



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an appeal under section 8.3.4 of the *Gambling Regulation Act 2004* by the French-Australian Chamber of Commerce and Industry against a decision to refuse an application to be declared a community or charitable organisation

Commission: Mr Ross Kennedy, Deputy Chair
Ms Helen Versey, Deputy Chair
Ms Deirdre O'Donnell, Commissioner

Date of Hearing: 15 September 2015

Date of Decision: 29 September 2015

Date of Reasons: 29 September 2015

Appearances: Mr Olivier Deschang, National Coordinator of the Applicant and General Manager of the Victorian Chapter of the Applicant, in person

Miss Naomi Martin as Counsel Assisting the Commission

Decision: The Commission has determined to confirm the decision of the Delegate

Signed:

Ross Kennedy
Deputy Chairman



REASONS FOR DECISION

BACKGROUND

1. On 7 July 2015, the French-Australian Chamber of Commerce and Industry (**the Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) to be declared a community or charitable organisation under the *Gambling Regulation Act 2003* (**GRA**).
2. The Applicant is an Australian public company limited by guarantee. According to its constitution (**Constitution**), the Applicant's objects are to:
 - (a) promote the development of commercial, industrial and economical bilateral links between France and Australia;
 - (b) provide the French-Australian business community with a range of events and services;
 - (c) support French businesses to export and set up businesses in Australia and provide similar services for Australian businesses interested in the French market; and
 - (d) promote goodwill between France and Australia (**Goodwill Object**).
3. On 13 July 2015, an authorised delegate of the Commission (**the Delegate**) refused the application on the basis that the Applicant is a business network with the main goal of furthering business and commercial interests, therefore not meeting the requirements of section 8.3.3(1) of the GRA in respect of community or charitable organisations.
4. The Applicant subsequently appealed against the Delegate's decision.
5. On 15 September 2015, the appeal was heard at a public inquiry before the Commission, where Mr Olivier Deschang, National Coordinator of the Applicant and General Manager of the Victorian Chapter of the Applicant, appeared in person.

LEGISLATION AND THE TASK OF THE COMMISSION

6. Section 8.3.1 of the GRA provides that an organisation may apply to the Commission to be declared a community or charitable organisation.
7. If an application to be declared a community or charitable organisation is refused, section 8.3.4 of the Act allows an applicant to appeal against the decision within 28 days of notification of the refusal.
8. On appeal, the Commission hears the matter afresh. It can exercise all the powers of the original decision-maker but can also consider additional material.



9. Under section 8.3.5(1) of the GRA, after consideration of an appeal, the Commission may:
- (a) confirm the original decision of the Delegate to refuse the application; or
 - (b) declare the Applicant to be a community or charitable organisation.

MATERIAL BEFORE THE COMMISSION

10. The Commission had before it and considered all of the material before the Delegate. This material included the Constitution and the Applicant's treasurer's report (**Treasurer's Report**) on its financial results for 2009-2014 and forecasted financial results for 2015.
11. The Commission also considered written submissions of the Applicant and Mr Deschang's oral evidence at the hearing.

APPLICANT'S SUBMISSIONS

12. The Applicant's written submissions refer to its Goodwill Object and the Applicant's activities and events with a philanthropic or benevolent component, such as:
- (a) Soiree de Gala (celebrating French-Australian relations and promoting French culture, businesses and products);
 - (b) Concours des Vins de Victoria (a competition between Victorian winemakers adjudicated by French judges);
 - (c) a Tour de France luncheon (celebrating the race); and
 - (d) various donations to charitable, educational, scientific and cultural causes.
13. In the Applicant's submission:

[W]hile FAGG/ does conduct activities with a view to furthering business and commercial interests between French and Australian commerce, it also is an organisation which is conducted in good faith for a philanthropic purpose including the promotion of culture, science and charity ...

MR DESCHANG'S EVIDENCE

14. Mr Deschang's evidence before the Commission was as follows.
- (a) The Applicant is a not-for-profit organisation primarily focusing on fostering the commercial and economic relationship between France and Australia via a range of networking events and other corporate activities. However, one of its missions is also to promote goodwill between Australia and France and to support the community with fundraising for other not-for-profit organisations.



- (b) The Applicant's focus is on promoting commercial activities between the two countries. However, it also plays an important role in the community promoting the French culture and contributing to multiculturalism in Victoria.
- (c) Three of the Applicant's four objects are commercial in nature.
- (d) The Goodwill Object is, however, geared towards promoting goodwill between France and Australia, not only at a commercial level but also at cultural, diplomatic, scientific and other levels. It is complementary to the Applicant's commercial objects.
- (e) Consistent with its commercial objects and the Goodwill Object, the Applicant's activities and events have a combination of commercial and philanthropic or benevolent purposes.
- (f) Those events and activities benefit members and attendees, but there are also benefits that flow from the activities and events to the community.
- (g) Most of the Applicant's staffing is dedicated to organising its events and activities.
- (h) The Applicant is not a charity organisation and possibly not a community one, but it has a strong emphasis on promoting the community.
- (i) It seeks permission to conduct minor gaming fundraising activities with prize pools valued at over \$5,000.

DECISION AND REASONS FOR DECISION

- 15. The Commission must determine whether to declare the Applicant to be a community or charitable organisation in accordance with the GRA.
- 16. To be declared as a community or charitable organisation in Victoria, the Commission must be satisfied that the Applicant is conducted in good faith for (relevantly) a philanthropic or benevolent purpose, including the promotion of art, culture, science, religion, education or charity.
- 17. The Commission is satisfied that the Applicant is conducted in good faith and acknowledges that Applicant's activities and events are commendable in their contribution to charity and French-Australian relations.
- 18. The Commission finds that the Applicant is conducted for a variety of purposes, as evidenced by the Applicant's objects and the events and activities conducted in furtherance of those objects. The Commission considers that, although the Goodwill Object is one of those purposes, the primary purpose of the Applicant is commercial, as reflected by the other three of the Applicant's objects. While certain outcomes are of a philanthropic or beneficial nature, the focus



and primary outcome of the vast majority of the Applicant's activities and events are commercial in nature.

19. The Commission also considers that the Treasurer's report shows that most of its corporate contributions and funds raised from events and membership are spent on the Applicant's own operating costs and that, overall, the evidence of the Applicant's expenses and community or charitable donations is not indicative of an organisation with a philanthropic or benevolent purpose.¹
20. Ultimately, the Commission finds that the Applicant is conducted primarily for commercial purposes, albeit complemented by some philanthropic or benevolent purposes.
21. The Commission has therefore determined to confirm the decision of the Delegate in refusing to declare the Applicant to be a community or charitable organisation.

This document is a true copy of the decision and reasons for decision of Mr Ross Kennedy (Deputy Chair), Ms Helen Versey (Deputy Chair) and Ms Deirdre O'Donnell (Commissioner) under section 8.3.5 of the GRA.

¹ Compare the Full Federal Court's consideration of the meaning of 'public benevolent institution' in *Commissioner of Taxation v Hunger Project Australia (ACN 002 569 271)* (2014) 314 ALR 333. Edmonds, Pagone and Wigney JJ had recourse to 'the ordinary meaning or common understanding of' the term in the absence of a 'single or irrefutable test or definition', holding that it includes an organisation that 'conducts itself in a public way towards those in need of benevolence': *Commissioner of Taxation v Hunger Project Australia (ACN 002 569 271)* (2014) 314 ALR 333, 345 (Edmonds, Pagone and Wigney JJ).