

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



BEECHWORTH LAWN TENNIS CLUB INC v AUSTRALIAN SPORTS COMMISSION [2021] FCA 990

Federal Court of Australia, O’Callaghan J, 20 August 2021

An application for discovery of documents relating to a Sports Grant Program

Key words: Grants, Australia, Incorporated Association, Community Sport Infrastructure Grant Program, Discovery of Documents

1. Beechworth Lawn Tennis Club Inc (Beechworth Tennis) is a Victorian incorporated association that operates tennis courts in the Indigo Shire.
2. The Indigo Shire Council made an unsuccessful application for a grant from the Community Sport Infrastructure Grant (CSIG) Program in respect of the tennis facilities operated by Beechworth Tennis.
3. The CSIG Program was established by the Commonwealth government in 2018 to ensure more Australians had access to quality sporting facilities and to encourage greater community participation in sport and physical activity. The 2018-19 budget supported capital projects of small-to-medium scale, through the provision of up to 500 grants, each valued up to \$500,000, to a total of \$29.7 million in that year.
4. The CSIG program was administered by the Australian Sports Commission (Sport Australia), which is a corporate Commonwealth entity established under the Australian Sports Commission Act 1989 (Cth).
5. In the same year, Wangaratta Clay made a CSIG application for a grant of funds in relation to a “Universal Access Toilet Amenities Facility”, which was approved in the sum of \$35,980.
6. Beechworth Tennis made a claim for relief arising from (at [11]):
 - (1) the decision not to grant the [Beechworth Tennis] application was affected by jurisdictional error, in that Sport Australia purported to delegate decision-making authority to the Minister without any statutory authority for such a delegation;
 - (2) further or alternatively, the decision not to grant the [Beechworth Tennis] application was affected by jurisdictional error, in that Sport Australia purported to act at the dictation of the Minister;
 - (3) further or alternatively, the grant to Wangaratta Clay was made without lawful authority because:
 - a) it was made by decision of the Minister, who had no power to make it;
 - b) alternatively, it was purportedly made at the dictation of the Minister;

c) alternatively, the grant was affected by apprehended bias in that the Minister was a member of Wangaratta Clay at the time of the grant.

7. Sport Australia denied the claims.
8. Beechworth Tennis sought discovery of various documents, including all documents in relation to the Minister's role in decisions relating to funding approvals for the CSIG Program.
9. Sport Australia agreed that documents specifically about the role which the Minister was to have in decisions as to which grant applications to accept or reject were relevant. However, any order for their discovery and production should have this proviso added, namely "on the condition that the search for documents is limited to a reasonable search of electronic records and that [Sport Australia] need not provide anything falling within this category which has already been provided to [Beechworth Tennis]".
10. The Court decided that if physical documents existed, then there was no good reason why they should not be discovered, unless it would be oppressive.
11. Sport Australia also agreed that documents evidencing the Minister's input or views into decisions as to which grant applications to accept or reject were relevant, but only to the extent that any such input or views related to the Beechworth Tennis and Wangaratta Clay applications.
12. The Court noted that ordinarily a party is required to discover documents that are directly relevant to the issues raised in the proceeding and found that this rule should apply in this circumstance. The Court found that documents evidencing the Minister's input or views into decisions as to which grant applications to accept or reject that related only to other grant applications, and which were not concerned, wholly or even in part, with the grant applications by Beechworth Tennis and Wangaratta Clay, were not directly relevant to the issues.
13. Further, no case was raised in the pleadings that there existed a practice, policy, system or pattern of behaviour, by which Sport Australia acted at the behest or direction of the Minister, or that tendency reasoning might be or become relevant.
14. The Court made orders for discovery in line with its findings above.

IMPLICATIONS



Beechworth Tennis argued that the court could have regard to the fact that the Auditor-General, in a report about the CSIG Program, repeatedly referred to particulars contained in its statement of claim, and considered the Minister to have been involved in Sport Australia's decision-making. This was not accepted by the Court at this time, but if it became relevant it would need to explore the applicability of s 16 of the Parliamentary Privileges Act 1987 (Cth).

VIEW THE CASE



This case may be viewed at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2021/990.html>

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Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

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EVENTS