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Version No. 014
Fundraising Appeals Act 1998
Act No. 78/1998

Version incorporating amendments as at 22 December 2004

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Fundraising Appeals Act 1998
Act No. 78/1998

Version incorporating amendments as at 22 December 2004

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY MATTERS

1. Purpose

The purpose of this Act is to regulate the raising and application of money and other benefits for non-commercial purposes from the public.

2. Commencement

- (1) This section and section 1 come into operation on the day this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision of this Act does not come into operation before 1 July 1999, it comes into operation on that day.

3. Definitions

In this Act—

"appeal manager", in relation to a fundraising appeal, means a person who has any managerial or financial responsibility for the appeal;

S. 3 def. of "appeal manager" inserted by No. 70/2001 s. 3.

"associate" has the meaning set out in section 6A;

S. 3 def. of "associate" inserted by No. 70/2001 s. 3.

"benefit" includes any gain or reward;

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"commercial fundraiser" means a person who is retained on a commercial basis by another person to administer all or part of a fundraising appeal for the other person;

"conduct a fundraising appeal" has the meaning set out in section 6;

"Court" means the Magistrates' Court of Victoria;

"designated person" means the designated person named by an incorporated association or an unincorporated organisation under section 18 or 64;

"Director" means the Director within the meaning of the **Fair Trading Act 1999**;

S. 3 def. of "Director" inserted by No. 70/2001 s. 3, amended by No. 30/2003 s. 86.

"disqualifying offence" means—

- (a) an offence involving fraud, dishonesty, violence or drug trafficking that is punishable by imprisonment for 3 months or more in the case of a natural person, or by a fine of \$10 000 or more in the case of a body corporate; or

- (b) an offence under this Act;

"externally-administered body corporate" has the same meaning as in the Corporations Act;

S. 3 def. of "externally-administered body corporate" inserted by No. 70/2001 s. 3.

"fundraising appeal" has the meaning set out in section 5;

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"insolvent under administration" means—

- (a) a person who is an undischarged bankrupt; or
- (b) a person for whom a debt agreement has been made under Part IX of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if the debt agreement has not ended or has not been terminated; or
- (c) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if the terms of the deed have not been fully complied with; or
- (d) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if a final payment has not been made under that composition;

S. 3 def. of "insolvent under administration" inserted by No. 70/2001 s. 3.

"inspector" means an inspector appointed under the **Fair Trading Act 1999**;

S. 3 def. of "inspector" substituted by No. 17/1999 s. 33(1).

"participate in a fundraising appeal" means to solicit or receive any money or benefit for the purposes of the appeal;

"public place" means—

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s. 3

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- (a) any public highway, road, street, bridge, footway, footpath, court, alley, passage or thoroughfare even though it may be formed on private property;
 - (b) any park, garden, reserve or other place of public recreation or resort;
 - (c) any railway station, platform or carriage;
 - (d) any wharf, pier or jetty;
 - (e) any passenger ship or boat to which the public has access;
 - (f) any public vehicle;
 - (g) any market;
 - (h) any auction room or place while a sale by auction is being conducted there;
 - (i) any place of public resort; or
 - (j) any open place to which the public whether upon or without payment for admittance have, or are permitted to have, access.

but does not include—

- (k) any State school or registered school or any related land or premises;
- (l) any land or premises owned or occupied by a university, TAFE College or other tertiary educational institution;
- (m) any land or premises owned or occupied by a registered funded agency within the meaning of the **Health Services Act 1988**;

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(n) any church, chapel or other premises or related land that is owned or occupied by a religious organisation;

"register" means the register required by section 70A;

S. 3 def. of "register" inserted by No. 70/2001 s. 3.

"registered fundraiser" means a person who is registered as a fundraiser by the Director under Division 2 of Part 3;

S. 3 def. of "registered fundraiser" inserted by No. 70/2001 s. 3.

"registrar" means registrar of the Court;

"religious organisation" means an organisation in respect of which a Proclamation is in force under section 26 of the Marriage Act 1961 of the Commonwealth;

"responsible person" means the responsible person named for the purposes of section 64A by an incorporated person under section 18(2)(k) or 64B;

S. 3 def. of "responsible person" inserted by No. 70/2001 s. 3.

"retention period" means a period of 45 days after the seizure of a thing under Part 5;

"Secretary" means the Secretary to the Department of Justice;

"unincorporated organisation" means a group of people who—

- (a) conduct an activity under a common name; and
- (b) maintain a list of members in relation to the conduct of that activity.

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s. 4

4. Reference provisions

- (1) A reference to a person in this Act includes a reference to an incorporated association and to each member of an unincorporated organisation.
- (2) Despite sub-section (1), a reference to a person in any provision creating an offence under this Act does not include a reference to a member of an unincorporated organisation unless it can be proved that the member instigated or actively engaged in, or consented to, the conduct that constitutes the offence, or that the offence was attributable to any wilful neglect by the member.
- (3) For the purposes of this Act, a person is not a member of an unincorporated organisation unless she or he has consented to being a member of the organisation.
- (4) A reference to a party in relation to a court proceeding is, in the case of an incorporated association or an unincorporated organisation, a reference to the designated person of that association or organisation.
- (5) A reference in this Act—
 - (a) to "she or he", "he or she", "her or him" or "him or her" is to be read as including a reference to "it"; and
 - (b) to "her or his" or "his or her" is to be read as including a reference to "its"—if the context permits.
- (6) A reference in this Act to "this Act" includes a reference to the regulations.
- (7) A reference in this Act to being found guilty of an offence includes a reference to having a charge of committing that offence found proven.

S. 4(7)
inserted by
No. 70/2001
s. 4.

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s. 5

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| (8) A reference in this Act to an offence under this Act, in relation to a finding of guilt, includes a reference to an offence under the Fundraising Appeals Act 1984 . | S. 4(8)
inserted by
No. 70/2001
s. 4. |
| (9) A reference in this Act to the registration of a person as a fundraiser includes a reference to the deemed registration of the person as a fundraiser. | S. 4(9)
inserted by
No. 70/2001
s. 4. |
| (10) A reference to assets obtained as a result of a fundraising appeal includes, in so far as the reference relates to a particular point of time, a reference to any assets that are received in relation to the appeal after that time. | S. 4(10)
inserted by
No. 70/2001
s. 4. |
| (11) The provisions of this section are subject to any contrary intention in any other section of this Act. | S. 4(11)
inserted by
No. 70/2001
s. 4. |

5. Meaning of "fundraising appeal"

- (1) A fundraising appeal occurs if a person solicits or receives money or a benefit on the basis of a representation that the soliciting or receiving is not solely for the profit or commercial benefit of the person or any other person, cause or thing on whose behalf the person is soliciting or receiving the money or benefit.
- (2) For the purposes of this section, it does not matter if—
 - (a) the person who solicits or receives the money or benefit does not make the representation;
 - (b) the representation was direct or indirect;
 - (c) the majority of the money or benefit is not to be applied for the benefit of the person, cause or thing on whose behalf it is solicited or received;

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(d) the person who solicits or receives the money or benefit does so as a volunteer or is paid for doing so.

(3) Despite anything to the contrary in sub-section (1), the following activities are not a fundraising appeal—

(a) soliciting or receiving any money or benefit—

(i) for the purposes of a patriotic fund within the meaning of the **Patriotic Funds Act 1958**; or

(ii) in relation to any raffle, lottery or other activity authorised or permitted under the **Gambling Regulation Act 2003**; or

S. 5(3)(a)(ii) amended by No. 114/2003 s. 12.1.3(Sch. 6 item 5).

(b) soliciting a person to become a member of an organisation or to pay the joining or membership fee of an organisation;

S. 5(3)(c) substituted by No. 70/2001 s. 5.

(c) the soliciting or receipt of any money or benefit by, or on behalf of, an organisation from a person—

(i) who is, or was, a member of the organisation; or

(ii) who is in the process of becoming a member of the organisation; or

(iii) who is a relative of, or who is personally acquainted with, any person referred to in sub-paragraph (i) or (ii)—

even if the money or benefit is solicited or received on the basis that it will be applied for purposes other than the benefit of the organisation;

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- (d) soliciting a person to devise or bequeath any property;
 - (e) soliciting or receiving money or a benefit exclusively or predominantly from among people sharing a common employer or principal or place of work if the soliciting or receiving—
 - (i) is carried out by one of those people; and
 - (ii) is made on the basis of a representation that the money or benefit will be applied for a benevolent or philanthropic purpose connected directly with another of those people or with the immediate family of another of those people;
 - (f) soliciting or receiving money or a benefit from—
 - (i) the Commonwealth, a State, a Territory, a local government body or any public authority or body created by, or that represents in any capacity, the Commonwealth, a State or a Territory;
 - (ii) a corporation, partnership or trust that is permitted to donate money or benefits for non-profit or non-commercial purposes by its memorandum of incorporation, articles of association, partnership agreement, trust deed or other empowering document;
 - (g) any other activity that the regulations state is not a fundraising appeal.
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s. 6

6. Meaning of "conduct" a fundraising appeal

- (1) A person conducts a fundraising appeal if she or he—
 - (a) organises the appeal in a capacity other than that of an employee or agent; or
 - (b) is the sole participant in the appeal; or
 - (c) is one of a number of participants in the appeal, but is not participating in the appeal as an employee or agent.
- (2) In determining whether a person is conducting a fundraising appeal, it does not matter whether the person is acting as a volunteer or is being paid.
- (3) If a person who conducts a fundraising appeal retains a commercial fundraiser to administer all or part of the appeal, a reference in this Act to the person conducting the appeal is a reference—
 - (a) to the person in respect of the appeal as a whole and of any aspect of the appeal that encompasses the appeal as a whole (such as a requirement to produce accounts relating to the appeal); and
 - (b) to the commercial fundraiser in respect of any aspect of the appeal that is being administered by the commercial fundraiser; and
 - (c) to the person in respect of any other aspect of the appeal.

S. 6(3)
substituted by
No. 70/2001
s. 6.

S. 6(4)
repealed by
No. 70/2001
s. 6.

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s. 6A

6A. Meaning of "associate"

For the purposes of this Act, a person is an associate of another person—

S. 6A
inserted by
No. 70/2001
s. 7.

- (a) if the person is able, or will be able, to have a significant influence over, or with respect to, the management or operation of the fundraising activities of the other person; or
- (b) in the case of another person that is a body corporate, if the person is a director, secretary or manager of the other person.

6B. Interpretation of "public interest"

Without limiting the generality of the meaning of "public interest", for the purposes of this Act a fundraising appeal is not conducted in the public interest if, in the opinion of the Court or the Director, as the case may be, the expenses payable in respect of the appeal in a particular period exceed a reasonable proportion of the total amount raised in that period.

S. 6B
inserted by
No. 70/2001
s. 7.

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s. 7

**PART 2—PROVISIONS APPLYING TO ALL FUNDRAISING
APPEALS**

7. False statements while seeking donations

(1) In conducting or participating in a fundraising appeal, a person must not make or give any representation or oral or written statement in relation to the appeal to another person that misleads or deceives, or that is likely to mislead or deceive—

- (a) the other person; or
- (b) anyone else to whom the other person may make, repeat or give the representation or oral or written statement.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or
imprisonment for 12 months or both.

(2) It is a defence to a charge under sub-section (1) if the person charged can show—

- (a) that she or he reasonably believed that the representation or statement was not misleading or deceptive, and was not likely to mislead or deceive; or
- (b) that the statement was an accurate repetition of information supplied by another person, and that the person repeating or passing on the statement had no reasonable grounds to doubt that the information was true.

(3) However, a person may not rely on the defence referred to in sub-section (2)(b) unless the person

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gave the person bringing the charge at least 7 days before the charge is heard a notice identifying the person who supplied the information or, if that identity is not known, setting out all the information the person charged has concerning the person who supplied the information.

- (4) Despite sub-section (3), the court before which the charge is brought may permit a person to rely on the defence referred to in sub-section (2)(b) even though the person did not give the notice required by sub-section (3) at least 7 days before the charge is heard.

8. False statements to employees, agents etc. concerning compliance with the Act

A person—

- (a) who is conducting or is proposing to conduct a fundraising appeal; or
- (b) who is acting on behalf of a person who is conducting or is proposing to conduct a fundraising appeal—

must not represent to an employee, agent or collector (whether voluntary or otherwise) that any thing required or permitted by this Act to be done in relation to the appeal has been done if it has not been done.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or imprisonment for 12 months or both.

9. Identification badges for collectors

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s. 9

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- (1) If a person is in the course of conducting or participating in a fundraising appeal—
- (a) in a public place; or
 - (b) on the premises of a person from whom money or a benefit is being solicited or received without the prior invitation of that latter person—

she or he must wear an identifying badge in such a way that the entire face of the badge is at all times clearly visible.

Penalty: 10 penalty units.

- (2) A person who is conducting a fundraising appeal must issue an identifying badge to each person participating in the appeal who is required by subsection (1) to wear an identifying badge and must ensure that the badge—
- (a) prominently displays the words "Paid Collector" if the person to whom it is issued is entitled, or expects, to be paid for participating in the appeal (other than for out-of-pocket expenses);
 - (b) prominently displays the words "Volunteer Collector" if the person to whom it is issued is not entitled, and does not expect, to be paid for participating in the appeal (other than for out-of-pocket expenses);
 - (c) complies with any other requirements specified in the regulations.

Penalty: In the case of a corporation,
120 penalty units.

In any other case, 60 penalty units or imprisonment for 6 months or both.

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s. 10

10. Collection receptacles to be secure, numbered and labelled etc.

- (1) A person who is conducting a fundraising appeal must ensure that any receptacles that are used to collect donations for the appeal that are in a public place—
- (a) are securely constructed, properly sealed and consecutively numbered; and
 - (b) are clearly labelled with—
 - (i) the name of the appeal; or
 - (ii) the name of the person conducting the appeal and the person or class of people or causes or things on whose behalf the appeal is being conducted.

Penalty: In the case of a corporation,
120 penalty units.

In any other case, 60 penalty units or
imprisonment for 6 months or both.

- (2) Despite sub-section (1), it is not necessary for the person to ensure that a receptacle used to collect money is properly sealed if every person who puts money in the receptacle (or who gives money that is to be put in the receptacle) is given a receipt in a form authorised by the person conducting the appeal.
- (3) This section does not apply to receptacles used as part of a highway collection carried out in compliance with the **Road Safety Act 1986** (or any regulations made under that Act).

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Part 2—Provisions Applying to all Fundraising Appeals

s. 11

11. Use and emptying of receptacles to be properly supervised

- (1) A person who is conducting a fundraising appeal must ensure that the use and emptying of any receptacles that are used to collect money for the appeal are supervised in a way that ensures, to the maximum extent that is practicable in the circumstances of the appeal—
- (a) in the case of a fundraising appeal to which Part 3 applies, that all the money is deposited in one of the accounts referred to in section 27;
 - (b) in any other case, that all the money is collected and given to the person.

Penalty: In the case of a corporation,
120 penalty units.

In any other case, 60 penalty units or imprisonment for 6 months or both.

- (2) A person who is conducting a fundraising appeal must ensure that the use and emptying of any receptacles that are used to collect donations other than money for the appeal are supervised in a way that ensures, to the maximum extent that is practicable in the circumstances of the appeal, that all the donations are collected and properly processed.

Penalty: In the case of a corporation,
120 penalty units.

In any other case, 60 penalty units or imprisonment for 6 months or both.

12. Exceptions to sections 10 and 11

- (1) The obligations imposed on a person by sections 10 and 11 are subject to any contrary obligations imposed on the person by the Director under section 19C or 23.

S. 12(1)
amended by
No. 70/2001
s. 12(a).

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Part 2—Provisions Applying to all Fundraising Appeals

s. 13

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- (2) Sections 10 and 11 do not apply to receptacles used in any circumstances specified for the purposes of this sub-section by the regulations.

13. Additional requirements for clothing bins

- (1) In this section, "**clothing bin**" means a receptacle that is intended to be used for the receipt of clothing (regardless of whether or not the receptacle is also intended to be used for the receipt of other things).
- (2) If one or more clothing bins are used in the course of a fundraising appeal to receive donations for the purposes of the appeal, the person conducting the appeal must ensure that a written record is kept of the following details—
- (a) the total amount of funds that were raised as a result of the donations to the bins; and
 - (b) what percentage of the donations were sold or made available for sale, what percentage of the donations were sold as scrap and to whom (in broad categories) the sales were made; and
 - (c) if any person is paid for collecting donations from the bins or for processing or selling the donations, what percentage of the proceeds of the donations was paid to the person; and
 - (d) any other details required by the regulations.

Penalty: In the case of a corporation,
120 penalty units.

In any other case, 60 penalty units or imprisonment for 6 months or both.

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- (3) A person conducting a fundraising appeal to which sub-section (2) applies must ensure that the required records are kept in a way that enables them to be conveniently and properly audited.

Penalty: In the case of a corporation,
120 penalty units.

In any other case, 60 penalty units or
imprisonment for 6 months or both.

- (4) In the case of a fundraising appeal to which Part 3 applies, the person conducting the appeal must ensure that the details required by sub-section (2) accompany the accounts required by section 29(4).

Penalty: In the case of a corporation,
120 penalty units.

In any other case, 60 penalty units or
imprisonment for 6 months or both.

14. Paid phone etc. canvassers must disclose that they are being paid

- (1) This section applies to a person—

- (a) who seeks donations to, or offers to sell anything as part of, a fundraising appeal by telephone or by any other method of spoken direct personal communication involving electronic or mechanical means; and
- (b) who is entitled, or expects, to receive money or some other financial reward for participating in the appeal (other than for out-of-pocket expenses).

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- (2) Before seeking a donation, the person must state to the person from whom the donation is being sought—
- (a) the fact that the person seeking the donation has been retained on a commercial basis to seek the donation; and
 - (b) the name of the person who is employing (or who has retained) the person seeking the donation; and
 - (c) the name of the person on whose behalf the donation is sought (if this name is different from the name required by paragraph (b)).

Penalty: 10 penalty units.

- (3) Before offering to sell anything, the person must state to the person to whom the offer is to be made—
- (a) the fact that the person making the offer has been retained on a commercial basis to make the offer; and
 - (b) the name of the person who is employing (or who has retained) the person making the offer; and
 - (c) the name of the person on whose behalf the offer is being made (if this name is different from the name required by paragraph (b)).

Penalty: 10 penalty units.

15. Letters etc. by commercial fundraisers must disclose certain details

- (1) This section applies if a commercial fundraiser seeks donations to, or offers to sell anything as part of, a fundraising appeal by any means of communication to which section 14 does not apply.

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(2) In the case of any communication by means of a document, the commercial fundraiser must ensure that the document states—

- (a) that the document has been sent or distributed by the commercial fundraiser; and
- (b) that the commercial fundraiser has been retained on a commercial basis to send or distribute the document.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or imprisonment for 12 months or both.

(3) In the case of any other means of communication, the commercial fundraiser must ensure that a donation is not sought, and that an offer to sell is not made, unless any person from whom the donation is sought, or to whom the offer is made, is informed of—

- (a) the fact that the communication has been made by the commercial fundraiser; and
- (b) the fact that the commercial fundraiser has been retained on a commercial basis to seek the donation or make the offer by that means of communication.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or imprisonment for 12 months or both.

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s. 16

**PART 3—PROVISIONS APPLYING TO PARTICULAR
FUNDRAISING APPEALS ONLY**

Division 1—Application of this Part

16. This Part does not apply to some organisations

S. 16
amended by
No. 70/2001
s. 8(a).

Subject to section 16B, this Part does not apply to the conduct of a fundraising appeal by the following organisations—

- (a) a State school, council or registered school under the **Education Act 1958**;
- (b) a university, TAFE College or other tertiary educational institution;
- (ba) a kindergarten that employs a pre-school teacher (as defined in the **Pre-school Teachers and Assistants (Leave) Act 1984**);
- (c) a registered funded agency within the meaning of the **Health Services Act 1988**;
- (d) a religious organisation;
- (e) a political party registered under section 50 of the **Electoral Act 2002**;
- (f) a trade union registered under the **Trade Unions Act 1958**;
- (g) an organisation registered under the Workplace Relations Act 1996 or the Industrial Relations Act 1988 of the Commonwealth.

S. 16(ba)
inserted by
No. 70/2001
s. 8(b).

S. 16(e)
substituted by
No. 23/2002
s. 192.

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s. 16A

S. 16(2)–(4)
repealed by
No. 70/2001
s. 8(c).

S. 16A
inserted by
No. 70/2001
s. 9.

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16A. Other exemptions from this Part

- (1) The Minister, by Order published in the Government Gazette—
 - (a) may exempt a person or organisation, or a class of person or organisation, from having to comply with all, or any provision, of this Part; and
 - (b) may impose conditions in relation to any exemption granted under paragraph (a).
- (2) The Minister may declare, by Order published in the Government Gazette—
 - (a) that a specified person or organisation, or a specified sub-class of person or organisation, falls within a class created by an Order made under sub-section (1);
 - (b) that a specified person or organisation, or a specified sub-class of person or organisation, is not exempt from this Part, even though the person, organisation or sub-class falls within a class created by an Order made under sub-section (1).
- (3) A declaration under sub-section (2) has effect according to its tenor.
- (4) If a condition applies in relation to an exemption applying to a person or organisation under this section, the exemption does not apply to the person or organisation during any period in which the person or organisation does not comply with the condition.

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s. 16B

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- (5) On or before the 6th sitting day after an Order made under this section is published in the Government Gazette, the Minister must ensure that a copy of the Order is laid before each House of the Parliament.
 - (6) A failure to comply with sub-section (5) does not affect the operation or effect of the Order but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.
 - (7) An Order made under this section may be disallowed in whole or in part by either House of Parliament.
 - (8) Part 5 of the **Subordinate Legislation Act 1994** applies to an Order made under this section as if—
 - (a) a reference in that Part to a "statutory rule" was a reference to the Order; and
 - (b) a reference in section 23(1)(c) of that Part to "section 15(1)" was a reference to sub-section (5).

16B. Exemption does not cover commercial fundraisers

- (1) This section applies if all or part of this Part does not apply to a person or organisation as a result of section 16 or 16A.
- (2) If the person or organisation retains a commercial fundraiser to administer all or part of a fundraising appeal, this Part applies to the commercial fundraiser in respect of the appeal.

S. 16B
inserted by
No. 70/2001
s. 9.

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s. 17

Pt 3 Div. 2
(Heading and
ss 17–24)
amended by
No. 52/1998
s. 311(Sch. 1
item 109.2),
substituted as
Pt 3 Div. 2
(Heading and
ss 17–23A) by
No. 70/2001
s. 10.

S. 17
substituted by
No. 70/2001
s. 10.

S. 17A
inserted by
No. 70/2001
s. 10.

Division 2—Registration of Fundraisers

17. Meaning of "intended appeal"

In this Division, "**intended appeal**" means any fundraising appeal that a person applying to be registered as a fundraiser intends, at the time of submitting the application, to conduct if the person is registered as a fundraiser.

17A. Fundraisers must be registered

Subject to Division 1, a person must not conduct a fundraising appeal unless she or he is registered by the Director as a fundraiser.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or
imprisonment for 12 months or both.

Note: In the case of a person who ceases to be exempt from this Part while the person is conducting a fundraising appeal, section 18C suspends the operation of this section for a limited period.

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s. 18

18. Application for registration as a fundraiser

S. 18
substituted by
No. 70/2001
s. 10.

- (1) A person who wishes to apply to register as a fundraiser must submit an application for registration to the Director at least 28 days before the date she or he intends to start conducting any fundraising appeal.

Note: Section 18B enables the submission of an application for registration within 28 days of an intended appeal if there are special circumstances. In the case of a person who ceases to be exempt from this Part while the person is conducting a fundraising appeal, section 18C supplants the 28 day time limit specified in this sub-section.

- (2) The application must be in the form required by the Director and must state—
- (a) the name of the person;
 - (b) if the person is a natural person, her or his residential or principal business address in Victoria;
 - (c) if the person is a corporation, the address in Victoria of its registered office or principal place of business;
 - (d) if the person is an incorporated association or an unincorporated organisation, the name and address of a natural person in Victoria appointed for the purposes of this Act as the designated person of the organisation;
 - (e) the name and contact details of a natural person who members of the public may contact in relation to any fundraising appeals to be conducted by the person;
 - (f) the name and address of any person who is, or who it is intended will be, an appeal manager for any fundraising appeals to be conducted by the person;

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s. 18

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- (g) either—
- (i) the name of every person on whose behalf the person intends to conduct a fundraising appeal; or
 - (ii) the common features shared by the class of person for whose benefit the person intends to conduct a fundraising appeal, and the means by which the money or benefit is to be transmitted to that class or is to be distributed among the individual members of that class; or
 - (iii) if any intended appeal is not to be conducted for the immediate direct benefit of one or more people, a description of the thing or cause for which the appeal is to be conducted, and the means by which the money or benefit will be applied to the thing or cause;
- (h) with respect to any intended appeal—
- (i) whether the person is to derive any money or benefit from the appeal;
 - (ii) the date on which it is intended to conduct, or start, the appeal;
 - (iii) the form of the appeal;
 - (i) if applicable, details (including the number) of the account that the person intends to use for the purposes of section 27(2);
 - (j) if the person has retained, or intends to retain, a commercial fundraiser or other person to administer part or all of an intended appeal, the name and address of that commercial fundraiser or other person;
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s. 18

- (k) if the person is an incorporated association that was not incorporated in Victoria, the name and address of a person appointed for the purposes of this Act as the responsible person of the association;
- (l) any other information required by the Director for the purposes of this Part.

Note: Paragraph (l) would, for instance, enable the Director to seek information in an application about associates of the person submitting the application to enable the Director to determine whether grounds for refusing the application exist under section 19B(3).

- (3) A number of people who are not an unincorporated organisation may combine to be registered as a fundraiser.
- (4) If a number of people combine to be registered as a fundraiser—
 - (a) the application must also contain the name and address of each of them; and
 - (b) they are deemed to be an unincorporated organisation.
- (5) The Director may modify the requirements of sub-section (2) to enable a person who is an organisation that is divided into a number of divisions or branches or other sub-groups to apply to register as a fundraiser without providing all the details required by that sub-section in relation to any person acting on behalf of a division, branch or sub-group.
- (6) In the case of an application by a person who is an incorporated association that was not incorporated in Victoria, the application must be accompanied by the consent required by section 64A(3) signed by the person appointed as the responsible person of the association.

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s. 18A

S. 18A
inserted by
No. 70/2001
s. 10.

18A. Consent of intended beneficiaries also needed

- (1) An application for registration as a fundraiser must be accompanied by—
 - (a) the written consent to an intended appeal of each intended beneficiary of the appeal; or
 - (b) a written explanation of why it is not practicable to comply with paragraph (a).
- (2) If the intended beneficiaries of an intended appeal are the members of an organisation, the written consent of a duly authorised representative of the organisation is sufficient compliance with subsection (1)(a) with respect to the members of the organisation.
- (3) For the purposes of this section, a person who will conduct or administer an intended appeal is not a beneficiary of the appeal unless the person is listed under section 18(2)(g)(i) or falls within a class described under section 18(2)(g)(ii).

S. 18B
inserted by
No. 70/2001
s. 10.

18B. Urgent applications

- (1) Despite section 18(1), a person may apply to register as a fundraiser less than 28 days before the date she or he intends to start conducting any fundraising appeal if there are special circumstances.
- (2) In addition to the information required by section 18, an application submitted under this section must set out those special circumstances.

S. 18C
inserted by
No. 70/2001
s. 10.

18C. Application if exemption ceases to apply

- (1) This section applies if a person who was exempt from this Part ceases to be exempt while the person is conducting a fundraising appeal.

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s. 18C

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- (2) The person must apply to be registered as a fundraiser within—
 - (a) 28 days after the exemption ceases to apply if the cessation is the result of the making of a new Order under section 16A; or
 - (b) in any other case, 28 days after the person becomes aware that the exemption no longer applies, or will no longer apply (whichever occurs first).
 - (3) Section 17A does not apply to the person until the expiry of the relevant period in sub-section (2).
 - (4) For the purposes of this section, section 18(1) is to be read as if "at least 28 days before the date she or he intends to start conducting any fundraising appeal" was omitted.
 - (5) Sections 18(2), 18A, 19B and 19C apply to an application for registration to which this section applies as if a reference in those sections to a fundraising appeal to be conducted, or that it is intended to conduct, or to an intended appeal, included a reference to the appeal that the person is conducting.
 - (6) Section 19A(2) applies to an application for registration to which this section applies as if a reference in section 19A(2) to a fundraising appeal that a person may conduct included a reference to the appeal that the person is conducting.
 - (7) Section 19B(4) does not apply to an application for registration to which this section applies.

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s. 18D

S. 18D
inserted by
No. 70/2001
s. 10.

18D. Information concerning applications

- (1) The Director may, within 21 days after receiving an application for registration, seek further information in relation to the application from the person who submitted the application.
- (2) If the Director seeks further information from a person under sub-section (1), the Director may, within 14 days of receiving the information, seek further information in relation to the application from the person.

S. 18E
inserted by
No. 70/2001
s. 10.

18E. Director may obtain information from Chief Commissioner of Police

- (1) On receiving an application for registration, the Director may ask the Chief Commissioner of Police to give the Director information concerning—
 - (a) the criminal record, if any, of—
 - (i) any person named in the application; and
 - (ii) any person the Director believes, on reasonable grounds, may be an associate of the person who submitted the application; and
 - (b) any other matter in relation to the application on which the Chief Commissioner may have information.
- (2) The Chief Commissioner must, not more than 14 days after receiving such a request, give the requested details to the Director.
- (3) The Chief Commissioner must comply with a request made under sub-section (1)(a)(ii) if the Director states that she or he believes that she or he has reasonable grounds for making the request.

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s. 18F

18F. Consent to disclosure of information may be required

S. 18F
inserted by
No. 70/2001
s. 10.

- (1) The Director may require a person submitting an application for registration to provide the Director with any consent required by another person or body to enable the Director to obtain from the other person or body information to check or confirm any information set out in the application.
- (2) A reference in this Part to seeking further information in relation to an application includes a reference to requiring the provision of any consent referred to in sub-section (1).
- (3) A reference to a consent in this section includes a reference to the consent of a person other than the person submitting the application.

Note: Sub-section (3), would, for instance, enable the Director to require a person submitting an application to obtain the consent to a criminal record check of a person whom the Director believes on reasonable grounds is an associate of the person before the Director makes a final decision on whether or not to grant the application.

19. Registration as a fundraiser

S. 19
substituted by
No. 70/2001
s. 10.

On receiving an application for registration from a person and after making any enquiries the Director considers to be appropriate, the Director may—

- (a) register the person as a fundraiser; or
- (b) refuse to register the person as a fundraiser.

19A. Registration to be refused in certain cases

S. 19A
inserted by
No. 70/2001
s. 10.

- (1) The Director must not register a person as a fundraiser if the person, or any person named in the application as an appeal manager—
 - (a) is an insolvent under administration or is an externally-administered body corporate; or

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s. 19A

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- (b) has been found guilty of a disqualifying offence within the 10 years immediately before the application for registration was lodged; or
 - (c) is a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (d) was an appeal manager for a fundraising appeal within the 10 years immediately before the application for registration was lodged that was conducted by a person who was found guilty of a disqualifying offence within that period.
- (2) The Director must not register a person as a fundraiser if, in the opinion of the Director, there are reasonable grounds to suspect—
- (a) that the person (or any person named in the application who may be involved in any fundraising appeal that the person may conduct) will not comply with any provision of this Act in relation to any fundraising appeal that the person may conduct; or
 - (b) that any fundraising appeal that the person may conduct will not be conducted or administered in good faith for the purposes stated to those from whom money will be sought; or
 - (c) that any fundraising appeal that the person may conduct will be contrary to the public interest.
- (3) Despite sub-section (1), the Director may register a person as a fundraiser even though the person or an appeal manager falls within a category described in sub-section (1)(b) or (1)(d) if the Director is satisfied that circumstances exist that make it appropriate to register the person.
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s. 19B

- (4) Despite sub-section (3), the Director must not register a person as a fundraiser if the person or an appeal manager has been found guilty of an offence under this Act within the 10 years immediately before the application for registration was lodged.

19B. Director may refuse registration in certain cases

S. 19B
inserted by
No. 70/2001
s. 10.

- (1) The Director may refuse to register a person as a fundraiser if, in the opinion of the Director—
- (a) the application for registration contains false or misleading information; or
 - (b) there are significant omissions in the application for registration or the application is incomplete in a significant way; or
 - (c) the explanation of why the consent of a beneficiary of an intended appeal has not been supplied is not adequate or satisfactory; or
 - (d) in the case of an intended appeal on behalf of a class of beneficiary, the description of the class is too vague, or the class is insufficiently identified.
- (2) The Director may refuse to register a person as a fundraiser if any person named in the application as an appeal manager is not, in the opinion of the Director, a fit and proper person to be associated with a fundraising appeal.
- (3) The Director may refuse to register a person as a fundraiser if any associate of the person—
- (a) is an insolvent under administration or is an externally-administered body corporate; or

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s. 19C

- (b) has been found guilty of a disqualifying offence within the 10 years immediately before the application for registration was lodged; or
 - (c) is not, in the opinion of the Director, a fit and proper person to be associated with a fundraising appeal; or
 - (d) was an appeal manager for a fundraising appeal within the 10 years immediately before the application for registration was lodged that was conducted by a person who was found guilty of a disqualifying offence within that period.
- (4) The Director may refuse to register a person as a fundraiser—
- (a) if the application for registration is submitted less than 28 days before the date the person intends to start conducting a fundraising appeal; or
 - (b) if the person complies with section 18B, if the Director is of the opinion that there are no special circumstances.

S. 19C
inserted by
No. 70/2001
s. 10.

19C. Conditions on registration

In registering a person as a fundraiser, the Director may impose conditions on the person in relation to the conduct by the person—

- (a) of fundraising appeals generally; or
- (b) of any intended appeal.

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s. 20

20. Duration of registration

S. 20
substituted by
No. 70/2001
s. 10.

- (1) The registration of a person as a fundraiser remains current—
 - (a) for 12 months from the date of registration;
or
 - (b) for any longer period specified by the Director in a written notice given to the person on registration—

unless the person is deregistered in accordance with this Act before that period expires.

- (2) The Director may not specify a period under subsection (1)(b) that is more than 5 years after the date of registration.
- (3) The registration of a person who is deemed to be registered as a fundraiser under section 21 remains current for 12 months from the date the registration is deemed to occur, unless the person is deregistered in accordance with this Act before that period expires.

20A. Details of registration to be given in the register

S. 20A
inserted by
No. 70/2001
s. 10.

- (1) On registering a person as a fundraiser, the Director must ensure that the details of the registration required by the regulations are placed in the register.
- (2) The Director must specify in the register the period for which the registration is to remain current.

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s. 21

S. 21
substituted by
No. 70/2001
s. 10.

21. Deemed registration if no response within 21 days

- (1) The Director is deemed to register a person as a fundraiser if—
 - (a) the person applied to be registered as a fundraiser in accordance with this Division; and
 - (b) the Director does not, within 21 days after receiving that application, seek further information under section 18D(1) or refuse to register the person as a fundraiser.
- (2) The Director is also deemed to register a person as a fundraiser if—
 - (a) the person applied to be registered as a fundraiser in accordance with this Division; and
 - (b) the Director seeks further information from the person under section 18D(1); and
 - (c) the person gives the Director the further information sought by the Director; and
 - (d) the Director does not, within 14 days after receiving that information, give the person notice of any action taken by the Director under section 18D(2) or 19.

S. 22
substituted by
No. 70/2001
s. 10.

22. Renewal of registration

- (1) A person may apply to the Director to renew the person's registration as a fundraiser.
- (2) The application—
 - (a) must be submitted to the Director at least 28 days before the person's registration is due to expire; and
 - (b) must contain any information or consents required by the regulations.

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s. 23

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- (3) Sections 18D, 18E, 18F, 19, 19A, 19B, 19C, 20A and 21 apply—
- (a) to an application for the renewal of registration as if it was an application for registration; and
 - (b) as if a reference to the date of registration was a reference to the date of renewal of registration; and
 - (c) as if a reference to registration was a reference to renewal of registration.

23. Director may impose conditions at any time

S. 23
substituted by
No. 70/2001
s. 10.

- (1) At any time after registering a person as a fundraiser, the Director may impose conditions on the person in relation to the conduct by the person—
 - (a) of fundraising appeals generally; or
 - (b) of any fundraising appeal being conducted, or to be conducted, by the person.
- (2) The Director may impose a condition that has immediate effect if, in the opinion of the Director, there is a significant risk that an act or omission may occur that is significantly contrary to the public interest if the condition did not take effect immediately.
- (3) To impose a condition under this section in any other circumstances, the Director—
 - (a) must give the registered fundraiser a written notice—
 - (i) setting out the conditions the Director wishes to impose and the reasons why the Director wishes to impose the conditions; and

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s. 23A

- (ii) inviting the registered fundraiser to comment on the proposed conditions within a time specified in the notice; and
 - (b) must consider any comments made by the registered fundraiser within the specified time; and
 - (c) if the Director decides to impose the conditions after considering the comments, must give the registered fundraiser a second written notice setting out the conditions and stating that the conditions apply from the date specified in the notice.
- (4) The Director must not specify a period of less than 7 days for the purposes of sub-section (3)(a)(ii).
 - (5) The Director must not, under sub-section (3)(c), specify a date that is before the date the notice under that sub-section is given to the registered fundraiser.
 - (6) The Director may specify conditions in the notice given under sub-section (3)(c) that differ from the conditions set out in the notice given under sub-section (3)(a) if the differences result from complying with any request made under sub-section (3)(b) or if the differences are of a minor nature.

S. 23A
inserted by
No. 70/2001
s. 10.

23A. Condition concerning distribution of proceeds

Without limiting section 19C or 23, the Director may impose a condition requiring that a registered fundraiser must ensure that either in any specified period, or over the course of a fundraising appeal, a specified percentage of the proceeds of the appeal must be distributed to the beneficiaries of the appeal.

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s. 24

Division 2A—Notification of Changes

Pt 3 Div. 2A
(Heading and
ss 24–24D)
inserted by
No. 70/2001
s. 10.
S. 24
substituted by
No. 70/2001
s. 10.

24. Change of appeal manager to be notified

- (1) In this section, a notifiable event occurs if—
- (a) a person listed in an application under section 18 or 22 as being an appeal manager for a registered fundraiser ceases to be an appeal manager for any appeal being conducted by the registered fundraiser; or
 - (b) it becomes apparent that a person listed in an application under section 18 or 22 as being a person who it is intended will be an appeal manager for an appeal will not be an appeal manager for the appeal; or
 - (c) a person (other than a person listed under section 18 or 22 as a person who it is intended will be an appeal manager for an appeal) becomes an appeal manager for an appeal being conducted by a registered fundraiser; or
 - (d) an appeal manager for an appeal being conducted by a registered fundraiser ceases to be an appeal manager for any appeal being conducted by the registered fundraiser.
- (2) The registered fundraiser must notify the Director in writing of the occurrence of a notifiable event within 28 days after the occurrence of the event.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or
imprisonment for 12 months or both.

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s. 24A

S. 24A
inserted by
No. 70/2001
s. 10.

24A. Retention of commercial fundraiser to be notified

- (1) This section applies if a registered fundraiser retains a commercial fundraiser to administer all or part of a fundraising appeal and the retention of that commercial fundraiser has not been mentioned in any application submitted by the registered fundraiser under section 18 or 22.
- (2) The registered fundraiser must notify the Director in writing of the retention of the commercial fundraiser within 28 days after entering into the retention agreement with the commercial fundraiser.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or imprisonment for 12 months or both.

S. 24B
inserted by
No. 70/2001
s. 10.

24B. Bankruptcy, convictions etc. to be notified

- (1) In this section, a notifiable event occurs if at any time after a registered fundraiser is registered, or has her or his registration renewed—
 - (a) she or he, or an appeal manager of the appeal—
 - (i) becomes an insolvent under administration or an externally-administered body corporate; or
 - (ii) is found guilty of a disqualifying offence; or
 - (iii) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**;
 - (b) one of her or his associates—
 - (i) becomes an insolvent under administration or an externally-administered body corporate; or

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- (ii) is found guilty of a disqualifying offence;
- (c) she or he becomes associated with an associate who—
 - (i) is an insolvent under administration or is an externally-administered body corporate; or
 - (ii) has been found guilty of a disqualifying offence.
- (2) The registered fundraiser must notify the Director in writing of the occurrence of a notifiable event—
 - (a) within 28 days after the occurrence of the event; or
 - (b) if the registered fundraiser only becomes aware of the occurrence of a notifiable event described in sub-section (1)(a) in relation to an appeal manager, or in sub-section (1)(b), after it occurs, within 28 days after becoming aware that the event has occurred.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or
imprisonment for 12 months or both.

24C. Addition of beneficiaries to be notified

- (1) This section applies if a registered fundraiser decides to conduct a fundraising appeal for the benefit of any person, thing, cause or class of person not previously listed as a beneficiary by the registered fundraiser under section 18(2)(g) or 22 when applying for registration, or the renewal of registration, or under this section.

S. 24C
inserted by
No. 70/2001
s. 10.

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s. 24D

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- (2) At least 28 days before conducting any fundraising appeal on behalf of the person, thing, cause or class, the registered fundraiser—
- (a) must notify the Director in a form and manner approved by the Director of the additional person, thing, cause or class; and
 - (b) must give the Director—
 - (i) the written consent of the additional beneficiary to becoming an intended beneficiary of the appeal; or
 - (ii) a written explanation of why it is not practicable to comply with sub-paragraph (i).

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or imprisonment for 12 months or both.

- (3) If the intended beneficiaries of an appeal are the members of an organisation, the written consent of a duly authorised representative of the organisation is sufficient compliance with sub-section (2)(b)(i) with respect to the members of the organisation.
- (4) The Director may waive the 28 day requirement in sub-section (2) in a particular case if the Director is satisfied that it is reasonable to do so.

S. 24D
inserted by
No. 70/2001
s. 10.

24D. Change of contact person to be notified

- (1) In this section "**contact person**" means the natural person who is notified as the contact person for a fundraiser under section 18(2)(e) or under sub-section (2)(b).
- (2) If the person nominated as the contact person for a registered fundraiser ceases to act as the contact person, the registered fundraiser—

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- (a) must appoint another person to act as the contact person as soon as is practicable; and
- (b) must notify the Director in writing within 7 days of the name and address of the person appointed.

Penalty: 10 penalty units.

Division 3—Conduct of Appeals

25. Appeals must be conducted in accordance with conditions imposed and details given

S. 25
substituted by
No. 70/2001
s. 11.

- (1) In conducting a fundraising appeal, a registered fundraiser must ensure that the appeal is conducted in accordance with—
 - (a) any conditions specified by the Director under section 19C or 23; and
 - (b) any details given to the Director under section 18 or 22 concerning the conduct of a fundraising appeal (unless a relevant detail no longer applies as a result of a condition specified by the Director or the Director has agreed in writing to the variation or omission of the relevant detail).

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or
imprisonment for 12 months or both.

- (2) If the Director has sought further information under section 18D, a reference to any details given under section 18 or 22 is to be read as a reference to those details as varied by the further information.

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S. 26
substituted by
No. 70/2001
s. 11.

26. Proceeds may only be given to beneficiaries

- (1) A person conducting a fundraising appeal must not give, and must not authorise or permit any other person to give, any of the net proceeds of the appeal to any person, cause or thing who is not a beneficiary of the appeal, unless otherwise permitted by the Director under sub-section (2) or ordered by the Court under section 35A.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or imprisonment for 12 months or both.

- (2) On the application of a person conducting a fundraising appeal, the Director may permit the person to give part of the net proceeds of the appeal to a person who is not a beneficiary if the Director is of the opinion that there are special circumstances.

- (3) In this section—

"beneficiary", in relation to a fundraising appeal, means—

- (a) any person, thing, cause or class of person listed as a beneficiary under section 18(2)(g) or 22 by the person conducting the appeal when applying for registration, or the renewal of registration, as a fundraiser or under section 24C(2);
- (b) any person who is acting on behalf of such a person, thing, cause or class of person;

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"net proceeds", in relation to a fundraising appeal, means the proceeds of the appeal other than those that have been used to pay any of the expenses of conducting the appeal.

27. All appeal money must be banked

- (1) This section applies if any money received in the course of a fundraising appeal is not deposited in an account held in the name of the sole intended beneficiary of the appeal.
- (2) A person who is conducting a fundraising appeal must ensure that any money received in the course of the appeal is deposited in an account—
 - (a) that is used exclusively for money received in the course of fundraising appeals and that is held at—
 - (i) an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth; or

S. 27(2)(a)(i) substituted by No. 11/2001 s. 3(Sch. item 28).

* * * * *

S. 27(2)(a)(ii)(iii) repealed by No. 11/2001 s. 3(Sch. item 28).

- (iv) any institution that is in a class of institution that is authorised for the purposes of this section by the regulations; and
 - (b) that has a name that indicates that it contains fundraising appeal money; and

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(c) from which it is only possible to withdraw money by a cheque signed by at least 2 people.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or imprisonment for 12 months or both.

(3) If the money received in the course of a fundraising appeal is deposited under subsection (2) in an account that is not used exclusively for money received in the course of that appeal only, the person who is conducting the appeal must keep records in relation to the account that enable the money to be readily identified as having been received in the course of the appeal.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or imprisonment for 12 months or both.

(4) The obligations on a person imposed by this section are subject to any contrary obligations imposed on the person by the Director under section 19C or 23.

S. 27(4)
amended by
No. 70/2001
s. 12(a).

Division 4—Accounts and Records to be kept

28. Purpose and scope of this Division

The purpose of this Division is to ensure that adequate information is available to enable inspectors and members of the public to check that the proceeds of fundraising appeals have been used for the purpose for which they were solicited or received.

29. Fundraisers must keep certain records and accounts

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- (1) A person conducting a fundraising appeal must keep records sufficient to enable a true and fair view of the income and expenditure relating to the appeal to be ascertained at any given time including (without limiting this requirement)—
- (a) full details of all funds and assets received as a result of the appeal;
 - (b) full details of what happened to all those funds and assets;
 - (c) full details of—
 - (i) the amount applied to the purposes or objects of the appeal and how it was distributed;
 - (ii) any expenditure on assets;
 - (iii) any expenditure on wages, salaries, commissions and other remuneration in relation to the appeal;
 - (iv) any other administrative expenses related to the appeal;
 - (v) any other expenditure related to the appeal;
 - (d) any other details required by the regulations.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or imprisonment for 12 months or both.

- (2) If the appeal is, or was, conducted as part of a national appeal, it is not necessary for the records to be kept in a way that enables the information required by sub-section (1) that only relates to Victoria to be identified.

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- (3) The person conducting the appeal must ensure that the records are kept in a way that enables them to be conveniently and properly audited.

Penalty: 50 penalty units.

- (4) The person conducting the appeal must ensure that accounts containing a summary of the records required by sub-sections (1) and (2) are finalised within 3 months of—

- (a) the date the appeal ends, if the appeal runs for 12 months or less; or
- (b) each anniversary of the start of the appeal, if the appeal runs for more than 12 months.

Penalty: 50 penalty units.

- (5) If the appeal runs for more than 12 months—

- (a) the accounts required by sub-section (4)(b) are annual accounts; and
- (b) once the appeal ends, the person conducting the appeal must ensure that accounts covering the period from the last anniversary of the appeal until the date the appeal ends are finalised within 3 months of the date the appeal ends.

Penalty: 50 penalty units.

- (6) For the purposes of this section, an appeal ends on the occurrence of the first of these events—

- (a) if the appeal is being conducted by a person who is deregistered as a fundraiser under Division 7, on the day the deregistration takes effect;
- (b) if the appeal is stopped by an order made by the Court under section 34, on the day the order takes effect;

S. 29(6)
substituted by
No. 70/2001
s. 13.

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- (c) in any other case, one month after the last significant solicitation for money or a benefit is made in relation to the appeal.
- (7) Records relating to any proceeds received after the date an appeal ends but before the accounts for the last period of the appeal are finalised must be included in those accounts.
- (8) If the person who conducted an appeal continues to administer any funds or assets received as a result of an appeal after the appeal ends, the person must ensure that accounts containing a summary of the records required by sub-sections (1) and (2) are finalised within 3 months of—
- (a) if the appeal ran —
 - (i) for 12 months or less, each anniversary of the date the appeal ended; or
 - (ii) for more than 12 months, each anniversary after the first anniversary of the date the appeal started; or
 - (b) 30 June in each year—
- until the person ceases to administer the funds or assets.

Penalty: 50 penalty units.

- (9) A person to whom sub-section (8) applied must ensure that accounts containing a summary of the records required by sub-sections (1) and (2) are finalised within 3 months of the date the last of the funds or assets ceased to be administered by the person.

Penalty: 50 penalty units.

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30. Other records that fundraisers must keep

- (1) A person conducting a fundraising appeal must keep all of the following records—
- (a) if a corporation, incorporated association or unincorporated organisation is authorised to participate in the appeal, the name of the person from that body who is responsible for overseeing the body's involvement in the appeal;
 - (b) the name and address of each person who participates in the appeal as a supervisor or manager;
 - (c) the name and address of each person who gained a financial advantage from the appeal (other than as a person for whose benefit the appeal was held or other than as a supplier of goods or services) and details of the reason for, and nature and amount of, that financial advantage;
 - (d) the—
 - (i) name and address of every person; or
 - (ii) name or description of every class of people—on whose behalf the appeal was made;
 - (e) copies of the consents required by section 18A(1)(a) (if any);
 - (f) the dates on which the appeal started and finished;

S. 30(1)(e)
amended by
No. 70/2001
s. 12(b).

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(g) any other records required by the regulations.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or
imprisonment for 12 months or both.

- (2) The details required by sub-section (1)(c) must be given in respect of any commercial fundraiser involved in the appeal who gained a financial advantage from the appeal, even if the commercial fundraiser only supplied goods or services.

31. Where and for how long records are to be stored

- (1) A person conducting a fundraising appeal must ensure that any records or accounts that the person is required to keep under this Part are stored at all times in Victoria at the address or the registered office or principal place of business of the person or of the designated person.

Penalty: 50 penalty units.

- (2) The person must also ensure that the records or accounts are stored at that place for 3 years after the date the appeal ends.

Penalty: 50 penalty units.

Division 5—Audit of Accounts and Records

32. Director may require accounts to be audited

- (1) The Director may direct a person who is conducting, or has conducted, a fundraising appeal to submit to the Director, within the time specified by the Director, an auditor's report on the accounts and records kept in relation to the appeal.

S. 32(1)
amended by
No. 70/2001
s. 24(1)(a).

- (2) A person must comply with such a direction.

Penalty: 50 penalty units.

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s. 32

S. 32(3)(a)
substituted by
No. 44/2001
s. 3(Sch.
item 51).

S. 32(3)(b)
amended by
No. 70/2001
s. 24(1)(a).

S. 32(5)
amended by
No. 70/2001
s. 24(1)(a).

- (3) The report must be prepared by—
- (a) a registered company auditor within the meaning of the Corporations Act; or
 - (b) a person approved by the Director in writing for the purposes of this section.
- (4) The report must contain the auditor's opinion on—
- (a) whether the money received as a result of the appeal has been properly accounted for and applied; and
 - (b) whether the records and accounts in respect of the appeal have been properly kept in accordance with this Act; and
 - (c) whether the accounts show a true and fair view of the income and expenditure relating to the appeal.
- (5) The Director—
- (a) may only issue a direction under subsection (1) within 3 years of the end of the appeal; and
 - (b) must allow the person who is given the direction a reasonable amount of time to comply with the direction; and
 - (c) is not liable for any costs in relation to the audit.
- (6) If—
- (a) the report of an auditor under this section states that a person may have committed an offence; and

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(b) that person is prosecuted for the offence and a court finds the person guilty of, or convicts the person of, the offence—

the court may, on the application of the person who paid for the auditor's report, order the offender to pay to the applicant the cost of the report.

- (7) Sections 86(2), (3), (4), (5), (6) and (7) and 87 of the **Sentencing Act 1991** apply to sub-section (6) as if a reference in those sections to an order made under section 86(1) of that Act was a reference to an order made under sub-section (6); and
- (8) A receipt for the payment of the costs of an auditor's report that purports to be signed by, or on behalf, of the person responsible for the audit is evidence of the cost of the report.

Division 6—Public Inspection of Accounts and Records

33. Public may inspect some records

- (1) Any person may inspect the accounts required by sections 29(4) and (5) and the records required to be kept by section 30 (other than the records referred to in sections 30(1)(b) and (c)).
- (2) Any person may inspect any auditor's report prepared under section 32 at any time after a copy has been given to the Director.
- (3) Sub-section (2) applies even if the auditor's report contains information that a person is not entitled to inspect under sub-section (1).
- (4) A person who is conducting, or has conducted, a fundraising appeal must make any account or record that a person is entitled to inspect under this section available for inspection during normal business hours within 21 days of receiving—

S. 33(2)
amended by
No. 70/2001
s. 24(1)(a).

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s. 33A

- (a) a written request for the inspection from the person; and
- (b) the fee (if any) required by the regulations for the purposes of this section.

Penalty: 10 penalty units.

- (5) The account or record must be made available for inspection at the principal place of business in Victoria of the person who is conducting, or who conducted, the appeal, unless the person who wishes to inspect the account or record agrees to a different venue for the inspection.
- (6) It is sufficient compliance with a request for inspection if the person who is conducting, or has conducted, the fundraising appeal gives the person who made the request a copy of the information requested.

Division 7—Deregistration of Fundraisers

Pt 3 Div. 7
(Heading and
ss 33A–33M)
inserted by
No. 70/2001
s. 14.

S. 33A
inserted by
No. 70/2001
s. 14.

33A. Director may deregister fundraiser

The Director may deregister a person as a fundraiser if—

- (a) the Court orders that any fundraising appeal being conducted, or proposed to be conducted, by the person be stopped; or
- (b) the Director is satisfied that the registration was obtained by fraud or on the basis of the supply of false, misleading or incomplete information; or
- (c) the Director is satisfied, in relation to a fundraising appeal being conducted by the person—

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- (i) that the person (or any person assisting the person to conduct or administer the appeal) has failed, with respect to the appeal, to comply with any provision of this Act; or
 - (ii) that the appeal is not being, or will not be, conducted or administered in good faith for the purposes stated to those from whom money was, is being, or will be, sought; or
 - (iii) that—
 - (A) the person falls within one of the categories listed in section 19A(1); or
 - (B) an appeal manager for the appeal falls within one of the categories listed in section 19A(1) or 19B(2); or
 - (C) an associate of the person falls within one of the categories listed in section 19B(3)—

(unless the Director knew that the person, appeal manager or associate fell within that category at the time the person conducting the appeal gave the Director details of the person, appeal manager or associate); or
 - (iv) that the conduct of the appeal should be stopped in the public interest; or
 - (d) the Director is satisfied, in relation to a fundraising appeal that the person is conducting, or intends to conduct, on behalf of a class of beneficiary, that the description of the class is too vague, or that the class is insufficiently identified; or
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s. 33B

- (e) the Director is satisfied that it is not in the public interest for the person to conduct a fundraising appeal; or
- (f) in the case of an incorporated association that was not incorporated in Victoria, that the association has not complied with section 64B(5).

S. 33B
inserted by
No. 70/2001
s. 14.

33B. Process for expedited deregistration

- (1) If the Director deregisters a person as a fundraiser under section 33A(a) or 33A(f), she or he must give the person a written notice—
 - (a) stating that the Director has decided to deregister the person as a fundraiser; and
 - (b) stating when the deregistration takes effect.
- (2) If the Director deregisters a person as a fundraiser under section 33A(a), she or he must also include details of the Court order in the notice.
- (3) The Director must not, under sub-section (1)(b), specify that the deregistration is to take effect before the notice is given to the person.

S. 33C
inserted by
No. 70/2001
s. 14.

33C. Process for other deregistration

- (1) Before deregistering a person as a fundraiser under section 33A(b), 33A(c), 33A(d) or 33A(e), the Director—
 - (a) must give the person a written notice—
 - (i) stating that the Director is considering whether to deregister the person and the reasons why the Director is considering deregistering the person; and
 - (ii) inviting the person to make, within the time specified in the notice, a submission in relation to whether or not the Director should deregister the person; and

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- (b) must consider any submission made by the person within the specified time; and
 - (c) if the Director decides to deregister the person after considering the comments, must give the person a second written notice stating that the person is deregistered from the date specified in the notice.
- (2) The Director must not specify a period of less than 7 days for the purposes of sub-section (1)(a)(ii).
- (3) The Director must not, under sub-section (1)(c), specify a date that is less than 28 days after the date the notice under that sub-section is given to the person.
- (4) If the Director deregisters a person, she or he must ensure that the details of the deregistration required by the regulations are noted in the register.

33D. Action to be taken on deregistration

S. 33D
inserted by
No. 70/2001
s. 14.

If the Director deregisters a person as a fundraiser, on the deregistration taking effect the person—

- (a) must stop any fundraising activities that the person was undertaking immediately before the deregistration took effect and must not undertake any new fundraising activities; and
- (b) must not, without the Director's written consent, pay out, or otherwise distribute or deal with, any asset obtained as a result of any fundraising appeal that the person conducted while registered as a fundraiser; and

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s. 33E

- (c) must give the Director an inventory of the assets of any fundraising appeal being conducted by the person within 3 working days after the withdrawal takes effect; and
- (d) subject to paragraph (b), must ensure that any assets obtained as a result of the appeal are distributed as soon as is practicable to the intended beneficiaries of the appeal.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or
imprisonment for 12 months or both.

S. 33E
inserted by
No. 70/2001
s. 14.

33E. Additional obligations of deregistered commercial fundraisers

- (1) This section applies if the person who is deregistered as a fundraiser—
 - (a) is a commercial fundraiser; and
 - (b) was administering all or part of a fundraising appeal at the time the person was deregistered.
- (2) On the deregistration taking effect, in addition to complying with section 33D the person must—
 - (a) immediately advise the person conducting the appeal of the deregistration; and
 - (b) subject to section 33D(b), as soon as is practicable transfer to that person all the assets of the appeal that are to be transferred on the ending of the appeal to that person under the agreement governing their relationship in respect of the appeal.

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s. 33F

33F. Additional obligation on person using commercial fundraiser

S. 33F
inserted by
No. 70/2001
s. 14.

- (1) This section applies if, immediately before a person was deregistered as a fundraiser, a commercial fundraiser retained by that person was administering all or part of a fundraising appeal on behalf of that person.
- (2) On the deregistration taking effect the person who was deregistered must also—
 - (a) advise the commercial fundraiser of the deregistration; and
 - (b) require the commercial fundraiser to transfer to the person all the assets of the appeal that are to be transferred on the ending of the appeal to the person under the agreement governing their relationship in respect of the appeal.

33G. Restriction on fundraisers if notice of deregistration given

S. 33G
inserted by
No. 70/2001
s. 14.

- (1) This section applies if a person is given a notice under section 33C(1)(c), but the notice is not yet in effect.
- (2) Despite anything to the contrary in section 33J(4) or 33L, the person must not, without the Director's written consent, pay out, or otherwise distribute or deal with, any asset obtained as a result of any fundraising appeal that the person conducted while registered as a fundraiser.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or
imprisonment for 12 months or both.

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s. 33H

- (3) Sub-section (2) ceases to apply if—
- (a) the notice under section 33C(1)(c) takes effect; or
 - (b) the notice is withdrawn; or
 - (c) the Victorian Civil and Administrative Tribunal cancels or otherwise revokes the notice.

Note: Once the notice under section 33(1)(c) takes effect, section 33D governs what the person must do.

- (4) Nothing in this section affects section 33D.

S. 33H
inserted by
No. 70/2001
s. 14.

33H. Action to be taken if registration expires

If a person's registration as a fundraiser expires and is not renewed, sections 33D, 33E and 33F apply as if a reference in those sections to the deregistration of a person as a fundraiser was a reference to the expiry of the registration.

S. 33I
inserted by
No. 70/2001
s. 14.

33I. Change of circumstance affects power to deregister

- (1) This section applies if—
- (a) the Director is entitled to deregister a person as a fundraiser on the basis of the status of, or any action taken by, a relevant associate, appeal manager, or assistant; and
 - (b) before a notice is issued under section 33C(1)(c)—
 - (i) the associate ceases to be an associate of the registered fundraiser; or
 - (ii) the appeal manager ceases to be an appeal manager for the appeal; or
 - (iii) the assistant ceases to be involved in the appeal, or in appeals conducted by the registered fundraiser.

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s. 33J

- (2) The Director may not deregister the person, solely on the ground that the former associate, appeal manager or assistant was involved in the appeal or appeals.

33J. Person may apply for review of Director's decision

S. 33J
inserted by
No. 70/2001
s. 14.

- (1) A person may apply to the Victorian Civil and Administrative Tribunal for a review of a decision of the Director—
- (a) to refuse to register the person as a fundraiser;
 - (b) to impose conditions, or any particular condition, on the conduct of an appeal under section 19C or 23;
 - (c) to seek further information from the person;
 - (d) to refuse to renew a person's registration as a fundraiser;
 - (e) to deregister a person as a fundraiser.
- (2) An application for review must be made within 28 days after the later of—
- (a) the day the person is given written notice of the decision that the person wishes to have reviewed;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (3) Any written notice that the Director gives a person of any decision referred to in sub-section (1) must contain a copy of this section.

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Part 3—Provisions Applying to Particular Fundraising Appeals Only

s. 33K

- (4) If a person applies for the review of any decision of the Director listed in sub-section (1)(d) or (1)(e) within the time specified in sub-section (2), the decision of the Director is stayed until the application for review is affirmed, abandoned or dismissed.

S. 33K
inserted by
No. 70/2001
s. 14.

33K. Certain actions not subject to review

Despite anything to the contrary in section 33J, a decision by the Director to deregister a person as a fundraiser under section 33A(a) or 33A(f) is not subject to review by the Victorian Civil and Administrative Tribunal.

S. 33L
inserted by
No. 70/2001
s. 14.

33L. Automatic extension of notice of deregistration

- (1) This section applies if—
- (a) a person is given a notice under section 33C(1)(c); and
 - (b) the person, under the **Victorian Civil and Administrative Tribunal Act 1998**, requests a statement of reasons for the decision to issue the notice within 28 days after notice of the decision is given to her or him.
- (2) The date specified in the notice as the date the notice is to take effect is extended by virtue of this sub-section until 28 days after the day on which—
- (a) the statement of reasons is given to the person; or
 - (b) the person is informed under section 46(5) of that Act that a statement of reasons will not be given—

whichever occurs first.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 3—Provisions Applying to Particular Fundraising Appeals Only

s. 33M

33M. Automatic reversal if Court order quashed etc.

S. 33M
inserted by
No. 70/2001
s. 14.

- (1) This section applies if—
 - (a) the Director deregisters a person as a fundraiser under section 33A(a); and
 - (b) the Court order on which the Director's action was based is quashed, lapses or is withdrawn.
- (2) On the quashing, lapsing or withdrawal of the order, by virtue of this section, the person who was the subject of the deregistration is deemed to be registered as a fundraiser for the remainder of the current registration period.
- (3) A reference in this section to a current period is a reference to the period in which the deregistration took effect.
- (4) If this section applies, the Director must ensure that the register is amended accordingly.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 4—Powers of the Court

s. 34

PART 4—POWERS OF THE COURT

Division 1—Jurisdiction of the Court under this Act

34. Court may order person to stop conducting an appeal

- (1) The Court may order a person to stop conducting a fundraising appeal and any associated activities, or any activities relating to a proposed fundraising appeal, if it is satisfied—
- (a) that the person (or any person assisting in conducting or administering the appeal or proposed appeal) has failed, with respect to the appeal or proposed appeal, to comply with any provision of this Act or any condition imposed by the Minister under this Act; or
 - (b) that the appeal or proposed appeal is not being, or will not be, conducted or administered in good faith for the purposes stated to those from whom money was, is being, or will be, sought; or
 - (c) that the appeal or proposed appeal should be stopped in the public interest; or
 - (d) that the person (or any person assisting in conducting or administering the appeal or proposed appeal) uses fundraising practices or activities that may bring public fundraising into disrepute; or
 - (e) that any registration obtained under this Act in relation to the appeal was obtained by fraud or on the basis of the supply of false, misleading or incomplete information; or

S. 34(1)(c)
amended by
No. 70/2001
s. 15(1).

S. 34(1)(d)
inserted by
No. 70/2001
s. 15(2).

S. 34(1)(e)
inserted by
No. 70/2001
s. 15(2).

Fundraising Appeals Act 1998
Act No. 78/1998

Part 4—Powers of the Court

s. 34

- (f) in respect of an appeal conducted by a registered fundraiser—
- (i) that the registered fundraiser—
 - (A) is an insolvent under administration or is an externally-administered body corporate; or
 - (B) has been found guilty of a disqualifying offence since becoming registered as a fundraiser; or
 - (C) is a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (ii) that an appeal manager of the appeal—
 - (A) falls within one of the categories listed in paragraph (f)(i); or
 - (B) is not a fit and proper person to be associated with the appeal; or
 - (C) was an appeal manager for a fundraising appeal within the 10 years immediately before the application for the order was filed that was conducted by a person who was found guilty of a disqualifying offence within that period; or
 - (iii) that an associate of the registered fundraiser falls within one of the categories listed in section 19B(3)—

S. 34(1)(f)
inserted by
No. 70/2001
s. 15(2).

unless the Director knew that the registered fundraiser, appeal manager or associate fell within that category at the time the registered fundraiser gave the Director details of the registered fundraiser, appeal manager or associate.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 4—Powers of the Court

s. 34

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- (2) The Court may order a person to stop any particular activity associated with a fundraising appeal or a proposed fundraising appeal if it is satisfied—
- S. 34(2)(a) amended by No. 70/2001 s. 15(3)(a).
- (a) that the activity does not comply with a provision of this Act or a condition imposed by the Minister or the Director under this Act; or
- S. 34(2)(aa) inserted by No. 70/2001 s. 15(3)(b).
- (aa) that the activity may bring public fundraising into disrepute; or
- (b) that the activity should be stopped in the public interest.
- S. 34(3) amended by No. 70/2001 s. 15(4).
- (3) The Court may make an order, or revoke an order, under this section on the application of the Minister or the Director.
- S. 34(4) substituted by No. 70/2001 s. 15(5).
- (4) In making an order, the Court—
- (a) may specify that the order is to take effect immediately;
- (b) must, in any other case, specify the date on which the order is to take effect;
- (c) may provide that the order is to lapse before it takes effect if certain conditions set out in it are met;
- (d) may impose restrictions on how the assets of the appeal are to be distributed or dealt with;
- (e) may stay all or part of the order;
- (f) may make any consequential order it thinks is necessary to give effect to the order.
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Fundraising Appeals Act 1998
Act No. 78/1998

Part 4—Powers of the Court

s. 35

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- (5) If the Court makes an order under this section in relation to a person who is exempt from all or part of Part 3, the Court may include in its Order a declaration that the exemption (or part of the exemption) is not to apply to the person for a specified period.
 - (6) If the Court exercises its powers under sub-section (5), the exemption (or part of the exemption) specified in the Order does not apply to the person during the period specified under that sub-section.

35. Court may make a temporary order without notice

- (1) The Court may make a temporary order under section 34 without giving the person against whom the order is sought an opportunity to be heard if it is satisfied—
 - (a) that there are reasonable grounds for believing that the application under section 34 might be successful; and
 - (b) that having regard to all the relevant circumstances, the public interest will be best served by the making of the order.
 - (2) In making an order under this section the Court—
 - (a) must specify the date on which the order expires; and
 - (b) must not specify an expiry date that is more than 30 days after the date it makes the order.
 - (3) The Court may extend an order made under this section, but only if it has started to hear the application under section 34 to which the order relates.
 - (4) The Court may extend an order under sub-section (3) until it gives its decision on the application.
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Fundraising Appeals Act 1998
Act No. 78/1998

Part 4—Powers of the Court

s. 35A

S. 35A
inserted by
No. 70/2001
s. 16.

35A. Court may make orders concerning distribution of appeal assets

- (1) This section applies if—
 - (a) all the intended beneficiaries of a fundraising appeal refuse to accept the assets offered to them as a result of the appeal; or
 - (b) all the intended beneficiaries of a fundraising appeal no longer exist or cannot be found after all reasonable enquiries have been made; or
 - (c) a question or dispute arises as to how any or all of the assets received as a result of a fundraising appeal are to be distributed.
- (2) The Director may apply to the Court for an order directing how the assets are to be distributed.
- (3) The Court may make any order concerning the distribution of the assets that it thinks is appropriate having regard to the stated purpose of the appeal.
- (4) The Court may make any consequential order it thinks is necessary to give effect to any order that it makes under sub-section (3).

36. Court may make orders concerning wrongly obtained assets

- (1) This section applies if—
 - (a) assets are obtained as a result of a fundraising appeal that was, or is being, conducted or administered in contravention of this Act; or
 - (b) assets that were obtained as a result of a fundraising appeal were not, or are not being, applied for the purposes stated to the people from whom the assets were obtained.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 4—Powers of the Court

s. 36

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- (2) The Minister or the Director may apply to the Court for an order in relation to the retrieval and disposal of the assets.
- (3) The Court may make any order concerning the retrieval and disposal of the assets that it thinks is appropriate having regard to the stated purpose of the appeal.
- (4) However, the Court may only make an order in respect of an asset if it is satisfied—
- (a) that sub-section (1) applies; and
 - (b) that the asset can be traced back (whether directly or indirectly) to the assets that were obtained as a result of the appeal; and
 - (c) in the case of an asset that is an object, that the asset is not held by a person who obtained it in good faith and for value.
- (5) The Court may make any consequential order it thinks is necessary to give effect to any order that it makes under sub-section (3).
- (6) Without intending to limit sub-section (5), the Court—
- (a) may order that a specified asset is not to be disposed of, or otherwise dealt with, by any person except in the manner and circumstances specified in the order; and
 - (b) if the Court considers that the circumstances so require, may direct a specified trustee to take control of the asset.

S. 36(2)
amended by
No. 70/2001
s. 24(1)(b).

Fundraising Appeals Act 1998
Act No. 78/1998

Part 4—Powers of the Court

s. 37

37. Minister or Director may refer question to Court for answer

S. 37(1)
amended by
No. 70/2001
s. 24(1)(b).

- (1) At any time the Minister or the Director may refer to the Court any question as to whether—
 - (a) a particular person in relation to a fundraising appeal—
 - (i) is conducting (or administering or participating in) or has conducted (or administered or participated in) the appeal; or
 - (ii) is or was exempt from the Act, or a part of the Act; or
 - (iii) has provided accurate information in any application, notice or statement required by or under this Act; or
 - (iv) has in any other respect complied or failed to comply with the provisions of this Act;
 - (b) a fundraising appeal being, or to be, conducted is or is not in the public interest.
- (2) Any finding of fact, or of mixed fact and law, that the Court makes in response to an application under this section is admissible as evidence of the relevant fact in any proceedings against a person for an offence against this Act.
- (3) Sub-section (2) does not apply to a finding that is quashed, or that is substituted by another finding, on appeal or review.
- (4) If a finding of fact, or of mixed fact and law, is substituted by another finding on appeal or review, sub-section (2) applies to the substituted finding as if it had been made by the Court.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 4—Powers of the Court

s. 38

38. Form of reference

- (1) A reference under section 37 must be in writing and must be lodged with the registrar and must state the question or matters to be determined by the Court.
- (2) The registrar must send a copy of the reference to each party other than the Minister or the Director (as the case may be), and must notify each party of the time and place fixed by the registrar for the hearing of the reference.

S. 38(2)
amended by
No. 70/2001
s. 24(1)(c).

Division 2—Procedure and Conduct of Matters under this Part

39. Powers of Court

- (1) Subject to this Part, the **Magistrates' Court Act 1989** and the Rules made under that Act apply to all applications and references by the Minister or the Director to the Court under this Act.
- (2) The Court in hearing an application, or dealing with a reference, under this Act may do anything that it may do in the exercise of its civil jurisdiction.

S. 39(1)
amended by
No. 70/2001
s. 24(1)(b).

40. Evidentiary provisions

- (1) Despite anything to the contrary in the **Magistrates' Court Act 1989** and the Rules made under that Act, evidence before the Court on the hearing of an application or a reference may be given in writing, or partly in writing, and may be given by a statutory declaration.
- (2) However, the Court must not receive evidence from any person who is not available for cross-examination, unless each party to the hearing consents to it doing so.
- (3) Any consent given under sub-section (2) forms part of the record of the Court.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 4—Powers of the Court

s. 41

41. Appearance of parties

Despite anything to the contrary in the **Magistrates' Court Act 1989** and the Rules made under that Act, a party (including a corporation) to an application or a reference may appear by any other person authorised by that party.

42. Determination of Court

If the Court makes a determination, it must, unless all parties to the matter otherwise agree, give to each party to the matter within a reasonable time of making the determination a statement in writing of its reasons for the determination.

43. Effect of determination

If a determination made by the Court requires any act or thing to be done by the Minister or the Director (other than the payment of costs), the Minister or the Director must do the act or thing within 5 working days of the day on which the Minister or the Director receives a copy of the determination.

S. 43
amended by
No. 70/2001
s. 24(1)(b).

Fundraising Appeals Act 1998
Act No. 78/1998

Part 5—Enforcement Provisions

s. 44

PART 5—ENFORCEMENT PROVISIONS

Division 1—General Enforcement Provisions

Pt 5 Div. 1
(Heading)
inserted by
No. 103/2004
s. 45.

44. Minister or Director may demand information

- (1) The Minister or the Director may require a person to give her or him any information or documents that the Minister or the Director considers necessary to determine whether that or any other person—

S. 44(1)
amended by
No. 70/2001
s. 17(a)(b).

- (a) has complied with a provision of this Act;
- (b) is, or has been at any time, required by law to comply with a provision of this Act;
- (c) is or might be conducting or administering, or has or might have conducted or administered, a fundraising appeal;
- (d) is, or was, exempt from the provisions of this Act.

- (2) The Minister or the Director must make the requirement in a written notice that identifies the information or document and that specifies—

S. 44(2)
amended by
No. 70/2001
s. 17(a).

- (a) by when the requirement must be complied with; and
- (b) in what form the information or document is to be given to the Minister or the Director.

S. 44(2)(b)
amended by
No. 70/2001
s. 17(b).

- (3) The notice must also state that the requirement is made under this section and must include a copy of this section and section 60.

S. 44(3)
amended by
No. 70/2001
s. 17(c).

Fundraising Appeals Act 1998
Act No. 78/1998

Part 5—Enforcement Provisions

s. 46

S. 44(4)
amended by
No. 70/2001
s. 17(b).

- (4) A person must comply with any requirement made by the Minister or the Director under this section, unless the person has a reasonable excuse for not doing so.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or imprisonment for 12 months or both.

S. 45
repealed by
No. 17/1999
s. 33(2).

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46. Searches to monitor compliance with this Act

- (1) In this section, "**relevant premises**" means any premises—
- (a) on or from which it appears a fundraising appeal is being conducted or administered;
or
 - (b) that an inspector believes, on reasonable grounds, contains any record or account that is required to be kept by this Act, or any document that indicates whether or not this Act has been complied with.
- (2) An inspector may enter any relevant premises at any reasonable hour in the daytime and at any time that the premises is open for business and may—
- (a) inspect the premises and any thing on the premises;
 - (b) search for any evidence of any contravention of this Act;
 - (c) make copies of, or take extracts from, any document kept on the premises;

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Act No. 78/1998

Part 5—Enforcement Provisions

s. 47

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- (d) seize any thing on the premises if the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction;
 - (e) use any assistants the inspector considers necessary to exercise the powers conferred by this section.
- (3) An inspector may exercise powers under this section only to the extent that it is reasonably necessary to do so for the purpose of determining compliance with this Act.
 - (4) An inspector may not continue to exercise any powers under this section if she or he fails to produce, on request, her or his identity card for inspection by the occupier of the land.
 - (5) An inspector may not, under this section, enter a residence unless the occupier of the residence has consented in writing to the entry and the carrying out of a search.

47. Offence-related searches and seizures

- (1) An inspector may only exercise powers under this section if she or he has reasonable grounds for suspecting that there is on any premises a particular thing that may be evidence of the commission of an offence under this Act.
- (2) The inspector, with any assistants she or he considers necessary, may with the consent in writing of the occupier of the premises, enter the premises and search for the thing without applying for a search warrant.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 5—Enforcement Provisions

s. 48

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- (3) If the thing is found during a search under subsection (2), the inspector may—
- (a) inspect any thing on the premises;
 - (b) inspect, and make copies of, or take extracts from, the thing;
 - (c) seize the thing if the inspector believes on reasonable grounds that it is necessary to seize it in order to prevent its concealment, loss or destruction.

48. Occupier to be given copy of consent

- (1) An occupier who consents in writing to the entry and search of her or his premises or residence under section 46 or 47 must be given a copy of the signed consent immediately.
- (2) If, in any proceeding, a written consent is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search.

49. Search warrant

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to particular premises if the inspector believes on reasonable grounds that there is, or may be within the next 72 hours, on the premises a particular thing that may be evidence of the commission of an offence under this Act.
- (2) If a magistrate is satisfied that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on the premises a particular thing that may be evidence of the commission of an offence under this Act, the magistrate may issue a search warrant authorising an inspector named in the warrant and any assistants the inspector considers necessary—

Fundraising Appeals Act 1998
Act No. 78/1998

Part 5—Enforcement Provisions

s. 50

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- (a) to enter the premises, or the part of premises, named or described in the warrant; and
 - (b) to search for and seize any thing named or described in the warrant.
- (3) In addition to any other requirement, a search warrant issued under this section must state—
- (a) the offence suspected; and
 - (b) the premises to be searched; and
 - (c) a description of the thing for which the search is to be made; and
 - (d) any conditions to which the warrant is subject; and
 - (e) whether entry is authorised to be made at any time or during stated hours; and
 - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and must be in the form set out in the regulations under that Act.
- (5) Subject to any provision to the contrary in this Act, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

50. Announcement before entry

- (1) Before executing a search warrant, the inspector named in the warrant or a person assisting the inspector must announce that she or he is authorised by the warrant to enter the premises and give any person at the premises an opportunity to allow entry to the premises.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 5—Enforcement Provisions

s. 51

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- (2) The inspector or a person assisting the inspector need not comply with sub-section (1) if she or he believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

51. Copy of warrant to be given to occupier

If the occupier or another person who apparently represents the occupier is present at a premises when a search warrant is being executed, the inspector must—

- (a) identify herself or himself to that person by producing her or his identity card for inspection by that person; and
- (b) give to that person a copy of the execution copy of the warrant.

52. Receipt must be given for any thing seized

- (1) An inspector may not seize a thing, apparently in the possession or custody of a person, unless she or he makes out and tenders to the person a receipt for the thing seized that—
 - (a) identifies the thing; and
 - (b) states the name of the inspector and the reason why the thing is being seized.
- (2) If an inspector is unable to discover the identity of the owner or custodian of any thing seized, the inspector must leave the receipt with, or post it to, the owner of the premises from which the thing was seized.

53. Copies of certain seized things to be given

- (1) If an inspector seizes—
- (a) a document; or
 - (b) a thing that can be readily copied; or
 - (c) a storage device the information in which can be readily copied—

the inspector must give a copy of the thing or information to the owner or custodian of the document, thing or device as soon as practicable after the seizure.

- (2) Sub-section (1) does not apply—
- (a) to any document, thing or device moved under section 54(2); or
 - (b) if the inspector is unable to discover the identity of the owner or custodian of any document, thing or device seized.

54. Use of equipment to examine or process things

- (1) An inspector may bring on to a premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized.

- (2) If—
- (a) it is not practicable to examine or process the things at the premises; or
 - (b) the occupier of the premises consents in writing—

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized.

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Act No. 78/1998

Part 5—Enforcement Provisions

s. 55

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- (3) The inspector, or a person helping the inspector, may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized, if the inspector or person helping believes on reasonable grounds that—
- (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or the thing.

55. Use or seizure of electronic equipment at premises

- (1) If—
- (a) a thing found at a premises is or includes a disk, tape or other device for the storage of information; and
 - (b) equipment at the premises may be used with the disk, tape or other storage device; and
 - (c) the inspector believes on reasonable grounds that the information stored on the disk, tape or other storage device is relevant to determine whether this Act has been contravened—

the inspector or a person assisting the inspector may operate, or may require the occupier or an employee of the occupier to operate, the equipment to access the information.

- (2) If the inspector or a person assisting the inspector finds that a disk, tape or other storage device at the premises contains information of the kind referred to in sub-section (1)(c), she or he may—
- (a) put the information in documentary form and seize the documents so produced; or

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- (b) copy the information to another disk, tape or other storage device and remove that storage device from the premises; or
 - (c) if it is not practicable to put the information in documentary form nor to copy the information, seize the disk, tape or other storage device and the equipment that enables the information to be accessed.
- (3) An inspector or a person assisting an inspector must not operate or seize equipment for the purpose mentioned in this section unless the inspector or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

56. Compensation for damage caused during inspections

- (1) The Minister must pay compensation for any damage caused by an inspector, or a person assisting an inspector, in exercising (or purporting to exercise) any power conferred by this Act.
- (2) However, the Minister is not liable to pay compensation for any damage caused during any inspection that reveals that there has been a contravention of this Act.
- (3) In determining the amount of compensation payable in relation to any damage caused to electronic equipment, regard is to be had to whether the occupier of the premises and the employees and agents of the occupier, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 5—Enforcement Provisions

s. 57

57. Return of seized things

- (1) If an inspector seizes a thing under this Act, the inspector must take reasonable steps to return the thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the thing has not been returned before the end of the retention period, the inspector must take reasonable steps to return it unless—
 - (a) proceedings have commenced within the retention period and those proceedings (including any appeal) have not been completed; or
 - (b) a court makes an order under section 58 extending the retention period.

58. Court may extend period

- (1) An inspector may apply to the Court within the retention period or within a period extended by the Court under this section for an extension of that period.
- (2) The Court may order such an extension if satisfied that retention of the thing is necessary—
 - (a) for the purposes of an investigation into whether an offence has been committed; or
 - (b) to enable evidence of an offence to be obtained for the purposes of a prosecution.
- (3) The Court may adjourn an application to enable notice of the application to be given to any person.

59. Power of inspector to require information or documents

- (1) An inspector who—
- (a) exercises a power of entry under this Act; and
 - (b) produces her or his identity card for inspection by a person—

may, to the extent that it is reasonably necessary to determine whether this Act has been contravened, require the person to give information to the inspector, to produce documents to the inspector and to give reasonable assistance to the inspector.

- (2) A person must not refuse or fail, without reasonable excuse, to comply with a requirement made under sub-section (1).

Penalty: 200 penalty units.

- (3) A person must not, in response to a request under this Division—

- (a) give information that the person knows to be false or misleading in a material detail; or
- (b) produce a document that the person knows to be false or misleading in a material detail without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 300 penalty units.

60. Protection against self-incrimination

- (1) A person is not excused from giving information, producing a document or doing any other thing that the person is required to do by or under this Act on the ground that the information, the production of the document or the doing of the other thing would tend to incriminate the person.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 5—Enforcement Provisions

s. 61

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- (2) However, if a person claims, before giving any information, producing any document or doing any other thing, that the information, the production of the document or the doing of the other thing might tend to incriminate the person, the information, document or evidence of the doing of the thing is not admissible in evidence against the person in criminal proceedings, other than in proceedings in respect of the falsity of the information.

61. Inspectors etc. must not disclose information

- (1) A person must not disclose any information that is obtained by her or him while exercising a power conferred by this Act.

Penalty: 200 penalty units.

- (2) A person must not use any such information to obtain directly or indirectly any pecuniary advantage for herself or himself or for any other person.

Penalty: 200 penalty units.

- (3) However, a person may disclose or use such information if—

- (a) the disclosure or use is made in the performance of a duty under, or in connection with, this Act; or
- (b) the person has the consent of the person to whom the information relates; or
- (c) the disclosure or use is made in legal proceedings at the direction of a court; or
- (d) the information is in the public domain at the time it is disclosed or used.

- (4) Sub-section (3) is not intended to interfere with any rights another person may have with regard to the disclosure or use of the information.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 5—Enforcement Provisions

s. 61A

61A. Director may order distribution of assets

S. 61A
inserted by
No. 70/2001
s. 18.

- (1) This section applies if—
 - (a) the Court orders a person to stop conducting a fundraising appeal under section 34; or
 - (b) the Director deregisters as a fundraiser a person who is conducting a fundraising appeal; or
 - (c) the registration of a person as a fundraiser expires while the person is conducting a fundraising appeal.
- (2) The Director may order the person to distribute, within the time specified by the Director, any assets received during the course of the appeal to the beneficiaries of the appeal.
- (3) The order—
 - (a) must be made by written notice given to the person; and
 - (b) must set out the time within which the distribution must be made; and
 - (c) must contain a copy of this section.
- (4) The person must comply with an order made under this section.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or
imprisonment for 12 months or both.

61B. Director may appoint an administrator

S. 61B
inserted by
No. 70/2001
s. 18.

- (1) This section applies if any of the circumstances listed in section 61A(1) exist in relation to a fundraising appeal.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 5—Enforcement Provisions

s. 61C

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- (2) If, in the opinion of the Director it is appropriate to do so, the Director may appoint an administrator—
- (a) to wind up the appeal; or
 - (b) to exercise the Director's functions in relation to consenting to the disbursement of the assets of the appeal.
- (3) An administrator appointed under sub-section (2)(a) may—
- (a) take possession of all assets associated with the appeal; and
 - (b) prepare any accounts required by this Act in relation to the appeal; and
 - (c) distribute assets of the appeal to the beneficiaries of the appeal; and
 - (d) do anything else that is necessary to wind up the appeal.
- (4) The costs of the administrator under this section are to be defrayed from the assets of the appeal.

Pt 5 Div. 2
(Heading and
ss 61C–61K)
inserted by
No. 103/2004
s. 46.

S. 61C
inserted by
No. 103/2004
s. 46.

Division 2—Infringement Notices

61C. Definition

In this Division—

"authorised officer" means—

- (a) an inspector;
- (b) a member of the police force;
- (c) a person authorised in writing by the Director.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 5—Enforcement Provisions

s. 61D

61D. Power to serve a notice

- (1) An authorised officer may serve an infringement notice on any person that he or she has reason to believe has committed an offence against a provision of this Act that is specified in the Schedule.
- (2) An infringement notice may be served on a person—
 - (a) by delivering it personally to the person; or
 - (b) by sending it by post addressed to the person at the person's last known place of residence or business.

S. 61D
inserted by
No. 103/2004
s. 46.

61E. Form of notice

An infringement notice must be in a form approved by the Director and must set out—

- (a) the date of the notice;
- (b) the provision of this Act that creates the offence;
- (c) the date, time and place of the alleged offence;
- (d) the nature and a brief description of the alleged offence;
- (e) the infringement penalty for the alleged offence set out in the regulations;
- (f) the manner in which the infringement penalty may be paid;
- (g) the time (not being less than 28 days after the date on which the notice is served) within which the infringement penalty must be paid;

S. 61E
inserted by
No. 103/2004
s. 46.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 5—Enforcement Provisions

s. 61F

- (h) that, if the amount of the infringement penalty is paid before the end of the time specified in the notice, the matter will not be brought before the Magistrates' Court unless the notice is withdrawn within 28 days after the date on which it was served;
- (i) that the person is entitled to disregard the notice and defend any proceedings in respect of the alleged offence in the Magistrates' Court;
- (j) any other prescribed particulars.

S. 61F
inserted by
No. 103/2004
s. 46.

61F. Late payment of penalty

An authorised officer may accept payment of the infringement penalty even after the expiration of the time for payment stated in the infringement notice if—

- (a) neither a charge has been filed nor a courtesy letter served under Part 2 of Schedule 7 to the **Magistrates' Court Act 1989** in respect of the offence to which the infringement penalty relates; and
- (b) the infringement notice has not been withdrawn.

S. 61G
inserted by
No. 103/2004
s. 46.

61G. Withdrawal of notice

- (1) A member of the police force may withdraw an infringement notice issued by a member of the police force under this Division within 28 days after it was served.
- (2) The Director may withdraw an infringement notice issued by any other authorised officer under this Division within 28 days after it was served.
- (3) The withdrawal of an infringement notice is to be effected by serving a withdrawal notice on the person on whom the infringement notice was served.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 5—Enforcement Provisions

s. 61H

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- (4) If the penalty sought in the infringement notice has been paid before the notice is withdrawn, the amount of the penalty must be refunded on the notice being withdrawn, and the Consolidated Fund is, to the necessary extent, appropriated accordingly.
 - (5) Proceedings for the offence in respect of which the infringement notice has been served may still be taken or continued despite the withdrawal of the notice.

61H. Payment exiates offence

If an infringement notice is not withdrawn and the infringement penalty is paid within the time specified in the notice or payment is accepted in accordance with section 61F, then—

- (a) the person on whom the notice was served has expiated the offence by that payment; and
- (b) no proceedings may be taken against that person in respect of that offence; and
- (c) no conviction is to be taken to have been recorded against that person for the offence.

S. 61H
inserted by
No. 103/2004
s. 46.

61I. Application of penalty

- (1) An infringement penalty paid under this Division must be applied in the same way as a fine paid under an order of a court made on an offender being convicted or found guilty of the offence to which the infringement penalty relates.
- (2) The payment of an infringement penalty under this Division is not and must not be taken to be—
 - (a) an admission of guilt in relation to the offence; or

S. 61I
inserted by
No. 103/2004
s. 46.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 5—Enforcement Provisions

s. 61J

- (b) an admission of liability for the purpose of any civil claim or proceeding arising out of the same occurrence, and the payment does not in any way affect or prejudice any such claim or proceeding.
- (3) The payment of an infringement penalty under this Division must not be referred to in any report provided to a court for the purpose of determining sentence for any offence.

S. 61J
inserted by
No. 103/2004
s. 46.

61J. Prosecution after service of infringement notice

A charge may be filed in respect of an offence to which an infringement notice relates if—

- (a) the infringement penalty has not been paid within the time for payment specified in the notice or in accordance with section 61F; or
- (b) the notice is withdrawn.

S. 61K
inserted by
No. 103/2004
s. 46.

61K. Enforcement of infringement penalty

Payment of the infringement penalty may be enforced in accordance with Part 2 of Schedule 7 to the **Magistrates' Court Act 1989** if—

- (a) the infringement notice is an infringement notice within the meaning of Schedule 7 to that Act; and
- (b) the infringement penalty has not been paid within the time specified in the notice or in accordance with section 61F; and
- (c) the notice has not been withdrawn; and
- (d) a charge has not been filed in accordance with section 61J.

PART 6—MISCELLANEOUS MATTERS

62. False statements

A person must not make any false statement or give any false information in an application, notice or other document provided under this Act.

Penalty: In the case of a corporation,
240 penalty units.

In any other case, 120 penalty units or imprisonment for 12 months or both.

63. Role of designated person

In the case of a person who is an incorporated association or an unincorporated organisation, for the purposes of this Act—

- (a) any requirement can be made of the association or organisation; and
- (b) any notice or other document can be given to the association or organisation—

by making it of, or giving it to, the designated person of the association or organisation.

64. Change of designated person

- (1) An incorporated association or an unincorporated organisation that has appointed a designated person may replace that person with another natural person.
- (2) The replacement of a designated person takes effect when the Director is given written notice of the name and address of the replacement.

S. 64(2)
amended by
No. 70/2001
s. 24(1)(a).

- (3) A person remains the designated person of an association or organisation until—

Fundraising Appeals Act 1998
Act No. 78/1998

Part 6—Miscellaneous Matters

s. 64B

S. 64(3)(a)
amended by
No. 70/2001
s. 24(1)(a).

(a) the Director is given a notice under sub-section (2); or

S. 64(3)(b)
amended by
No. 70/2001
s. 24(1)(a).

(b) the person gives the Director a written notice of resignation signed by the person.

S. 64A
inserted by
No. 70/2001
s. 19.

64A. Appointment and role of responsible person

- (1) This section only applies to an incorporated association that was not incorporated in Victoria.
- (2) A person may only be appointed as the responsible person of an incorporated association if she or he is a natural person and is a member of the governing body of the association.
- (3) The appointment of a person as a responsible person only takes effect on the person signing a written consent to the appointment that also states the obligations imposed on a responsible person by this Act and the maximum penalty that applies if those obligations are not met.
- (4) A person who is notified as the responsible person under section 18(2)(k) on behalf of an incorporated association must ensure that the association complies with all the obligations placed on the association by this Act.
Penalty: 120 penalty units.
- (5) It is a defence to a charge under sub-section (4) if the person charged proves that she or he took all reasonable steps to ensure that the association complied with all the obligations placed on it by this Act.

S. 64B
inserted by
No. 70/2001
s. 19.

64B. Change of responsible person

- (1) An incorporated association that has appointed a responsible person may replace that person with another person.

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Part 6—Miscellaneous Matters

s. 66

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- (2) The replacement of a responsible person takes effect when the Director receives—
 - (a) written notice of the name and address of the replacement; and
 - (b) the consent required by section 64A(3) signed by the replacement.
 - (3) A person remains the responsible person of an association until—
 - (a) the person is replaced in accordance with sub-section (2); or
 - (b) the person gives the Director a written notice of resignation signed by the person.
 - (4) A person does not cease to be the responsible person of an association merely by ceasing to be a member of the governing body of the association.
 - (5) If a person appointed as the responsible person of an association resigns, the association must replace that person not more than 7 days after the resignation takes effect.

65. Presumption concerning the service of documents by post

- (1) If a document under this Act is sent by prepaid post to an address, the document is to be presumed for the purposes of this Act to have been received at that address at the time at which the document would have been delivered in the ordinary course of post.
- (2) Sub-section (1) does not apply if the relevant court or tribunal is satisfied that the document was not received at the address at that time on the basis of evidence presented by, or on behalf of, a person seeking to displace the presumption.

66. Continuing offences

Fundraising Appeals Act 1998
Act No. 78/1998

Part 6—Miscellaneous Matters

s. 67

S. 66(1)
amended by
No. 70/2001
s. 24(1)(b).

- (1) The Minister or the Director or an inspector may give a person a notice—
 - (a) stating that in her or his opinion the person is engaging in conduct that constitutes an offence under this Act; and
 - (b) requesting the person to take specified action to stop the offence from continuing; and
 - (c) specifying a date by when the specified action must be taken.
- (2) The notice must—
 - (a) specify the provisions in respect of which it is issued; and
 - (b) contain a brief description of the grounds on which it is based; and
 - (c) contain a copy of this section.
- (3) If the person fails to comply with a notice given under this section, the person is guilty of an offence for each day the offence in respect of which the notice was given continues after the date specified under sub-section (1)(c).

Penalty: One tenth of the penalty that applies in respect of the offence for each day the offence continues after the date specified under sub-section (1)(c).
- (4) Sub-section (3) does not apply if the offence in respect of which the notice was given is not found proven.

67. Extended time for prosecutions

Despite anything to the contrary in any Act, a proceeding for an offence against this Act may be commenced within 3 years after the date on which the offence is alleged to have been committed.

Fundraising Appeals Act 1998
Act No. 78/1998

Part 6—Miscellaneous Matters

s. 69

68. Application of Fair Trading Act 1999

S. 68
substituted by
No. 103/2004
s. 47.

- (1) Sections 106HA, 143 and 144 and Division 2 of Part 11 (except sections 151A, 151B, 151C and 153) of the **Fair Trading Act 1999** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Fair Trading Act 1999** were a reference to this Act.
- (2) For the purposes of sub-section (1), section 154 of the **Fair Trading Act 1999** applies as if a reference to prescribed proceedings were a reference to—
 - (a) proceedings for an offence against a provision of this Act (except Part 5); or
 - (b) proceedings on an application for an injunction under section 149, 149A or 150 of the **Fair Trading Act 1999** (as applied by sub-section (1)) against a person alleged to have contravened a provision of this Act (except Part 5); or
 - (c) proceedings on an application for an order under section 158, or for damages under section 159, of the **Fair Trading Act 1999** (as applied by sub-section (1)).

69. Delegation by Minister and Director

S. 69
(Heading)
inserted by
No. 70/2001
s. 24(1)(d).
S. 69
amended by
No. 70/2001
s. 24(2) (ILA
s. 39B(1)).

- (1) The Minister may, in writing, delegate to any officer or employee of the public service any of the powers conferred on her or him by this Act, other than this power of delegation.
- (2) The Director may, in writing, delegate to any officer or employee of the public service any of

S. 69(2)
inserted by
No. 70/2001
s. 24(2).

Fundraising Appeals Act 1998
Act No. 78/1998

Part 6—Miscellaneous Matters

the powers conferred on her or him by this Act, other than this power of delegation.

S. 70
amended by
No. 70/2001
s. 24(1)(e).

70. Judicial notice concerning authorisations

All courts and people authorised by law or the consent of parties to receive evidence must take judicial notice of the signature of the Minister, the Director and any delegate of the Minister or the Director on any document.

S. 70A
inserted by
No. 70/2001
s. 20.

70A. Register

- (1) The Director must maintain a register for the purposes of this Act.
 - (2) The Director must ensure that the register contains any details concerning fundraising appeals required by this Act.
 - (3) The register may contain—
 - (a) the name and contact details of registered fundraisers, any person designated as a contact person by a fundraiser and any designated person; and
 - (b) details of fundraising appeals that are being, or that are intended to be conducted, by registered fundraisers;
 - (c) details of the beneficiaries on whose behalf fundraising appeals are being, or are intended to be, conducted;
 - (d) in relation to a particular person or organisation, details of the proportion of the proceeds raised in fundraising appeals by the person or organisation that have been passed on to the beneficiaries of the appeals (regardless of whether this information relates to current appeals or not); and
 - (e) any other information permitted by the regulations.
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Fundraising Appeals Act 1998
Act No. 78/1998

Part 6—Miscellaneous Matters

s. 70B

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- (4) A person may inspect the register at any time that the office in which the register is kept is open for business.
 - (5) The Director may publish the register, or any details in the register, in any manner or form that the Director considers to be appropriate.
 - (6) The Director may amend the register at any time to correct any mistakes in the register.

70B. Public information statements

S. 70B
inserted by
No. 70/2001
s. 20.

- (1) If satisfied that it is in the public interest to do so, the Minister or the Director may make a public statement or issue a public warning about any of the following—
 - (a) fundraising practices or activities, or any person or class of person engaging in those practices or activities;
 - (b) income and expenditure details relating to a particular fundraising appeal;
 - (c) the percentage of the proceeds raised in a particular fundraising appeal that have been distributed to the intended beneficiaries of the appeal;
 - (d) any other matter that adversely affects, or that may adversely affect, the interests of the public concerning the collection or distribution of fundraising proceeds.
- (2) The statement or warning may identify a particular person.

71. Regulations

- (1) The Governor in Council may make regulations—
 - (a) prescribing the form of any notice, application, permit, request, order, direction or other form or instrument to be made or given under this Act;

Fundraising Appeals Act 1998
Act No. 78/1998

Part 6—Miscellaneous Matters

s. 71

S. 71(1)(da)
inserted by
No. 70/2001
s. 21.

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- (b) exempting a person or a class of people from having to comply with any or all of the requirements of this Act and imposing conditions in relation to such exemptions;
 - (c) prescribing labelling and record-keeping requirements for clothing bins;
 - (d) requiring a person conducting a fundraising appeal to which Part 3 applies to ensure that any record or account required by Part 3 complies with specified requirements or standards;
 - (da) prescribing matters that must, or that may, be included in the register;
 - (e) prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may impose a penalty of up to 20 penalty units for any breach of the regulations; and
 - (d) may confer a discretionary authority or impose a duty on a person or a class of people;
 - (e) may apply, adopt or incorporate any matter contained in any document whether—
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Fundraising Appeals Act 1998
Act No. 78/1998

Part 6—Miscellaneous Matters

- (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time or as in force from time to time.
- (3) Regulations made under sub-section (1)(c) may impose requirements that override the general requirements of this Act concerning labelling or record-keeping.
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Fundraising Appeals Act 1998
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Part 7—Transitional Provisions

s. 72

Pt 7
(Heading)
inserted by
No. 70/2001
s. 22.

PART 7—TRANSITIONAL PROVISIONS

72. Transitional provision

- (1) Any consent, direction, permit, notice, request, requirement or document given under the **Fundraising Appeals Act 1984** that—
 - (a) was in force immediately before this section came into operation; and
 - (b) that has an equivalent under this Act—
is deemed to have been given under this Act.
- (2) Any fundraising appeal that was being conducted in accordance with all applicable laws immediately before the date this section came into operation may continue to be conducted for 12 months after that date as if the **Fundraising Appeals Act 1984** had not been repealed and as if this Act was not in force.

S. 72A
inserted by
No. 17/1999
s. 34.

72A. Transitional provision relating to inspectors

- (1) An inspector appointed under the **Fair Trading Act 1999** may continue and complete any proceedings under this Act commenced or made by or against or in relation to a former inspector and existing immediately before the commencement day.
- (2) In this section—

"commencement day" means the day of commencement of section 34 of the **Fair Trading (Inspectors Powers and Other Amendments) Act 1999**;

"former inspector" means a person authorised under section 45 of this Act as in force before the commencement day.

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Part 7—Transitional Provisions

s. 73

73. Repeal of former Act

- (1) The **Fundraising Appeals Act 1984** is repealed.
- (2) In section 4(c) of the **Second-Hand Dealers and Pawnbrokers Act 1989**, for "1984" substitute "1998".

74. Registration as fundraiser not required in certain cases

S. 74
inserted by
No. 70/2001
s. 23.

- (1) This section applies to a person who was conducting a fundraising appeal with the consent or deemed consent of the Minister, or under a permit issued by the Minister, immediately before section 23 of the **Fundraising Appeals (Amendment) Act 2001** came into operation.
- (2) Despite anything to the contrary in Part 3, the person may continue to conduct the appeal until the expiry of the consent or permit even though the person is not registered as a fundraiser.
- (3) The register may contain—
 - (a) the name and contact details of any person to whom this section applies; and
 - (b) details of the appeal that the person is conducting that are equivalent to the details that the register may contain in relation to appeals conducted by registered fundraisers.

75. Temporary continuation of exemptions

S. 75
inserted by
No. 70/2001
s. 23.

A person or organisation that was exempted from all or any of Part 3 by regulations in force under section 16(2) immediately before the date section 23 of the **Fundraising Appeals (Amendment) Act 2001** came into operation continues to be exempted from all or any of that Part (as the case may be) for 12 months after that date, unless an Order made under section 16A otherwise provides.

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Part 7—Transitional Provisions

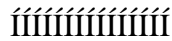
Fundraising Appeals Act 1998
Act No. 78/1998

SCHEDULE

Sch.
inserted by
No. 103/2004
s. 48.

INFRINGEMENT OFFENCES

Section 9(1)	Section 29(8)
Section 14(2)	Section 29(9)
Section 14(3)	Section 31(1)
Section 24D(2)	Section 31(2)
Section 29(3)	Section 32(2)
Section 29(4)	Section 33(4)
Section 29(5)	



Fundraising Appeals Act 1998
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Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 30 April 1998

Legislative Council: 6 October 1998

The long title for the Bill for this Act was "to regulate fundraising appeals, to repeal the **Fundraising Appeals Act 1984** and for other purposes."

The **Fundraising Appeals Act 1998** was assented to on 10 November 1998 and came into operation as follows:

Sections 1 and 2 on 10 November 1998: section 2(1); rest of Act on 1 July 1999: section 2(3)

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Fundraising Appeals Act 1998** by Acts and subordinate instruments.

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 109) on 31.12.99 s. 2(3)
Current State: This information relates only to the provision/s amending the **Fundraising Appeals Act 1998**

Fair Trading (Inspectors Powers and Other Amendments) Act 1999, No. 17/1999

Assent Date: 18.5.99
Commencement Date: Ss 33, 34 on 1.9.99: Government Gazette 19.8.99 p. 1901
Current State: This information relates only to the provision/s amending the **Fundraising Appeals Act 1998**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 28) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Fundraising Appeals Act 1998**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 51) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Fundraising Appeals Act 1998**

Fundraising Appeals (Amendment) Act 2001, No. 70/2001

Assent Date: 7.11.01
Commencement Date: 1.1.02: Government Gazette 13.12.01 p. 3061
Current State: All of Act in operation

Electoral Act 2002, No. 23/2002

Assent Date: 12.6.02
Commencement Date: S. 192 on 1.9.02: Government Gazette 29.8.02 p. 2333
Current State: This information relates only to the provision/s amending the **Fundraising Appeals act 1998**

Fair Trading (Amendment) Act 2003, No. 30/2003

Assent Date: 27.5.03
Commencement Date: S. 86 on 28.5.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fundraising Appeals act 1998**

Fundraising Appeals Act 1998
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Endnotes

Gambling Regulation Act 2003, No. 114/2003

Assent Date: 16.12.03

Commencement Date: S. 12.1.3(Sch. 6 item 5) on 1.7.04: Government Gazette 1.7.04 p.1843

Current State: This information relates only to the provision/s amending the **Fundraising Appeals Act 1998**

Fair Trading (Enhanced Compliance) Act 2004, No. 103/2004

Assent Date: 21.12.04

Commencement Date: Ss 45–48 on 22.12.04: s. 2(1)

Current State: This information relates only to the provision/s amending the **Fundraising Appeals Act 1998**

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Endnotes

3. Explanatory Details

No entries at date of publication.