigate minor non-compliance matters that could be avoided through providing clearer rules and guidance</li> </ul>
<b>Benefits</b>	<ul style="list-style-type: none"> <li>• Charitable fundraisers may be able to develop their own compliance</li> </ul>	<ul style="list-style-type: none"> <li>• No identifiable benefits</li> </ul>	<ul style="list-style-type: none"> <li>• No identifiable benefits</li> </ul>

	process that may lead to more flexibility		
--	---	--	--

### 4.3 Assessment of Option 2 – Maintain the status quo

The proposed Regulation would not be made. The existing Regulation would need to be re-made to support the Act.

The current regulatory regime will continue to apply. However, rules relating to the conduct of appeals, financial reporting, record keeping requirements and other relevant information needed by charitable fundraisers to comply will be “scattered” across various instruments such as the Act, the existing Regulation and the Charitable Fundraising Standard Conditions (Standard Conditions). The decentralised nature of information in the existing regime is confusing and to some degree inaccessible for organisations seeking to undertake charitable fundraising. In addition, the potential benefits of a more effective and appropriate regulatory framework will not be realised.

As such, Option 2 is not a preferred option.

**Table 4 – Assessment of Option 2**

	<b>Charities</b>	<b>Consumers and general public</b>	<b>Government</b>
<b>Costs</b>	<ul style="list-style-type: none"> <li>Maintaining the status quo despite recent incidents that arose due to the gap in current accountability measures would decrease public confidence in the sector</li> <li>Could create uncertainty for charitable fundraisers as the Bergin Report’s law reforms would not be introduced</li> </ul>	<ul style="list-style-type: none"> <li>Uncertainty about the current regime will remain and may discourage individuals or smaller groups from starting a charity</li> <li>Will not improve public confidence in the sector</li> </ul>	<ul style="list-style-type: none"> <li>Continued demand for resources to investigate and prosecute non-compliance on simple enquiries</li> <li>Regulatory framework gaps would decrease the Regulator’s effectiveness</li> </ul>
<b>Benefits</b>	<ul style="list-style-type: none"> <li>No operational changes as the sector is already familiar with current rules</li> </ul>	<ul style="list-style-type: none"> <li>Ongoing familiarity with how the sector operates</li> </ul>	<ul style="list-style-type: none"> <li>No need to adapt compliance and enforcement strategy to a new regulatory regime</li> </ul>

## 4.4 Assessment of Option 3 – Remake the Regulation

If the proposed Regulation is introduced to support the Act, it would provide an updated regulatory framework that reflects contemporary requirements and approaches.

First, the proposed Regulation introduces stronger accountability measures in terms of clearer record-keeping and accounting requirements. For example, the proposed Regulation introduces general accountability clauses which emphasises the need for charities to have written agreements with traders and to maintain adequate records, to trace fundraising proceeds. The more detailed accountability processes mean that, if required, fundraising proceeds would be more easily traceable. It would also promote information transparency and could increase consumer confidence in charities.

Second, the proposed Regulation consolidates and streamlines current rules that are scattered across different documents into one single regulatory instrument. Unnecessary administrative and regulatory processes have been removed, rules are clarified in simpler terms, more principle-based obligations are introduced and plain English is used. The aim is to improve compliance and promote self-regulation as there will be less confusion around how to comply with the charitable fundraising regime. Better accountability and compliance would help boost public confidence and perception of charities in NSW. In turn, it may result in less enquiries received by Fair Trading.

Third, the proposed Regulation introduces a fit and proper person test to restrict management of charitable funds to responsible individuals and organisations. Applicants who have been convicted of fraud, misconduct or dishonesty related offences in the past 10 years would not be able to run a charity. If the applicant is an organisation, then this requirement extends to the directors of the company or board of trustees.

Furthermore, an applicant for an authority must not be going through insolvency, be placed in liquidation or under external administration or being wound up. These new requirements aim to minimise the risk of charitable funds being in the hands of individuals who have a prior history of mismanaging money. This could also improve the level of public confidence in charities.

Lastly, the proposed Regulation expands on the suspension and revocation powers provided by the Act. It will be possible for the Regulator to refuse, suspend, or cancel an authority if an applicant is no longer fit and proper, or a NSW authority holder has its registration revoked by the ACNC. This allows the Regulator to respond more quickly, take a pro-active approach to indications of potential non-compliance, and minimise adverse outcomes. A more effective and appropriate compliance and enforcement regime could also enhance complaint investigation.

The proposed Regulation would support the Act effectively. For these reasons, Option 3 provides the **greatest net benefit** in comparison to the other options and is the preferred option.

**Table 5 – Assessment of Option 3**

	<b>Charities</b>	<b>Consumers and general public</b>	<b>Government</b>
<b>Costs</b>	<ul style="list-style-type: none"> <li>Initial costs associated with understanding the new regulatory changes and setting up adequate internal data collecting and accounting processes</li> <li>Initial costs from updating internal policy and procedures to comply with new Regulations</li> </ul>	<ul style="list-style-type: none"> <li>No identifiable costs</li> </ul>	<ul style="list-style-type: none"> <li>Initial costs from updating internal policy and procedures</li> </ul>
<b>Benefits</b>	<ul style="list-style-type: none"> <li>Reduced confusion around rules with a single, centralised legislative instrument that contains all provisions</li> </ul>	<ul style="list-style-type: none"> <li>Greater information transparency around charitable purpose and charitable proceeds</li> <li>Likely increased public confidence in charities</li> <li>May enhance the level of community engagement with the sector</li> </ul>	<ul style="list-style-type: none"> <li>Enhanced reporting requirements may help identify accountability issues and aid compliance efforts</li> <li>Greater capacity to take action against bad players</li> </ul>

## 4.5 Cost-benefit analysis

*Note: The below analysis is based on collated data provided from internal sources.*

It is acknowledged that the social and economic costs and benefits of each option, including making the proposed Regulation, are difficult to quantify, particularly in relation to the economic value of community trust. As fundraising authorities will remain fee-free, there are no additional costs in this regard.

In NSW there is significant diversity in the size and composition of approximately 5,343 authorised fundraising organisations. The funds raised from individual charitable fundraising appeals in a financial year may range from a few hundred dollars to tens of millions of dollars. The costs incurred by individual fundraisers also vary significantly.

In 2019, a total of 1,655 general enquiries were received by the Department of Customer Service (NSW Fair Trading) relating to charitable fundraising. Most of the enquiries related to what kinds of records fundraisers are required to maintain.

Very few complaints were received from persons donating to these appeals. For example, in 2019 the Department received 28 complaints regarding unauthorised fundraising. Cases of non-compliance were usually found to result from the complexity or differing requirements of various relevant laws, and not due to intentional mischief or fraudulent behaviour. The experience of the Office of Liquor and Gaming, who previously administered the charitable fundraising laws, was that complaints in the past resulted mostly from minor and unintentional mistakes made by good willed volunteers and paid charity workers.

Under Option 1, an increasing amount of guidance would be sought by charitable fundraisers. There being no regulations, a number of requirements and obligations in the Act that would usually be further clarified in regulations would be effectively left “open ended” and vague. For example, particulars that must be included as part of a non-ACNC entity’s annual financial reporting would not be clarified. As a result, the NSW Government would have to commit more resources to ensure it is able to address incoming enquiries.

Implementation of Option 2 creates similar circumstances. Should Option 2 be chosen, the existing Regime would continue to remain in force. Current requirements that are scattered across different legislative instruments will not be consolidated or streamlined into one single regulatory regime. As such, widespread confusion relating charitable fundraising requirements would likely continue.

The proposed Regulation – Option 3 – will centralise information from the Standard Conditions and existing Regulations, and will also introduce new requirements many of which align with the requirements of the ACNC. The changes to the framework effectively “group” requirements and obligations imposed on charitable fundraisers and provide clarity about financial reporting, record-keeping and governance. There may be additional costs associated with the proposed financial reporting requirements. However, most large organisations would already be meeting these requirements as part of sector best practice. Any increased costs to charitable fundraising organisations may be offset by the benefits of greater accountability and transparency for fundraising appeals, which will help to minimise the risk of fraud or other mischief. This will lead to greater public confidence in and support of charitable fundraising.

As with changes to any existing regulatory framework, it is expected that there will be a period of adjustment during which time enquiries will increase due to unfamiliarity with the new requirements.

It is also anticipated that the clarity and centralisation of information in the proposed Regulation will result in an overall reduction in enquiries over time. The Department will continue to monitor related enquiries data and assess the dataset as a reflection of the effectiveness of the Charitable Fundraising regime.

## 5 Discussion of the proposed Regulation

---

This chapter provides analyses of each clause in the proposed Regulation. Many of the provisions in the Act and the proposed Regulation are intended to ensure the integrity of charities and fundraising appeals, and thereby maintain community confidence in charitable fundraising activities.

The proposed Regulation also consolidates some of the key requirements previously contained in the Standard Conditions, removes overlapping provisions and introduces principle-based accountability provisions that align well with the ACNC requirements. This includes:

- a uniform accounting standard which all reports must adhere to
- detailed requirements around giving receipts to funds received
- alignment in the reporting contents in annual returns with ACNC's "annual statements"
- exemption for ACNC-registered charities to report separately to NSW Fair Trading if they have already reported directly to the ACNC
- self-disclosure reporting requirements.

These proposed changes make reporting requirements easier to understand via clear language. This may reduce the risk of non-compliance. Overall, the proposed changes ensure that the integrity of accounts prepared are of a high and consistent quality. This will in turn facilitate better compliance, governance and increased transparency as charitable funds obtained from appeals can be appropriately identifiable and traceable to its source.

Submissions are welcome on any aspect of the proposed Regulation or any other relevant issue, whether or not raised in this RIS. However, the following discussion points provide greater context for some provisions in the proposed Regulation and explore some regulatory options for these provisions.

### 5.1 Definitions of key terms – clause 3

The proposed clause 3 contains definitions of various terms used throughout the proposed Regulation. The following new terms have been included in the proposed Regulation:

- ACNC responsible entity
- Australian Accounting Standards
- Australian Auditing Standards
- Supply of goods.

These provisions are interpretation tools which benefit stakeholders as they promote understanding and functioning of the Regulation.

## 5.2 Parents and citizens associations are authorised to conduct fundraising appeals without holding authorities – clause 8

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.

Under section 9(3)(b) an organisation established by an Act and subject to the control and direction of a Minister can conduct a fundraising appeal without being the holder of an authority. The formation and operation of a Parents and Citizens (P&C) Association is established and governed by the *Education Act 1990* (Education Act). Section 115(1A) of the Education Act grants any P&C Association discretion to be incorporated under either the *Parents and Citizens Associations Incorporation Act 1976* (P&C Act) or under the *Associations Incorporations Act 2009*. As such, all P&C Associations constituted under the Education Act are under the control and direction of the Minister for Education and Early Childhood Learning.

The existing Regulation is unclear as to whether P&C Associations in NSW Government public schools are exempt from holding an authority. Due to this uncertainty, NSW Fair Trading is aware of the practice of many P&C Associations applying for authorities just to ensure that their school-run charitable activities comply with legislative requirements. The proposed Regulation is now making it unambiguous that all P&C Associations in NSW Government schools constituted under the Education Act are exempt from the requirement to hold a fundraising authority.

Fundraising appeals run by P&C Associations are primarily used towards infrastructure or educational development in their respective schools or communities. There is a great social benefit in reducing the administrative burden on P&C Associations to apply for authorities, as members of P&C Associations work on an unpaid and voluntary basis. Lessening the red tape for P&C Associations also means that there is greater flexibility in running activities. This may promote greater parental and guardian involvement in school environments, create unity in the community and result in positive change in student welfare.

Clause 8 states that P&C Associations are expressly exempt from holding an authority to conduct a fundraising appeal.

However, Parents and Friends Associations in non-state government schools, such as private schools or independent faith schools, are not included in this proposed exemption as they do not fall under the portfolio and control of the Minister.

**2. Should the proposed Regulation include exemptions for Parents and Friends Associations in non-state government schools? What are the implications?**

### **5.3 Grounds to suspend and cancel an authority to fundraise - clause 9**

Section 16(2)(i) of the Act enables the Secretary to refuse an application for an authority if the Secretary is not satisfied by matters prescribed by the regulations.

Clause 9 provides the Secretary with discretion to refuse an application for an authority. Under the proposed clause, the Secretary can refuse an application for an authority if:

- the applicant or associate has not held or does not hold any licence that was cancelled because of dishonesty or fraud,
- the applicant or associate has a conviction in NSW or elsewhere for an offence involving dishonesty that was recorded in the last 10 years, unless the Secretary has determined under subsection 9(b) that the offence should be ignored.

These grounds will enable the Regulator to analyse historical behaviour more thoroughly as a basis for a decision to award, revoke or renew an authority. If the applicant's authority has been suspended or cancelled but they have demonstrated that they are once again eligible, the Secretary can then use discretion to assess the application rather than rely on an obligation to refuse. The introduction of grounds to suspend or cancel as a discretion to refuse aligns with licencing structures of other NSW Fair Trading licences.

### **5.4 Fit and proper person test - clause 10**

Clause 10 introduces a new fit and proper person test. This clause supplements the new powers given to the Secretary in sections 16 and 19 of the Act (as amended) to allow for the refusal, suspension or cancellation of an authority. The intention of the fit and proper person test is to restrict management of charitable funds to responsible individuals and organisations with no prior money-related issues. This is also in-line with the ACNC's concept of a "responsible person" to reduce conflicts of interests in the management of funds. Under the proposed clause 10, a person is not fit and proper if:

- the person has been convicted of fraud or dishonesty related offences in the past 10 years;
- the person who have been convicted of an offence against the Act or the Regulation; and
- the person or a corporation that is going through insolvency, is placed in liquidation or under external administration or is wound up.

The proposed clause makes it clear that if the person is a corporation, the fit and proper test applies to the director of the corporation or a person who is concerned in the management of the corporation.

If a person or an organisation is not considered to be fit or proper, then an authority to fundraise may not be granted. If a person or an organisation that currently holds an authority but then subsequently becomes not fit and proper, the Regulator can exercise its powers to suspend or cancel the authority pending an investigation. Public confidence in charities' governance and use of funds would increase if the risk of charitable funds being in the hands of persons who have a prior history of mismanaging money is minimised.

## **5.5 ACNC registration revocation is constituted as grounds for suspension or cancellation of authorities – clause 11**

Clause 11 introduces additional grounds for suspension or cancellation of authorities. Registration with the ACNC is a pathway to obtain a fundraising authority in NSW under the new section 6(1) of the Act (as amended). Under clause 11 of the proposed Regulation, revocation of an ACNC registration can be used as grounds for suspension or cancellation of a charitable fundraising authority in NSW. It is proposed that suspension or cancellation of an authority can occur where:

- the ACNC suspends or revokes an entity's ACNC registration
- the authority holder is a corporate body and its respective registration is cancelled or suspended by the regulatory body that administers the legislation under which it is registered.

The ACNC has a range of powers to deal with non-compliance. Revocation due to non-lodgement of the Annual Information Statement (AIS) is the most common reason why the ACNC revokes charities' registration. ACNC registered charities will receive at least four reminders to submit their AIS. The ACNC has a policy where charities with two outstanding AIS' will have their charity registration revoked (the 'double defaulter' process).

NSW Fair Trading is aware of a number of organisations that have been deregistered as corporate entities but continue to be registered by the ACNC. The additional grounds proposed under clause 11 ensures that NSW Fair Trading can mitigate problems arising from indications of non-compliance.

## **5.6 Procedures and review of suspension or cancellation of authorities – clauses 12 & 13**

Clause 12 enables the Secretary to issue a written notice to the holder of the authority if there are grounds for the suspension and cancellation of an authority. Notice of the suspension or cancellation

must specify the date or time from which suspension or cancellation takes effect and the grounds for the suspension or cancellation. A notice of suspension must also specify the period of suspension.

Clause 13 allows for the holder of an authority whose authority is suspended or cancelled to apply to the NSW Civil and Administrative Tribunal for an administrative review under the *Civil and Administrative Act 2013*.

## **5.7 Funds and expenses – clauses 14, 15 &16**

Section 20(3) of the Act states that the regulation may specify what constitutes a lawful and proper expense in connection with fundraising appeals.

The existing Regulation grants discretionary powers to the Minister with respect to lawful and proper expenses in charitable fundraising appeals. To ensure that fundraising appeals are conducted for a proper purpose, it is suitable to continue to prescribe what constitutes a lawful and proper expense in relation to those fundraising appeals. In clause 10, the Minister may decide matters as (including but not limited to) what constitutes a lawful and proper expense in respect of a particular fundraising appeal or any class or description of fundraising appeals.

The form of the existing clause 10 has been incorporated into the proposed Regulation. However the discretionary powers are now granted to the Secretary so as to align with the Act (as amended).

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.

### **Identification of payments – all funds must be clearly identified**

To strengthen traceability measures in the regime, section 20(6) of the Act (as amended) requires that “money received in the course of a fundraising appeal before the deduction of any expenses is to be paid immediately into an account held by the holder of the authority concerned at an authorised deposit-taking institution”. The deposit would create a digital reference as evidence that the deposit has taken place.

Clause 15 of the proposed Regulation seeks to align with these requirements. Clause 15 requires that the following matters must be identified:

- payments relating to fundraising appeals that are made into and out of accounts; and
- the fundraising appeal to which the payments relate.

### **Receipts must be issued for all money received**

The proposed Regulation incorporates the receipt requirements from condition 8(3)(a) of the current Standard Conditions.

For the purposes of traceability and legitimising transactions, clause 16 requires an authorised

fundraiser to issue a receipt for each money received, except in circumstances where the money is received from the supply of goods or services or through a payroll deduction scheme. A single receipt can be issued for the gross amount of money if it is received through a collection box or device, or for the aggregated amount of money deposited directly into an authorised fundraiser's account for a period not more than 12 months.

A receipt must include the name of the authorised fundraiser, the authority number (or other form of identification of the authority granted) of the authorised fundraiser, the amount of money received, and the date and time the receipt is issued.

If the fundraising appeal is conducted with a trader, the trader must also issue receipts that are authorised by the authorised fundraiser pursuant to the written agreement between the trader and the authorised fundraiser.

The introduced receipt requirements will also ensure that donors receive adequate information for tax and general accounting purposes.

### **3. Does the use of collection boxes or similar devices always involve a trader?**

## **5.8 Record keeping requirements – clauses 17 & 18**

Section 22 of the Act (as amended) requires 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. Section 22(2)(b) requires that records relating to the income and expenditure include any particulars that are required by the regulations (among other requirements).

Clause 11 of the existing Regulation requires records to include particulars related to all items of gross income received/able and expenditure incurred as well as particulars of transactions related to gross income received/able and expenditure incurred.

The proposed Regulation omits the current clause 11 and makes provision for new requirements for record-keeping under clause 17. The updated requirements align with the ACNC Act where required and consolidate record-keeping requirements from the Act, existing Regulations and Standard Conditions.

The aim of this consolidation is to make the requirements of the regime easier to understand and comply with and remove potentially duplicative provisions. This will result in increased transparency around how charitable funds are distributed and used. The proposed Regulation does not include overly prescriptive provisions relating to:

- consecutive numbering of receipts;
- the need to retain ID cards/ badges, collection boxes and physical receipt books; or

- similar overly prescriptive rules.

By removing these requirements, the proposed Regulation will be able to respond more flexibly to contemporary fundraising appeals which tend to not require physical locations or tools.

The proposed Regulation makes the following provisions for income and expenditure record-keeping requirements at clause 17:

- records must be kept in writing in English or a format easily converted to English;
- all records must be kept for 7 years unless otherwise permitted by the Minister in writing;
- records must identify the charitable purpose for which any money or benefit received or paid in the course of a fundraising appeal;
- records must be kept, maintained and readily accessible to enable true and fair financial statements (or reports) under section 24 of the Act.

The proposed Regulation also makes provisions for additional records that must be kept and maintained at clause 18, where:

- records must be kept of all persons associated with the appeal, including all traders, paid employees and all volunteers, and the activities they engage in, regarding the fundraising appeal;
- a cash book must be kept for each account into which the gross income obtained from the appeal is paid;
- a register of assets arising from the fundraising appeal must be kept;
- a register recording details of receipt books or computerised stationary, as well as a petty cash book if petty cash is used;
- records of meeting minutes must be kept for business relating to the fundraising appeals that is transacted by the governing body of the organisation, as well as any general meeting held by the organisation; and
- all other records must be kept for 3 years (e.g. info on staff, participating persons, traders) otherwise permitted by the Minister in writing.

The purpose of these record keeping requirements is to ensure charitable fundraisers are accountable for the funds they raise and the funds are appropriately used for their intended charitable purpose. Good record-keeping practices also help mitigate misappropriation of donations and engaging in fraudulent activity. Keeping of proper records will also help the Regulator to understand how funds have been raised and spent in the event of a compliance action.

## 5.9 Financial reporting – clause 19

A key element of the proposed Regulation is to align and harmonise governance, financial accountability and record-keeping requirements with those of the ACNC. These requirements reflect the relevant information that is submitted to the ACNC by way of annual information statements.

The Act (as amended) enables entities that are registered with the ACNC to submit financial reporting directly to the ACNC. The ACNC will in turn share that information with NSW on their behalf through a data sharing arrangement (i.e. ACNC registered charities are deemed to satisfy requirements of section 23 and section 24 by complying with ACNC Act).

In practice, the requirements outlined here will only apply to entities that are not registered with the ACNC or to entities deemed to be exempt from compliance. This could be given effect by an 'order' made pursuant to section 23(4) or more broadly by exemption in the Regulation.

The proposed Regulation at clause 19 will require non-ACNC registered charities to include the following information in an annual return:

- details of the authority holder (including the authority holder's name, registered address, phone number, website (if applicable), contact email address and address for service email)
- incorporated status (as per the *Associations Incorporation Act 2009* NSW)
- personal details of personnel (inclusive of name, date of birth phone number and address)
- information about fundraising activities and key beneficiaries to the appeal
- details of how many paid employees and volunteers
- traders details.

Clause 19(2) requires the following documents to accompany an annual return under section 23(1)(d) of the Act:

- an annual financial statement (if not exempt from requirement to prepare a financial statement under section 25 of the Act)
- an auditor's report (if not exempt from auditing requirement under section 25)
- a statement of compliance in the form approved under section 24B.

Clause 19(3) details the particulars that are to be included in an annual financial statement.

Requirements for annual financial accounts contained in condition 6 of the Charitable Fundraising Standard Conditions have been included in the proposed clause. The new clause requires an annual financial statement to be prepared in accordance with the Australian Accounting Standards. The annual financial report must also consist of the following:

- an income statement that summarises the income and expenditure of each fundraising appeal conducted in a financial year

- a balance sheet that summarises all assets and liabilities resulting from the conduct of fundraising appeals at the end of the financial year
- a statement of cash flows
- financial notes if more than \$100,000 gross is received from any fundraising appeal conducted in a financial year.

Clause 19(4) of the proposed Regulation prescribes further requirements to be included as part of the annual financial statement for authorised fundraisers that are organisations. At clause 19(4)(a) a declaration must be provided by the organisation to state that it is able to pay its debts, it can comply with the requirements of the Act and the Regulation, the contents in the annual financial statement are true and fair, and appropriate internal controls have been employed.

Clause 19(4)(b) require that if the organisation receives more than \$100,000 gross in any financial year for any fundraising appeal, the organisation's income statement and balance sheet must outline:

- details of accounting principles and methods adopted in the preparation of financial statements
- information on any material matter or occurrence, including those of an adverse nature such as an operating loss from fundraising appeals
- a statement that describes the manner in which the net surplus or deficit obtained from fundraising appeals for the period was applied
- details of aggregate gross income and aggregate direct expenditure incurred in appeals in which traders were engaged.

These proposed requirements provide clarity for charitable fundraisers on what to include as part of their financial reporting. It also ensures accountability and transparency of fundraising appeals to minimise the risk of deception or fraud.

**4. Do the financial reporting requirements sufficiently prevent fraud and mismanagement in the conduct of fundraising appeals? If not, how could they be changed to better protect consumers and the broader public?**

## 5.10 Auditing requirements – clause 20

Section 24(1) of the Act requires the accounts relating to receipts and expenditure of fundraising appeals to be audited annually.

Clause 20 exempts a person or an organisation with annual revenue less than \$250,000 from having their accounts audited annually. This would provide significant red tape reduction for low risk

small organisations that raise less than \$250,000 a year. The audit threshold in the proposed Regulation will maintain the current level of \$250,000 to ensure close alignment with the reporting requirements of the ACNC.

It is acknowledged that an audit plays a vital role in maintaining regulatory oversight of fundraising appeals with high turnover amounts. Independent audits safeguard donor protection by increasing accountability on the distribution of proceeds, as well as promoting integrity and encouraging compliance from charitable fundraisers.

## 5. Is the proposed threshold of \$250,000 remain appropriate?

### 5.11 Written agreements between traders and authority holders – clause 21

Rules around persons conducting or participating in a fundraising appeal on behalf of an authorised fundraiser – commonly known as “traders” – have been consolidated into simpler terms from the Standard Conditions. The proposed Regulation puts emphasis on the requirement for all traders to have a written trader agreement with the authority holder before commencing any fundraising appeals. Trader agreement contracts must now contain certain contractual terms that cover the elements specified in Clause 21. These terms include:

- the rights, duties and responsibilities of each party
- how variation to the agreement may be made
- how the agreement may be terminated and for what reasons
- notice that alternative dispute resolution will apply to disputes and how alternative dispute resolution mechanisms will apply
- types of insurance policies, the level of insurance, and the terms and conditions of the relevant insurance policy
- an undertaking by the trader that they will comply with all relevant state and federal laws
- trader’s obligation to comply with reporting requirements and also to help facilitate the authority holder to comply with reporting requirements
- appropriate internal controls/safeguards for accountability measures (e.g. traceable donations)
- trader’s responsibility to maintain records, types of records and manner of keeping records
- amount of return to be obtained/basis of method of amount calculated (can’t be a percentage) and manner of payment
- details of any commission, wage or fee payable to the trader and any other persons, and
- type and limits on amount of expenses that may be borne by the trader and authority holder.

The expanded requirements aim to ensure that the responsibilities between parties are made clear, especially around how collected funds will be used, distributed and monitored to promote transparency.

However, the current need to specify certain start and end dates for the trader agreement have been relaxed following recommendations by sector stakeholders. The proposed Regulation only requires written trader agreements to specify a period for when the authorisation to grant permission to participate is in force. For example, authority holders can grant traders permission to conduct appeals on their behalf for “no longer than 5 years”. This means that authority holders will not need to constantly review dates of appeals and update trader agreements for long appeals. This also allows for the same trader agreement to be used where the same participants are involved in numerous appeals of the same nature. Less administrative burden for authority holders will translate to cost savings, which means more proceeds could be put towards charitable purposes.

**6. Are there any significant implications that will result from the changes to written agreements?**

**7. Should penalty units be introduced to ensure better enforcement with written trader agreement requirements?**

## **5.11 Notification of additional matters to the Secretary – clause 23**

The existing Regulation requires authority holders to notify the Minister within 28 days of any changes to the details of the authority holder. This includes names, addresses, and charitable purposes, branches to be covered by the authority and details of traders.

The proposed Regulation at clause 23 introduces new requirements for the authority holder to notify the Secretary of any additional changes prescribed under section 24A(1)(j) of the Act. These requirements are aimed at replicating the ACNC’s self-disclosure reporting requirements under the *Australian Charities and Not-for-profit Commission Act 2012*, where notification is required if:

- obligations under the Act and/or the Regulation have not been met in a significant way, which would result in them losing eligibility to hold an authority to fundraise, or
- if there is a material error in financial statements, or
- registration with the ACNC is suspended or removed.

This standard of replication was not met in the Act and therefore need to be fulfilled by Regulations. The requirement to provide notification of suspension complements section 24(1)(d) of the Act regarding ACNC registration revocation.

These new self-disclosure reporting requirements encourage accountability and promote good record-keeping practices to limit the risk of misappropriation of funds and engaging in fraudulent activity.

## **5.12 Public access to information – clause 24**

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 the regulation, for furnishing certain information.

Clause 24 states that on request by any person, the authorised fundraiser is required to provide to the applicant copies of annual audited financial reports prepared in relation to fundraising appeals conducted by the person or organisation during the 7 financial years prior to the request. The proposed clause uses the term “annual audited financial statements” instead of “annual audited financial accounts” (also known as financial reports) as contained in the current Regulation. This is to ensure that terminology used in the Act and the Amendment Act are consistent in the Regulation.

## **5.13 Religious organisations exempt from Act – clause 27**

Section 7(1) of the Act allows the regulation 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 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).

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 proposed Regulation under clause 27 lists 33 exempt religious bodies, which have been imported from the existing Regulation. ‘IN Network Australia Inc’ have been removed as the organisation no longer exists.

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.

**8. Should any of the religious bodies listed in clause 27 be amended or removed?**

## 5.14 Standard Conditions of an Authority – clause 22 &

### Schedule 1

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’.

Section 16(6) of the Act provides that, if the Secretary does not determine an application for an authority to fundraise within 60 days, then the authority is issued subject to any conditions that may be prescribed by the Regulation. Section 20(10) of the Amendment Act allows the Regulation to prescribe provisions relating to conditions of fundraising authorities.

Clause 22 of the proposed Regulation prescribes the Standard Conditions set out in Schedule 1.

Schedule 1 of the proposed Regulation carries over most Standard Conditions that are fit for purpose from the existing regulatory regime. Some requirements which are considered necessary to retain from the Standard Conditions have been incorporated into the body of the Regulation. These include giving receipts, record keeping requirements, annual financial reporting and agreement between traders and authority holders (as set out above).

The conditions under Schedule 1 are intended to protect the community by increasing accountability, as well as promoting integrity and encouraging compliance from charitable fundraisers.

The Secretary’s ability to impose specific conditions on particular fundraising authorities will be retained, as in NSW Fair Trading’s other licensing regimes.

#### **Controls over conduct of appeals**

The following requirements relating to the conduct of appeals have been brought forward from the Standard Condition but simplified into more principle-based provisions:

- the need to exercise proper and effective controls over conduct of appeals
- the requirement for organisations to submit audited annual financial statements as per section 24 of the Act to an annual general meeting of the organisation within 6 months after the end of each financial year
- the need for proper expenses payable in respect of the appeal to be proportionate to gross income
- the need for an authorised fundraiser to give authorisation to a member, employee or agent to conduct non face-to-face fundraising
- the need for identification requirements when conducting face-to-face appeals, for example, ID badges

- the need for adequate control and accountability of monetary donation boxes, collection bins or bags, and
- the restrictions around soliciting from occupants of motor vehicles as a safety precaution for fundraising participants.

### **Fundraising through direct marketing – condition 9**

The conduct provisions for fundraising through direct marketing have been streamlined to align with the *Australian Consumer Law (ACL)*, *Telecommunications (Do Not Call Register)(Telemarketing and Research Calls) Industry Standard 2007* of the Commonwealth and other relevant laws to protect the privacy and data of fundraising participants. The proposed condition 9 omits previous provisions relating to consumer rights to cancel unsolicited consumer contracts after purchasing goods or services as a result of direct marketing, as this right is already covered by the ACL. The proposed condition also updates the terminologies related to direct marketing to expand its application to various forms of appeals using modern technology. These new requirements ensure proper disclosure of the status of participants to raise conduct transparency and to assist the public in making informed choices when engaging with charities.

### **Advertisements and disclosure of information – conditions 12 & 13**

The key requirements around advertisements, notices and disclosure of essential information to the public when asked or when displaying signage or charity donation bins have been retained. However, prescriptive requirements such as set font and picture sizes have been removed, and the wording has been modified into more principle-based provisions.

Importantly, the proposed condition 12 requires that any advertisement, notice or information provided as part of a fundraising appeal must comply with the ACL and any other relevant laws to provide protection to the donors.

The proposed condition 13 removes the “best endeavour” requirement that currently allows persons conducting appeals to only answer questions “to their best endeavour” and replaces it with a mandatory need to answer all questions honestly within the operator’s knowledge. This responsibility also extends to making reasonable arrangements to find the answers to unknown questions. This change places higher burdens on operators to act honestly and is aimed to increase consumer confidence in fund allocations through the practice of information transparency.

### **Governance conditions**

The key concepts in the current Standard Conditions relating to management of authorised fundraisers have been brought forward. However, instead of specifying prescriptive restrictions on proper management conduct, the proposed Regulation introduces more principle-based clauses that maintains the intentions of current requirements around:

- authorisation of expenditure
- management composition

- trusteeship involvement
- restrictions for persons who are members of the same family
- conflicts of interest, and
- dispute resolution channels.

This is also in-line with the objective of Division 45-B of the *ACNC Regulation 2013*, which aims to balance the need to minimise the risk of mismanagement and misappropriation of charitable funds and to provide a minimum level of confidence to the public that registered entities will promote the effective and efficient use of their resources, with the flexibility for charities to effectively run their appeals and engage with the wider-community for social unity purposes.

### **The involvement of children in charitable fundraising – Part 3 conditions**

Currently, Part 2 of the Authority Conditions confers a number of obligations and requirements relating to the participation of children in fundraising appeals. These obligations and requirements have now been incorporated into Part 3 of the Schedule 1 of the proposed Regulation. The purpose of retaining these obligations and requirements comes from the need to ensure that the wellbeing and protection of children remains of paramount importance.

**9. Should the conditions regarding child participants specify the kinds of insurance required? If so, what kinds of insurance should be recommended?**

## **5.18 Other issues not raised in this RIS**

The regulation making powers of the Act are summarised at Appendix 1. Some of these powers are used in the current Regulation while other powers are not.

**10. Do any of the regulation making powers that are not included in the proposed Regulation need to be used, and if so, why?**

**11. Are there any other issues that are not raised in this RIS that relate to the Regulation? If so, what is the issue and how could it be addressed in the Regulation?**

**12. During 2020, some concerns have been raised about the distribution of funds from bushfire appeals. To address this matter, should fundraisers be obligated to distribute funds in a timely manner and if so, in what circumstances? If specific timeframes were imposed, how should such requirements apply to fundraising appeals running over different periods (e.g. appeals running for two months or appeals running for two years), or for ongoing appeals?**

## Appendix 1 - Summary of regulation making powers

The following table sets out the existing regulation making powers in the Act and new regulation making powers introduced in the Amendment Act. It also identifies the regulations that are prescribed under these powers in the proposed Regulation.

Section of Act	Regulation making power under the Act	Clause in proposed Regulation
5(3)(f)	Prescribe anything that does not constitute a fundraising appeal (as defined in section 5) for the purposes of the Act.	4
7(1)(b)	Exempt a religious body/organisation from the Act (save for section 48) except where prescribed by the Regulation.	27
9(2)(a)	Authorise organisations or persons to conduct a fundraising appeal without being the holder of an authority.	5, 6, 7, 8
11(2)(a1)	Prescribe requirements in a written agreement between the trader and person or organisation holding an authority to conduct the appeal.	nil
11(2A)	Make provision for (and regarding) written agreements between traders and persons or organisations that hold authorities to conduct appeals	21
13A(4)	Make provision for matters concerning an authority as relevant to the operation of Part 2 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> .	nil
16(2)(i)	Allowing the Minister to refuse an application if the Minister is not satisfied with any other matter prescribed by the Regulation.	9
16(5)	May specify circumstances in which a person is not a fit and proper person.	10
19	Impose conditions on a grant of authority (1) and may provide that a contravention of a specified condition is an offence.	22
19A(1)	Empowers the Secretary to suspend or cancel an authority on the grounds listed in section 19A and any other grounds so prescribed by the Regulation.	11, 22
19A(2)	May make provision for procedures relating to the proposed suspension or cancellation of an authority and reviews/appeals against the suspension/cancellation of an authority	12, 13
20(3)	May make provision for the determination (by the decision of the Minister or otherwise) of, what constitutes a lawful and proper expense in connection with particular fundraising appeals or any class or description of fundraising appeals or fundraising appeals generally.	14
20(10)	May make provision for: <ul style="list-style-type: none"> <li>• identification of payments in/out of accounts and the fundraising appeals that payments relate to,</li> <li>• controls on expenditure</li> <li>• issuing of receipts</li> <li>• matters relating to dealing with money or benefits received in the course of fundraising</li> </ul>	15, 16
22(2)	Specify the manner and period in which records must be kept and maintained.	17
22(2A)	Make provision for or with respect to the auditing of the records.	17
23(1)	Require Annual Returns be lodged within the period of 6 months after the end of each financial year. Annual returns must include information required by the Regulation.	19
24	Requirements for annual audit of accounts relating to receipts and expenditure	nil
24A(1)(j)	May specify circumstances that require a holder of an authority to notify the Secretary.	23
25(1)	Exempt a person or organisation (or of a class of persons or organisations) from all or any of the provisions of this division, other than any provision relating to the keeping of records.	20
25A	May authorise police officers of or above a specified rank to exercise any or all functions of an authorised officer under the Act.	28
47	Prescribe information that organisations must furnish upon request.	24
47(3)	Prescribe fees for supply of information or financial statements.	nil
48	Exempt an organisation/s from the application of section 48 with respect to remuneration of board members of charitable fundraising organisations.	nil
53	Secretary delegation of the exercise of any function to any other person or class or class of persons	nil
54	Prescribe other methods for the service of documents.	nil
55	General Regulation making power	1, 2, 3, 18
55(2)	May create offences punishable by a penalty not exceeding 20 pu	nil
Sch 2	General power to make savings or transitional provisions	29

## Appendix 2 - Summary of main changes to Regulation

The following table sets out the main changes being proposed to the Regulation:

	Clause in 2015 Regulation	Clause in 2020 Regulation	Intent of clause	Change
<b>Definitions</b>	3	3	Definition of terms used throughout the regulation.	Removal of term "trader". Addition of new terms: <ul style="list-style-type: none"> <li>• Receipt</li> <li>• ACNC responsible entity</li> <li>• Australian Accounting Standards</li> <li>• Australian Auditing Standards</li> <li>• Supply of goods.</li> </ul>
<b>Exempted organisation</b>		8	Parents and Citizens Associations in NSW Government schools are exempt from holding a fundraising authority.	Makes it unambiguous that all Parents and Citizens Associations in NSW Government schools constituted under the <i>Education Act 1990</i> are exempt from the requirement to hold a fundraising authority.
<b>Applications, suspensions and cancellation of authorities</b>		9, 10, 11	Provides discretionary power to the Secretary to refuse, suspend or cancel authorities if the applicant or the authority holder is associated with misconduct, dishonesty or fraud.	Establishes grounds for the Secretary to refuse applications for authorities, including circumstances in which the applicant's licence was cancelled due to misconduct, dishonesty or fraud.  Introduces a fit and proper test to minimise the risk of charitable funds being mismanaged.  Introduces additional grounds for suspension or cancellation of authorities, where an ACNC registration revocation is constituted as grounds to suspend or cancel an authority fundraiser.
		12	The Secretary may by written notice, suspend or cancel an	Introduces formal process for

			authority, if satisfied there are reasonable grounds to do so.	suspension or cancellation of authorities.
		13	The holder of an authority whose authority is suspended or cancelled may apply to the Civil and Administrative Tribunal for an administrative review.	Introduces formal administrative review process for suspension or cancellation of authorities.
<b>Funds and expenses</b>		16	Receipts must be issued for all money received in a fundraising appeal. Exceptions are included in the proposed clause.	Creates traceability measures where payments relating to fundraising appeals must be clearly identified, including giving of receipts.
	11	17	Records of income and expenditure must be kept and maintained for: <ul style="list-style-type: none"> <li>• A period of 7 years</li> <li>• In English, or easily convertible into English; and</li> <li>• Must identify the charitable purpose for which any money or benefit received or paid in the course of a fundraising appeal.</li> </ul>	Consolidates record-keeping requirements from the Act, existing Regulations and Standard Conditions. Makes new requirements for record keeping, including alignment with the ACNC Act where required.  Key changes to timeframe and accessibility of records of income and expenditure. Authority holders must also clearly identify charitable purpose of money received and paid.
		18	A person or organisation conducting an appeal must keep records of all persons associated with the appeal, and all minutes from meetings for a period of 3 years.	Consolidates record-keeping requirements from the Standard Conditions.
<b>Financial reporting</b>		19	The following particulars must be included as part of an annual return, including an annual financial statement, an auditor's report and a statement of compliance.  Consolidates particulars that must be included as part of an annual financial statement from the Standard	Clear guidelines and requirements implemented to harmonise financial reporting across the sector.

			Conditions, including adherence with the Australian Accounting Standards, an income statement, balance sheet, statement of cash flows and financial notes.	
<b>Auditing Requirements</b>	12	21	<p>Fundraisers exempted from need to have accounts audited if:</p> <ul style="list-style-type: none"> <li>• They do not receive more than \$250,000 gross per annum from appeals.</li> </ul>	<p>Change from “more than \$250,000” to “\$250,000 or more” to capture entities that receive \$250,000 in a financial year.</p> <p>Requirement for Minister’s direction to comply with section 24 audit requirements have been removed.</p>
<b>Miscellaneous</b>		22	Clarifies the matters that must be contained written agreements between traders and authority holders.	Consolidates requirements from the Standard Conditions.
		23	Standard Conditions of an Authority set out in Schedule 1 of the proposed Regulation.	<i>See 6.12 above.</i>
	16	24	Authority holders must notify the Secretary of any additional changes.	New addition of matters concerning any material error in the annual financial statement and suspension or revocation of ACNC registration.

## Appendix 3 - List of targeted stakeholders

---

A copy of the proposed Regulation and this RIS has been provided to key stakeholder groups and organisations. These include:

- Fundraising Institute Australia
- Public Fundraising Regulatory Association
- Justice Connect
- Business Council of Cooperative and Mutuals
- Royal Flying Doctor Service
- Lilliane Brady Pink Ladies
- Luke Priddis Foundation
- Kids with Cancer
- Learning links
- Australian Charities and Not-For-Profits Commission
- Queensland Office of Fair Trading
- Consumer Affairs Victoria
- South Australia Consumer and Business Affairs