



6 September 2021

Ms Yananisai Magodora
Chief Executive Officer
Help From Abroad Pty Ltd
96A Derby Drive
Epping VIC 3076

By email: admin@helpfromabroad.com.au

Dear Yananisai

Appeal of decision to refuse to declare organisation as a community or charitable organisation

Background

On 18 May 2021, Help From Abroad Pty Ltd (the **Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) to be declared, pursuant to section 8.3.3 of the *Gambling Regulation Act 2003* (the **GR Act**), as a community or charitable organisation (the **Application**).

On 24 June 2021, an authorised delegate of the Commission determined to refuse the Application on the basis that she was not satisfied that the Applicant had provided sufficient information to the Commission to justify its declaration as a community or charitable organisation (the **Decision**).

On 28 June 2021, you wrote to the Commission on behalf of the Applicant seeking to appeal the Decision (the **Appeal**).

Decision

Having considered the matters set out below, the Commission on review has determined to grant the Appeal and declare the Applicant a community or charitable organisation pursuant to section 8.3.5 of the GR Act.

The Appeal

In the materials received, you submitted in summary, that:

- a) the Applicant was established to help eliminate poverty in rural areas of Zimbabwe by providing disadvantaged persons with food, clean water, sanitation, and financial support;
- b) the Applicant's constitution provides that, on winding up, surplus assets are not to be transferred to the Applicant's members, rather to a similar organisation with similar objectives;

- c) the Applicant's members want the Applicant to be able to conduct fundraising raffles with the proceeds to be used exclusively for benevolent purposes; and
- d) examples of how the proceeds from the conduct of raffles will be applied in order to fulfil the Applicant's charitable purpose include drilling a borehole at a rural school in Zimbabwe so that communities have access to clean water.

On 16 August 2021, you wrote to the Commission to state your preference that the Commission determine the Appeal by way of a hearing.

The Appeal was heard on 31 August 2021 by videoconference due to the COVID-19 pandemic restrictions on indoor gatherings. Ms Emma Masango and yourself, as directors of the Applicant, made submissions in support of the Appeal.

Ms Masango submitted that the Applicant has four board members and two volunteers. The directors will ensure that the funds raised by the Applicant are applied towards the Applicant's charitable purpose. She is currently completing a Master of Business Administration which includes a module in corporate governance.

In the hearing, you submitted that you have a lot of experience working in not-for-profit organisations, and have worked closely with presidents and/or directors of those organisations. You also stated that another board member located in South Africa has significant practical experience working in a not-for profit organisation.

Legislation and task before the Commission

Section 8.3.1 of the GR Act states that an organisation may apply to the Commission to be declared a community or charitable organisation. A declaration that an organisation is a community or charitable organisation remains in force for a period of ten (10) years unless the declaration is revoked or renounced under Chapter 8 of the GR Act.¹

Section 8.3.3 of the GR Act empowers the Commission to make a declaration that an applicant is a community or charitable organisation. Relevantly, this section states:

- (1) *The Commission, by instrument, may declare an organisation to be a community or charitable organisation if the Commission is satisfied that the organisation is conducted in good faith for—*
 - (a) *any philanthropic or benevolent purpose, including the promotion of art, culture, science, religion, education or charity...*
- (2) *In determining whether to make a declaration under subsection (1), the Commission may have regard to any matter which it considers relevant, including but not limited to—*
 - (a) *the conduct of fundraising or minor gaming activities by the applicant²;*
 - (b) *the conduct of any person directly or indirectly associated with the applicant³.*

¹ Section 8.3.6 of the GR Act.

² In this case, the proposed conduct of fundraising raffles.

³ In this case, the board of directors of the Applicant.

There are no specific matters prescribed by section 8.3.3(2) of the GR Act which the Commission must consider prior to declaring an organisation to be a community or charitable organisation.

Relevantly, the objective of the GR Act concerning this Appeal is in section 1.1(2) of the GR Act, which, amongst other factors, states:

...

(2) *The main objectives of this Act are—*

...

(e) *to ensure that-*

- (i) *community and charitable gaming benefits the community or charitable organisation concerned;*
- (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated...*

...

After consideration of an application under section 8.3.3(1) of the GR Act, the Commission must, pursuant to section 8.3.3(3), either:

- a) declare the applicant to be a community or charitable organisation for the purposes of this Act; or
- b) refuse the application.

Section 8.3.4 of the GR Act allows the applicant to appeal against a decision to refuse an application for a declaration under section 8.3.3(3) of the GR Act, provided the appeal is in writing and specifies the grounds on which it is made.

After consideration of an appeal under section 8.3.5 of the GR Act, the Commission may:

- a) confirm the original decision of the delegate to refuse the application; or
- b) declare the applicant as a community or charitable organisation.

In this context, the Commission, on an appeal, stands in the shoes of the original decision maker and makes a fresh decision with respect to the application. In doing so, it must consider all the information, material and evidence before the original decision maker. It may also consider further information, material or evidence as part of making its decision.

The Commission's decision

In the Commission's view, the Applicant has provided sufficient information to demonstrate that it is a bona fide community or charitable organisation, including:

- a) A copy of the Applicant's constitution which specifies:
 - (i) the assets and income of the company must be applied solely in furtherance of the company's charitable purpose and no portion of its income or assets must be

paid or transferred, directly or indirectly (including by way of dividend, bonus, or otherwise), to any member. That clause shall override and prevail any other clause in the Applicant's constitution to the extent of any inconsistency;

- (ii) the Applicant's object is to act as a charitable institution for the advancement of social or public welfare of the people in Zimbabwe, and to act as a benevolent institution to relieve poverty, suffering, distress, misfortune, disability, destitution or helplessness of persons in Zimbabwe; and
- (iii) if the endorsement of the company as a deductible gift recipient is revoked, deductible gifts of money or deductible contributions made, and any money received because such deductible gifts and contributions, must be transferred to a charitable fund, authority or institution after the payment of the company's liabilities.

- b) A copy of the Applicant's statement of purpose which specifies that the company has been registered solely to operate as a not-for-profit organisation and will provide financial relief to financially disadvantaged people in order to fulfil its charitable purpose.

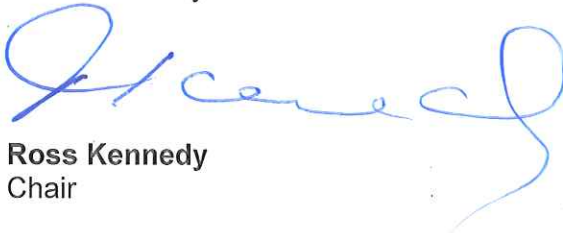
The Commission also notes that the Applicant is registered with the Australian Taxation Office, as a "public benevolent institution". For clarity, the Commission regards the Applicant's registration with such a national regulator as a matter which is supportive, but not determinative, of whether the Applicant satisfies the relevant statutory test under the GR Act.

The Commission has no evidence of any possible conflict of interest, which may suggest an intention of the Applicant's directors to obtain a real financial advantage through their association with the Applicant, or any dishonesty or past behaviour of the directors not conducting themselves in good faith. Further, the Commission has no basis for any concerns regarding the competence and experience of the directors to perform their duties.

Having considered the above matters, the Commission on review hereby grants the Appeal.

If you have any queries please contact Caitlin McAlister, Senior Solicitor, Legal Services on (03) 9098 5130 or via email (caitlin.mcalister@vcqlr.vic.gov.au).

Yours sincerely



Ross Kennedy
Chair