



Victorian Commission for Gambling and Liquor Regulation

REASONS FOR DECISION

In the matter of an application by Geelong Amateur Arts Fund (the Applicant) for a stay of the decision to refuse to declare the Applicant as a community or charitable organisation pursuant to section 8.3.3 of the *Gambling Regulation Act 2004* pending the determination of an appeal under section 8.3.5 of the *Gambling Regulation Act 2004*

Commission:

Mr Ross Kennedy, Deputy Chairman
Ms Kate Hamond, Commissioner
Mr Des Powell, Commissioner

Date of Hearing:

16 & 17 December 2014

Date of Decision:

17 December 2014

Date of Reasons:

17 December 2014

Appearances:

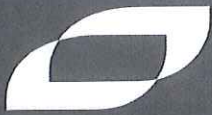
Mr John Larkins as Counsel for the Applicant
Ms Anna Clarke as Counsel Assisting

Decision:

The Commission has determined to grant the stay of the decision of the delegate up to, and including, 10 February 2015, subject to the conditions outlined in paragraph 23 of these reasons.

Signed:

Des Powell
Commissioner



REASONS FOR DECISION

BACKGROUND

1. On 27 November 2014, an authorised delegate of the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) determined to not renew an application for a declaration by Geelong Amateur Arts Fund Inc (**GAAF**) as a community or charitable organisation 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 28 November 2014, the Applicant applied to the Commission for an appeal of this decision pursuant to section 8.3.4 of the *Gambling Regulation Act 2003* (the **GRA**).
3. On 15 December 2014, the Applicant applied for a stay of the decision of the authorised delegate of the Commission pending the determination of an appeal pursuant to 8.3.5 of the GRA.

LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Section 8.3.6 of the GRA states that a renewal of a declaration is an application to the Commission for a new declaration as a community or charitable organisation.
5. Specifically, section 8.3.6A(3) of the Act states that-
 - (a) an application under this section for a new declaration; and
 - (b) the determination of such an application; and
 - (c) any declaration made as a result of such application-

as if the application has been made by an organisation other than a community or charitable organisation".
6. Further, section 8.3.4 of the Act allows the Applicant to appeal against a decision to refuse an application for a declaration under 8.3.3 of the Act, provided the appeal is in writing and specifies the grounds on which it is made.

MATERIAL BEFORE THE COMMISSION

7. The Commission had before it and considered all of the material before the Delegate, as well as the Statement of Reasons of the Delegate, dated 2 September 2014.
8. The Applicant further filed the following material :



- 8.1. Affidavit (and exhibits) filed by Karl Jacker sworn 15 December 2014;
 - 8.2. Letter from Karl Jacker dated 16 December 2014;
 - 8.3. Letter from Kennedy Guy Solicitors dated 16 December 2014;
 - 8.4. Document titled "Geelong Amateur Arts Fund budget for 7 months December 2014 to June 2014"; and
 - 8.5. Submissions provided to the Commission on 16 December 2014 prepared by Counsel Mr John Larkins.
9. The Commission conducted a public hearing on 16 December 2014 and 17 December 2014 in relation to the application for a stay of decision.

DECISION AND REASONS FOR DECISION

10. The Commission accepts that the Applicant is the subject of a refusal to grant a new declaration and therefore is entitled to make an application to appeal the decision to refuse to grant the renewal declaration.
11. The Commission notes the submission of the Applicant, that although there is no explicit power of the Commission to stay the implementation of the decision appealed, unlike under section 160 of the *Liquor Control Reform Act* 1998, the Applicant submitted that the Commission holds an implied power to grant a stay. The Applicant submitted, based on the comments by McGarvie J in *Metro Palace P/L v Liquor Licensing Commission and Ors.* 1989 Vic SC 227 (19 May 1989) that-
- "... the value of a right to seek a review by the Full Commission is greatly reduced or may be rendered nugatory if a cancellation or suspension operates before the Full Commission has the opportunity of reversing the decision. Ordinarily, it is proper that a Tribunal which has made a decision to use its powers to facilitate and appeal against or a review of the decision which is given by the law compare: Charlton v Members of the Teachers' Tribunal [1981] VR 831 at pages 842-3.*
12. The Commission also notes the decision of the Queensland Supreme Court in the matter of *Legal Services Commissioner v Baker* [2005] QCA 482 whereby the Court also held that the

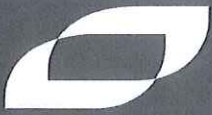


where there is a "proper case for a stay of an order made by the Tribunal injustice would be done if the stay could not be granted....in such case an order granting a stay would be necessary or convenient for the exercise of the Tribunal's jurisdiction".

13. The Commission accepts that section 10 of the *Victorian Commission for Gambling and Liquor Regulation* 2011 grants the Commission power to do all things necessary or convenient to be done for, or in connection with the performance of its duties and functions under (amongst others) gambling legislation.
14. Therefore, the Commission holds that it does have an implied power to grant a stay in the determination of a decision under 8.3.3 of the GRA, pending a determination of an appeal under section 8.3.5 of the GRA.
15. The Applicant submitted that should a stay not been granted, it would render the right of an appeal available to the Applicant nugatory given the catastrophic effect on the ability of the Applicant to continue bingo activities now or in the future as well as the consequential effects on the employment of a significant number of people.
16. Further, the Applicant submitted that it would be in a position to consent to certain conditions being imposed on the operation of bingo activities pending the outcome of a final determination by the Commission.
17. The Commission accepts that the general principle in determining whether to grant a stay pending the determination of an appeal turns on the Applicant demonstrating that special or exceptional circumstances exist so that "there is a significant risk that if its appeal is successful, that success will be rendered nugatory by the appellants inability to recover" after the determination of that appeal, should it be successful.
18. While the Commission notes that it would be in a position to hear the full appeal of this determination as a matter of urgency, it accepts that it would be unjust to compel the Applicant to rush an appeal hearing and possibly place it in a detrimental position whereby its appeal rights would be extinguished without a fair hearing.



19. The Commission must also consider that the main objectives of the GRA are to foster responsible gambling, and (amongst others) to ensure that community and charitable gaming benefits the community or charitable organisations concerned. Further, Chapter 8 of the GRA provides for the regulation and supervision, and control of gaming for the benefit of community and charitable organisations. The Commission must ensure that community and charitable gaming is conducted honestly and is free from criminal influence and exploitation, and that practices which could undermine public confidence in community and charitable gaming are eliminated.
20. Further, the Commission notes that sworn evidence was presented to the Commission at the stay hearing from Mr Karl Jacker, the now president of the Applicant as from 5 December 2014. Mr Jacker stated that has had over 30 years experience as an investigator and auditor of the Australia Taxation Office. Further, he explained to the Commission that the practice of the Applicant going forward, should the stay be successful, would be to account on a weekly basis, all the surplus funds in the general account would be transferred to its solicitors trust fund. Mr Jacker also submitted that while the Applicant was currently solvent, it may need to assess its cash flow, going forward, and may need to consider the possibility of grace period regarding the rental payments to the landlord.
21. The Commission accepts that by imposing certain conditions on the operation of the Applicant in terms of accounting for all surplus funds, these measures will assist in satisfying the Commission that appropriate oversights of all of the benefits derived from the charitable organisation are accounted for, and appropriately recorded during the 7 weeks pending the appeal hearing.
22. The Commission considers that the need to ensure that practices which could undermine public confidence in community and charitable gaming are eliminated are balanced against the risk to this Applicant that, should the appeal be successful, that success would be rendered nugatory by the Applicant's inability to continue to operate, the Commission is satisfied on balance that a stay should be granted pending the final determination.



23. On the above basis, the Commission determines to grant the stay from today's date and up to and including 10 February 2015, and to impose the following conditions on the Applicant's declaration to be a community or charitable organisation for the purposes of the GRA pursuant to its previous declaration which continues in force under section 8.3.6A (1)(a):

23.1. That all net profits (being proceeds derived from the operation of the Bingo Centre and Lucky Envelope operations less any reasonable expenses deducted from the Applicants 'general account') are deposited, on a weekly basis, into the trust account of the Applicants solicitors, Guy Kennedy Solicitors; and

23.2. That, at the request of an authorised officer of the Commission, the Applicant must make available the general accounts of the Applicant, and they must remain available at any time to an authorised officer from today until the determination of the appeal.

The preceding twenty-three (23) paragraphs is a true copy of the Reasons for Decision of Mr Ross Kennedy (Deputy Chairman), Ms Kate Hamond (Commissioner) and Mr Des Powell (Commissioner).