



Victoria Government Gazette

No. S 280 Monday 17 August 2009
By Authority of Victorian Government Printer

Gambling Regulation Act 2003

DETERMINATION OF GAMING MACHINE ENTITLEMENT ALLOCATION AND TRANSFER RULES

I, Tony Robinson MP, Minister for Gaming, acting under sections 3.4A.3 and 3.4A.5(9) of the **Gambling Regulation Act 2003** determine as follows –

- 1 These gaming machine entitlement allocation and transfer rules relate to the pre-auction club offer for the allocation of gaming machine entitlements to clubs.
- 2 That any determination (and any gaming machine entitlement allocation and transfer rule) previously made under sections 3.4A.3 and 3.4A.5(9) of the Gambling Regulation Act is revoked and replaced by this determination and the gaming machine entitlement allocation and transfer rules set out in this determination which take effect from the date they are published in the Victorian Government Gazette.
- 3 The following rules constitute gaming machine entitlement allocation and transfer rules under section 3.4A.3 of the Gambling Regulation Act.
- 4 For the purposes of section 3.4A.5(9) of the Act, these gaming machine entitlement allocation and transfer rules specify –
 - (a) the process for allocating a proportion of the gaming machine entitlements that can be endorsed with a venue condition that specifies that gaming may be conducted under that entitlement in an approved venue in which a club licence or racing club licence is in force; and
 - (b) the requirements to be complied with by a person wishing to participate in the process for allocating those gaming machine entitlements.

Pre-Auction Club Offer

- 5 In these rules, **club** means a venue operator that:
 - (a) held a venue operator's licence as at 4 June 2009, and
 - (b) was operating an approved premises in which gaming was being conducted as at 4 June 2009, and in which:
 - (i) gaming was being conducted on gaming machines that were determined by the Victorian Commission for Gambling Regulation as at 30 June 2009 to be gaming machines that came within the proportion of gaming machines that may be used to conduct gaming in a club venue in accordance with the Minister's determination under section 3.2.3 of the Gambling Regulation Act, and
 - (ii) gaming was determined by the Victorian Commission for Gambling Regulation to be gaming to which the club taxation rate applied under section 3.6.6(2) of the Gambling Regulation Act as at 1 July 2009, and
 - (c) as at the date of the offer under rule 6 holds a club venue operator's licence.
- 6 Each club will receive a written offer from the Minister for the club to purchase gaming machine entitlements up to a maximum number and for a specified price determined by the Minister.
- 7 The offer will allow a club to nominate the number of gaming machine entitlements that the club agrees to purchase up to the maximum number and for the prices determined by the Minister.

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- 8 The Commission is authorised to determine, with respect to each approved venue for which the club holds a venue operator's licence and which meets the criteria set out in Rule 5(b):
- (a) the maximum number of gaming machine entitlements that will be made available to that club under the offer, calculated in accordance with rule 9; and
 - (b) the information required, in accordance with rule 10, for the Minister to determine the prices payable for those gaming machine entitlements.
- 9 The maximum number of gaming machine entitlements that will be made available to a club, with respect to each approved venue, under the offer must be determined by the Commission as the lesser of –
- (a) 40 gaming machine entitlements, or
 - (b) the number of approved gaming machines permitted in the relevant venue as specified on the club's venue operator's licence as at midnight on 4 June 2009.
- 10 The Commission will determine for the purpose of the calculation of the price at which an entitlement is to be offered to a club –
- (a) the total annual gaming machine expenditure for the club in the financial year 2008-09, and
 - (a) the weighted average quantity of gaming machines permitted in the relevant venue during the financial year 2008-09.
- 11 For the purpose of rule 10, the Commission must calculate the weighted average quantity of gaming machines for each venue, which will be calculated as follows-
- (a) where the quantity of permitted gaming machines specified under the venue operator's licence for that venue has not been altered during the year, the weighted average quantity of gaming machines will remain the permitted quantity as specified under the venue operator's licence as at 30 June 2009; or
 - (a) where the quantity of permitted machines as specified under the venue operator's licence for that venue has altered during the year, the sum of the differing quantity of machines, weighted for the respective days they were permitted, and then divided by 365 to get the weighted average quantity of gaming machines for financial year 2008-09.
- 12 The price at which an entitlement is to be offered to a club shall be calculated by taking:
- (a) the total annual gaming machine expenditure for the club in the financial year 2008-09,
 - (b) dividing it by the weighted average quantity of gaming machines calculated under rule 11,
 - (c) taking one third of this amount,
- and
- (d) for each of the first 20 entitlements offered, multiplying this amount by 180%; and
 - (e) for each of the second 20 entitlements offered, multiplying this amount by 200%.
- 13 For the purposes of clarity, the calculation in rule 12 is expressed mathematically as follows-

$$Pe1_{y=(1...20)} = \left(\frac{TE_{Va}}{TQ_{Va}} \right) \times \left(\frac{1}{3} \right) \times (180\%) \quad \text{and} \quad Pe2_{y=(21...40)} = \left(\frac{TE_{Va}}{TQ_{Va}} \right) \times \left(\frac{1}{3} \right) \times (200\%)$$

Where,
$$\overline{TQ}_{Va} = \left(\frac{\sum_{i=1}^n w_i x_i}{\sum_{i=1}^n w_i} \right)$$

Where:

$Pe1_{y=(1...20)}$ = Price of each of the first twenty entitlements offered to clubs.

$Pe2_{y=(21...40)}$ = Price of each of the second twenty entitlements offered to clubs.

TE_{Va} = Total annual gaming machine expenditure for venue "a".

\overline{TQ}_{Va} = Weighted average of total quantity of permitted machines at venue "a" in 2008/09.

w_i = Weighting for period i (expressed in whole days).

x_i = Quantity of machines for period i .

- 14 Before an offer is made under rule 6, the Minister shall provide each club, by letter, details of the Commission's determinations. The Minister's letter shall be for information purposes only and does not constitute an offer under Rule 6.
- 15 The Commission is authorised, for the purposes of the Minister's letter, to apply the formula set out in rule 13, in order for the Minister to provide the relevant club with the price that would be payable for each gaming machine entitlement if the Minister were to make that club an offer in accordance with the rules.
- 16 Within 14 days of receiving the Minister's letter, the club must (unless the club takes the steps described in rule 17) deliver to the Minister a signed copy of the form provided with the Minister's letter, stating that the club is willing to receive an offer of gaming machine entitlements calculated in accordance with the details provided in the letter.
- 17 If the club is of the opinion that details of the Commission's determination or calculations do not accord with the rules, the club must, within 14 days of receiving the Minister's letter, deliver to the Minister (for forwarding to the Commission) a written statement clearly identifying the aspect of the Commission's determination or calculations that the club claims does not accord with the rules, and the reason for that claim.
- 18 The Commission must consider a written statement received from a club under rule 17 and decide whether the determination made or application of the formula with respect to the relevant club requires an amendment in order to accord with these rules or whether the determination or application of the formula as made shall stand. On or before 29 September 2009, the Commission shall give to the club written notice of the outcome of the consideration under this rule, including (where appropriate) a revised determination.
- 19 If within the 14 day period in rule 17 the club does not write to the Commission under that rule, the Minister and the Commission shall not consider any other submission from a club in relation to the matters set out in the letter sent to the club under rule 14.
- 20 The Minister shall determine the price of entitlements and offers to be made to a club under rule 6 based upon the determination or revised determination of the Commission and will determine the date that those offers will be made to the relevant clubs and the period the offers will be open for acceptance.
- 21 To accept the offer of gaming machine entitlements the club must, within the period nominated in the offer –
 - (a) execute and return to the Minister a duly executed deed poll (in the form required by the Minister) under which the club agrees to purchase the gaming machine entitlements and to the terms of allocation of the gaming machine entitlements; and

- (b) at the same time either pay the amount of the deposit payable for the gaming machine entitlements accepted in the club offer by way of a bank cheque in favour of the State of Victoria or provide an unconditional irrevocable bank guarantee in favour of the State of Victoria for the amount of the deposit due.
- 22 When requested on behalf of the Minister, the venue operator must duly execute and provide to the Minister the related agreements provided for under s.3.4A.6 of the Act, relating to payment and venue conditions for the gaming machine entitlements.
- 23 The Minister will determine when, after the receipt of the related agreements, the entitlements that have been accepted by a club will be allocated to that relevant club.
- 24 The Minister will only allocate gaming machine entitlements under these rules to clubs that hold a club venue operator's licence on the date of allocation.
- 25 The Minister will only allocate the number of entitlements to a club under these rules that corresponds to the number that the relevant club accepted as part of the offer made under rule 6 and for which a deposit was paid as provided for under rule 21.
- 26 Each gaming machine entitlement allocated under these gaming machine entitlement allocation and transfer rules must, on allocation, be endorsed with:
 - (a) a venue condition that allows their use in an approved venue in which a club licence or racing club licence is in force; and
 - (a) a geographic area condition that allows their use in an approved venue in the same geographic area as the approved venue to which the offer relates.

Dated 17 August 2009

TONY ROBINSON MP
Minister for Gaming

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