

19 July 2022

Ms Jessica Lipsett
Director
Corney & Lind Lawyers Pty Ltd
PO Box 236
RBH Post office 4029

By email: Jessica.Lipsett@corneyandlind.com.au

Dear Ms Lipsett

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

I refer to your letter dated 7 April 2022 in relation to the above matter.

Background

On 1 February 2022, Bolsta Foundation Ltd (the **Applicant**) applied to the Victorian Gambling and Casino Control Commission (**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 10 March 2022, an authorised delegate of the Commission determined to refuse the Application on the basis that the Applicant did not meet the requirements as having a philanthropic and benevolent purpose based as their primary purpose (**the Decision**).

On 7 April 2022, you wrote to the Commission on behalf of the Applicant seeking to appeal the Decision (**the Appeal**).

The Appeal

The Commission has received and considered all the materials submitted to the Delegate as well as some new material submitted in relation to the Appeal.

In the materials before the Delegate, you explained that the Applicant will run a continuous series of raffles enabling participating organisations the flexibility of fundraising for any period. It was proposed that the Applicant would distribute 60% of ticket sales back to the participating organisations and 40% would be retained to cover the cost of prizes, administration of the raffles and the cost of running the digital platform. It was also noted that distribution to organisations may increase if suitable sponsors are identified.

In the materials received on Appeal, you submitted an updated copy of the Bolsta Foundation Ltd Constitution that in summary, stated:

- a) The Objects of the Applicant is to facilitate and support effective fundraising for charities or not for profit organisations and to provide resources and a fundraising platform for

charitable or not-for-profit organisations (“**affiliate members**”) for their “proper charitable or community purposes”;

- b) To provide such platform for those affiliate members of the Applicant to conduct competitions for prizes on the platform for the purpose of the affiliate members’ fundraising by means of an online digital application that can be conveniently accessed and used by the affiliate members and their members;
- c) To ensure that the affiliate members enjoy the direct and immediate benefit of their fundraising;
- d) Affiliate membership may be granted by the Board to any duly constituted and registered charity or not-for-profit organisation subscribing to the fundraising services offered by the Applicant provided the affiliate member complies with the terms and conditions of subscription determined by the Board; and
- e) “Subscription Fees” means any subscription fee or annual subscription fee, for any class of membership, fixed by the Board from time to time.

Legislation and task before the Commission

A person must not conduct minor gaming (which includes raffles) otherwise than in accordance with Chapter 8 of the GR Act. In accordance with section 8.3.12 of the GR Act, an organisation that is a community charitable organisation (or has applied for a declaration as a community charitable organisation) may apply to the Commission for a minor gaming permit to enable them to lawfully conduct minor gaming.

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;*

¹ Section 8.3.6 of the GR Act.

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

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

Commercial Raffle Organiser

Section 8.5A.1 of the GR Act defines a Commercial Raffle Organiser (**CRO**) as a person, other than an employee of a declared community or charitable organisation that conducts a raffle, in whole or in part, on behalf of a community or charitable organisation and receives payment for their services.

Section 1.3 of the GR Act defines a Commercial Raffle Organiser as a person, other than an employee of the holder of a minor gaming permit, who is retained on a commercial basis to conduct a raffle, in whole or in part.

Pursuant to section 8.5A.2 of the GR Act, a CRO is required to hold a commercial raffle licence in order to conduct these activities on behalf of a holder of a minor gaming permit which under the GR Act needs to be a declared community or charitable organisation.

Decision

Having considered the matters set out above and the information submitted by the Applicant, the Commission confirms the original decision of the delegate to refuse to grant the Application to declare the Applicant a community or charitable organisation pursuant to section 8.3.5 of the GR Act. The Commission considers that the information currently before it about the financial operation of the Applicant, that it is unable to be satisfied that the Applicant meets the requirements in section 8.3.3 of the GR Act, including that a declared community charitable organisation is required to operate for the primary reason of its benevolent or charitable purpose.

The GR Act operates in a way to permit declared community and charitable organisations to conduct minor gaming, including raffles, provided that the proceeds are distributed for its benevolent or charitable purpose. In this instance, Bolsta is proposing to conduct raffles on behalf of other entities and they would then be provided part of the proceeds to distribute.

The Commission is also of the view that the way in which the Applicant proposes to conduct raffles on behalf of other entities and to retain up to 40% of entry fees and this falls within the type of operation permitted under a CRO licence, not a minor gaming permit held by a community and charitable organisation.

If the Applicant proposes to conduct raffles on its own behalf, which is not what is proposed in this Application, it would need to be a declared charitable organisation and would need to distribute the money in accordance with its benevolent purpose. If the Applicant proposes to conduct raffles to assist other charities in fundraising, which is what it appears the Applicant is seeking to do, it would be conducting raffles on behalf of others, and to do so lawfully, it would need to hold a CRO licence.

If you have any queries please contact Wayne Fowler, Solicitor, Legal Services on (03) 9098 5336 or via email (wayne.fowler@vgccc.vic.gov.au).

Yours sincerely



Fran Thorn

Chair