



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an appeal by Minyip Progress Association Inc (**the Applicant**) against a decision to refuse an application by the Applicant to be declared a community or charitable organisation pursuant to section 8.3.5 of the *Gambling Regulation Act 2003*.

Commission:

Mr Ross Kennedy, Chair
Ms Deirdre O'Donnell, Deputy Chair
Dr Dina McMillan, Commissioner

Date of Decision:

15 May 2019

Date of Reasons:

15 May 2019

Decision:

The Commission has determined to grant the appeal and declare the Applicant a community or charitable organisation pursuant to section 8.3.5 of the *Gambling Regulation Act 2003*.

Signed:

A handwritten signature in black ink, appearing to read 'R Kennedy', written over a horizontal line.

Ross Kennedy
Chair



REASONS FOR DECISION

BACKGROUND

1. On 2 July 2018, an authorised delegate of the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) determined to refuse an application by the Minyip Progress Association Inc (**the Applicant**) under the *Gambling Regulation Act 2003* (**the GR Act**) to be declared as a community or charitable organisation (**the Application**) on the basis that the Commission was not satisfied that the organisation was conducted in good faith for a philanthropic or benevolent purpose.
2. On 11 December 2018, the Commission received correspondence from the Applicant, dated 20 July 2018, seeking to appeal the delegate's decision (**the Appeal**). The Applicant submitted (in summary):
 - a) the Applicant is already registered as a charity with the Australian Charities and Not-For-Profits Commission;
 - b) all of the Applicant's work is performed by volunteers, there are no paid staff;
 - c) the purpose of the Applicant's operation is for the benefit of the community, including:
 - i. maintaining community assets and infrastructure; and
 - ii. promoting and assisting ongoing social development of the community in association with the local shire council; and
 - d) the proposed fundraising by the Applicant would be by way of raffles.
3. On 20 February 2019, the Commission requested the Applicant to provide further material in order to make its decision in relation to the Appeal, namely:
 - a) the Applicant's constitution;
 - b) the Applicant's 'winding up clause';
 - c) evidence as to the Applicant's criteria in determining distribution of its grants;
 - d) evidence of previous distribution of funds for grants; and
 - e) further particulars in relation to the Applicant's proposed fundraising and minor gaming activities, and how the proceeds from such activity would be applied.
4. On 27 March 2019, the Applicant provided the Commission with the following information:
 - a) its constitution;



- b) its winding up provision as detailed in the Model Rules for an Incorporated Association in accordance with the *Associations Incorporation Reform Act 2012*;
 - c) its criteria for determining distribution of funding; and
 - d) evidence of distribution of its funds from its trust account between August 2007 and January 2019.
5. With the consent of the Applicant, the Commission decided this Appeal “on the papers” without conducting a hearing.

LEGISLATION AND THE TASK BEFORE THE COMMISSION

6. The relevant object of the GR Act concerning this Appeal is in section 1.1(2), 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...*

...

7. 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
8. 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—

¹ Section 8.3.6 of the GR Act.



(a) any philanthropic or benevolent purpose, including the promotion of art, culture, science, religion, education or charity, and including the benefiting of a fund certified to be a patriotic fund under section 24 of the Patriotic Funds Act 1958 or the fund or part of the fund of the Australian Red Cross Society; or

(b) the purposes of any sporting or recreational club or association of a prescribed kind; or

(c) the purposes of a political party.

(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 applicant;

(b) the conduct of any person directly or indirectly associated with the applicant.

9. 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.
10. 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.
11. After consideration of an appeal under section 8.3.5 of the GR Act, the Commission may:
 - c) confirm the original decision of the delegate to refuse the application; or
 - d) declare the applicant as a community or charitable organisation.
12. 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.



MATERIAL BEFORE THE COMMISSION

13. The Commission had before it and considered all the material before the delegate.
14. The Commission also considered the additional material submitted by the Applicant as detailed in paragraphs 2 to 4 above.

DECISION AND REASONS FOR DECISION

15. To declare an organisation to be a community or charitable organisation, the Commission must be satisfied that the organisation, being the Applicant, is conducted in good faith for any philanthropic or benevolent purpose including, but not limited to, the promotion of art, culture, science, religion, education or charity.²
16. As noted in paragraph 2(a) above, the Applicant is already registered as a charity with the Australian Charities and Not-For-Profits Commission. Whilst this has a different regulatory scheme, it has similar requirements as detailed in section 8.3.3 of the GR Act and the Commission considers it relevant that the Applicant already has this registration, but not determinative.³ Accordingly, the Commission must still go on and satisfy itself of the requirements in section 8.3.3.
17. With this Appeal, the Commission notes that it has received evidence from the Applicant indicating that its purpose includes promoting a combination of culture, education and charity within the town of Minyip. Specifically, the materials lodged by the Applicant on 27 March 2019 demonstrate that since 2007 the Applicant has been distributing funds from its trust account to Minyip's Primary School, Pre-School and Kinder-Gym, as well as Minyip's Bowls Club, Senior Citizens Club and Men's Shed, to provide support in maintaining the facilities of these local community organisations and assist in developing their social activities.
18. In determining whether to make a declaration (or to confirm the decision of the delegate to refuse the application), the Commission, under section 8.3.3(2) of the GR Act, may have regard to any matter which it considers relevant, including, but not limited to:
 - a) the conduct of fundraising by the Application (specifically in this case the fundraising by way of raffles); and
 - b) the conduct of any person directly or indirectly associated with the Application (in this case the Applicant's members).

² Section 8.3.3(1) of the GR Act.

³ Registration with the Australian Charities and Not-For-Profits Commission requires that an organisation must be not-for-profit and have only charitable purposes that are for the public benefit.



19. Overall, the Commission must be satisfied that the organisation is conducted in good faith for the purpose it so intends.
20. As noted above, the Commission has received evidence that the Applicant proposes to carry out raffles for the purpose of fundraising to maintain the facilities of a number of local community organisations and develop their social activities.
21. The Commission also notes from the Applicant's evidence that all of the Applicant's work is performed by volunteers, there are no paid staff. The Applicant's winding up rules make it clear that in the event the Applicant wound up, its surplus assets must not be distributed to any member, rather given to a not-for-profit organisation like the Applicant.
22. For a combination of the reasons discussed above, the Commission accepts that the Applicant carries out its conduct in good faith for the benevolent purpose of maintaining the facilities of a number of local community organisations and developing their social activities.
23. Accordingly, the Commission determines to declare the Application as a community or charitable organisation under section 8.3.5 of the GR Act.

The preceding 23 paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, Chair, Ms Deirdre O'Donnell, Deputy Chair, and Dr Dina McMillan, Commissioner.