



# Victoria Government Gazette

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## 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 The following rules constitute gaming machine entitlement allocation and transfer rules and are in addition to the rules for the allocation of entitlements under the Pre-Auction Club Offer published in the Victorian Government Gazette on 17 August 2009. These rules replace the gaming machine entitlement allocation and transfer rules that were published in the Victorian Government Gazette (Number S 373) on 26 October 2009.
- 2 For the purposes of section 3.4A.5(9) of the Act, the gaming machine entitlement allocation and transfer rules specify –
  - (i) the process for allocating gaming machine entitlements; and
  - (ii) the requirements to be complied with by a person wishing to participate in the process for allocating gaming machine entitlements.
- 3 These rules constitute the rules for the process for allocating gaming machine entitlements to venue operators by way of electronic auction.
- 4 The date of effect of the rules contained in this determination is the date of publication in the Victorian Government Gazette.

#### 5 **Introduction**

- (i) The primary process for the allocation of gaming machine entitlements and for determining the amount that must be paid by a person to whom gaming machine entitlements will be allocated will be an electronic auction, conducted in a series of rounds over two stages.
- (ii) The auction will provide for venue operators to submit orders for gaming machine entitlements in 176 defined markets.
- (iii) In order to participate in the auction a venue operator must validly execute the deed poll and meet the eligibility requirements in these rules.
- (iv) Following the auction and subject to the venue operator executing the related agreements, the allocation of gaming machine entitlements will be made by the Minister based on the successful orders.

#### 6 **Definitions**

In these rules, the following definitions apply –

**announcements** means announcements in relation to the conduct of the auction that may be made by the auctioneer and made available by or on behalf of the auctioneer.

**auction** means the electronic auction to be conducted that will form the basis for determining the allocation of gaming machine entitlements in accordance with these rules.

**auction day** means the date for the second stage of the auction as determined by the Minister.

**auctioneer** means the Commission as constituted for the purposes of the auction including a single commissioner appointed under the Act.

**auction end** means the point in time during the auction that either the new order monitor or the successful order monitor reaches zero as set out in these rules.

**SPECIAL**

**auction system** means the electronic system used to effect the auction, accept orders, calculate the provisionally successful orders and identify successful orders.

**bidder training** means the training in features of the auction system required by the Minister to be completed before a person can become a qualified bidder representative.

**business day** means a day that is not a Saturday or Sunday or a public holiday declared as a Public Holiday under the **Public Holidays Act 1993** (Vic.).

**club entitlement** means a gaming machine entitlement that will be allocated to the holder of a club venue operator's licence and that will be endorsed with a venue condition that allows its use in a venue in which a club licence or a racing club licence is in force.

**club offer rules** means the rules for the allocation of entitlements under the Pre-Auction Club Offer published in the Victorian Government Gazette on 17 August 2009.

**coach** means a person trained on behalf of the Minister in the use of the auction system who may assist qualified bidder representatives with the technical aspects of using the auction system.

**Commission** means the Victorian Commission for Gambling Regulation as constituted under the Act including the Commission as constituted for the purposes of it performing the functions of the auctioneer.

**deed poll** means the deed, containing the requirements to be complied with as determined by the Minister, provided as part of the notice for registration that each venue operator or prospective venue operator must execute to participate in the auction.

**event management rules** means the rules governing the conduct of persons attending the auction at the event venue which shall be allocation and transfer rules under the Act.

**event venue** means the location in Melbourne, Victoria, determined by the Minister for the conduct of the second stage of the auction.

**excluded precincts** means the precincts of the City of Melbourne excluded from the Order under section 3.2.4 of the Act published in the Victorian Government Gazette on 19 June 2009.

**geographic area** means a region or municipal district in the State referred to in section 3.2.4 of the Act and includes the area that is the excluded precincts.

**holding entity** means a person:

- (a) who wholly owns a nominating entity and a related entity; or
- (b) in respect of which a nominating entity and a related entity are wholly owned subsidiaries.

**hotel entitlement** means a gaming machine entitlement that will be allocated to the holder of a venue operator's licence and that will be endorsed with a venue condition that allows its use in a venue in which a pub licence is in force.

**market** means each market for gaming machine entitlements comprising 88 geographic areas each divided for the issue of hotel entitlements and club entitlements as specified in the notice for registration.

**market price** means the uniform dollar amount payable for a gaming machine entitlement in a market, as calculated by the auction system.

**minimum order price increment** has the meaning given to that term in rule 23(b).

**new order monitor** has the meaning given to that term in rule 26.

**nominating entity** means a venue operator who has nominated a qualified bidder representative where such venue operator is wholly owned by (or is a wholly owned subsidiary of) a holding entity.

**notice for registration** means the guide for participation in the auction inviting (on behalf of the Minister) venue operators (and prospective venue operators), to submit a registration to participate in the auction.

**opening bid price** means the minimum dollar amount determined by the Minister for a gaming machine entitlement which the price component of each order must meet or exceed for it to be accepted by the auction system.

**order** means a binding offer for a specified quantity of gaming machine entitlements at a specified price submitted in a market on the auction system by or on behalf of a qualified bidder.

**password** means a password issued to a qualified bidder under rule 13 for access to the auction system.

**PIC** means the personal identification code provided to a qualified bidder under rule 13 to provide access to the auction system.

**prospective venue operator** means an entity that has applied or intends to apply for a venue operator's licence.

**provisionally successful bidder** means a qualified bidder who submits a provisionally successful order.

**provisionally successful order** has the meaning given to that term in rule 20.

**qualified bidder** means a venue operator that has met the requirements under rule 10.

**qualified bidder representative** has the meaning given to that term in rule 12.

**qualified bidder representative deed poll** means the deed provided as part of the notice for registration that each person who will represent a qualified bidder must execute, after completion of the bidder training, to be registered as a qualified bidder representative.

**registration** means a registration form lodged by a venue operator or prospective venue operator in response to the notice for registration.

**related agreement** means an agreement (the terms of which are to be determined by the Minister) to be entered into by a venue operator pursuant to section 3.4A.6 of the Act, including:

- (a) a related agreement for payment governing matters of payment with respect to the allocation of gaming machine entitlements to a venue operator; and
- (b) a related agreement for venues that addresses matters concerning, amongst other things, the use of gaming machine entitlements allocated to a venue operator and requirements for a venue operator to co-operate with the Commission and the monitoring licensee.

**related entity** means a venue operator, other than a nominating entity, which is wholly owned by (or is a wholly owned subsidiary of) a holding entity.

**relevant person** means a qualified bidder representative, officers, employees, servants, agents and contractors of the venue operator (including its consultants and professional advisers).

**round** means a period of time allowed by the auction system during which a qualified bidder may submit orders.

**successful bidder** means the qualified bidder who submits a successful order.

**successful order** has the meaning given to that term in rule 27.

**successful order monitor** has the meaning given to that term in rule 26.

## 7 Auction details

- (a) The Minister will determine the following details for the auction –
  - (i) the event venue; and
  - (ii) the day(s) and time(s) for the first and second stages of the auction.
- (b) The Minister or the auctioneer may extend the times determined under rule 7(a)(ii).
- (c) Each qualified bidder and qualified bidder representative must comply with the event management rules with respect to the event venue and the auction as are determined by the Minister.
- (d) The Minister may postpone or cancel the auction in whole or in part by notice.

**8 Auction structure**

- (a) The opening bid price for each club entitlement and hotel entitlement will be determined by the Minister and set out in the notice for registration.
- (b) The first stage of the auction –
  - (i) is a mandatory stage, consisting of one round, requiring participation by each qualified bidder by submitting an order, accepted by the auction system, in each market for which the qualified bidder is registered;
  - (ii) will be conducted:
    - (A) electronically using the auction system;
    - (B) prior to the auction day commencing on a day determined by the Minister and allowing a period of not less than 10 business days to submit orders commencing at 9.00 am on the first day and concluding at 5.00 pm on the final day (Melbourne time).
- (c) The second stage of the auction –
  - (i) will consist of a series of rounds during which each qualified bidder may submit orders in the auction system in each market for which that qualified bidder is registered;
  - (ii) will be conducted –
    - (A) electronically using the auction system at the event venue;
    - (B) commencing on the auction day; and
    - (C) until auction end.
- (d) A qualified bidder may only submit an order in the auction system in a market in the second stage of the auction if it has submitted an order that was accepted by the auction system in that market during the first stage of the auction.

**9 Changes**

In accordance with and subject to the Act the Minister may determine any change to these rules, the auction system or the event management rules at any time and provide notice of such changes to persons who have registered for participation in the auction.

**10 Qualified Bidders**

- (a) In order to participate in the auction, a venue operator must be a qualified bidder.
- (b) A person who has registered for participation in the auction will be a qualified bidder if the person –
  - (i) by 21 December 2009 –
    - (A) has validly executed a deed poll and returned it to the Minister;
    - (B) has duly completed a registration and returned it to the Minister, including nomination of –
      - (1) persons who will become its qualified bidder representatives; and
      - (2) the markets in which it seeks to submit orders;
    - (C) has lodged with the Minister the default bond required under the deed poll for each market in which it has nominated to submit orders;
  - (ii) by 28 days prior to commencement of the first stage of the auction
    - (A) holds a venue operator's licence (other than a provisional venue operator's licence under section 3.4.28 of the Act); and
    - (B) has ensured that its registered representatives have undertaken the bidder training; and
  - (iii) has not been disqualified or refused qualification as a qualified bidder by written notice from the Minister.

- (c) A person who has registered for participation in the auction must continue to satisfy the requirements of a qualified bidder including to hold a venue operator's licence. A person who has registered for participation in the auction must immediately notify the Minister if it ceases (or is likely to cease) to satisfy the requirements of a qualified bidder set out in rules 10(b)(i) to (ii).
- (d) Only a qualified bidder that holds a club venue operator's licence may submit an order for club entitlements in the auction.
- (e) The Minister may determine a later date for any requirement of this rule 10 to be met by a person or persons.

#### 11 **Registration**

- (a) A person proposing to participate in the auction as a venue operator must nominate in its registration –
  - (i) the markets in which it intends to submit an order in the auction; and
  - (ii) a minimum of two natural persons to be its qualified bidder representatives for the auction.
- (b) The auction system will only permit the venue operator to submit an order in the auction –
  - (i) through its qualified bidder representatives in accordance with rule 13; and
  - (ii) for gaming machine entitlements in its nominated markets.

#### 12 **Qualified bidder representative**

- (a) In order to be registered for participation in the auction as a qualified bidder representative, the person nominated by the venue operator (or prospective venue operator) must –
  - (i) submit the information specified in the notice for registration;
  - (ii) undertake bidder training as provided by the State; and
  - (iii) validly execute the qualified bidder representative deed poll and provide it to the State by a date that is no later than 28 days prior to the date for the commencement of the first stage of the auction.
- (b) In addition to the two qualified bidder representatives required to be nominated under rule 11, if the venue operator (or prospective venue operator) nominates for more than three markets in its registration, it must register two additional bidder representatives for each further multiple of three markets (or part thereof) for which it nominates. The Minister or the auctioneer may determine a different number of bidder representatives for each market or multiple of markets and must provide notice of such change to all persons who have submitted a registration under these rules. For the avoidance of doubt the maximum number of bidder representatives that the venue operator (or prospective venue operator) may register is two bidder representatives for each multiple of three markets (or part thereof) for which it nominates.
- (c) A venue operator (or prospective venue operator) may replace a bidder representative (including a qualified bidder representative) by notice in writing to the contact nominated on behalf of the Minister:
  - (i) in the event of the incapacity or death of the bidder representative (including a qualified bidder representative), at any time prior to the date for the commencement of the first stage of the auction; or
  - (ii) in all other cases, by 28 days prior to the date for the commencement of the first stage of the auction.

On and from the date of receipt of such notice, the bidder representative being replaced will cease to have authority to participate in the auction on behalf of the venue operator. Such notice must contain the information in relation to bidder representatives specified in the registration for the person who the venue operator (or prospective venue operator) nominates as the replacement bidder representative. The person who the venue operator (or prospective venue operator) nominates as the replacement bidder representative must ensure they are registered for participation in the auction as a qualified bidder representative in accordance with rule 12(a) by:

- (iii) where the circumstances described in rule 12(c)(i) apply and notice is given less than 28 days prior to the date for the commencement of the first stage of the auction, notwithstanding anything in rule 12(a), the date for the commencement of the first stage of the auction; or
  - (iv) in all other cases, 28 days prior to the date for the commencement of the first stage of the auction.
- (d) A qualified bidder representative cannot represent more than one qualified bidder, subject to rule 12(e).
- (e) A qualified bidder representative who has:
- (i) been nominated by a nominating entity, where such nomination together with the names of the nominating entity and each related entity of the nominating entity which the qualified bidder representative is authorized to represent, is communicated in writing to the contact nominated by the Minister by 28 days prior to the auction day; and
  - (ii) complied with the requirements to be registered for participation in the auction as a qualified bidder representative in accordance with rule 12(a),  
may be available on the auction day to act as the qualified bidder representative for the nominating entity or any related entity provided that once any such qualified bidder representative commences to act as the qualified bidder representative for:
  - (iii) a nominating entity, it must not act as the qualified bidder representative for any related entity; or
  - (iv) a related entity, it must not act as the qualified bidder representative for the nominating entity or any other related entity.
- Once a qualified bidder representative commences to act as the qualified bidder representative for a nominating entity or a related entity, it must immediately notify the auctioneer or the contact nominated from time to time by the auctioneer.
- (f) For the avoidance of doubt, rule 28(d) and (e) will not operate to prohibit a qualified bidder representative communicating with a nominating entity or a related entity in relation to any matters relevant to the operation of rule 12(e), unless and until a qualified bidder representative commences to act as the qualified bidder representative for a nominating entity or any related entity in accordance with rule 12(e).
- (g) The Minister may determine a later date for any requirement of this rule 12 to be met by any or all venue operators, bidder representatives (including qualified bidder representatives), nominating entities or related entities.

### 13 Security requirements

- (a) Each qualified bidder will be issued with a personal identification code or codes ('PIC') and password or passwords, as appropriate for access to the auction system, and the Minister or the auctioneer may determine such further security requirements as may be required for the operation of the auction.
- (b) A qualified bidder representative must correctly enter the PIC and password into the auction system and comply with any other notified security requirements –
  - (i) to participate in the auction on behalf of the qualified bidder; and
  - (ii) submit an order for a gaming machine entitlement in a market.

- (c) The qualified bidder will be bound by any use of the PIC and password, including –
  - (i) any access to the auction system;
  - (ii) any transaction entered into or communicated to the auction system; and
  - (iii) any order or information entered into or gained from the auction system.
- (d) The qualified bidder and qualified bidder representatives must keep the PIC and password confidential and secure at all times.
- (e) If the qualified bidder or a qualified bidder representative becomes aware or believes that the confidentiality or security of the PIC and password has been compromised –
  - (i) the qualified bidder must notify the Minister or the auctioneer immediately;
  - (ii) the Minister or the auctioneer may cancel the access related to the PIC and password; and
  - (iii) the qualified bidder will remain responsible for and bound by any use of the PIC and password until the Minister or the auctioneer cancels the access related to the PIC and password.
- (f) If the qualified bidder replaces a bidder representative in accordance with rule 12(c), it may request the Minister to change each PIC and password issued to the qualified bidder.
- (g) The Minister or the auctioneer may cancel or change each PIC and password (or all of them) at any time and give notice to the qualified bidder.

14 **Coaches**

- (a) A qualified bidder representative may use a coach to assist with the technical aspects of the use of the auction system.
- (b) Any transaction in the auction system is deemed to have been submitted to the auction system by the qualified bidder allocated to the relevant PIC and password used, irrespective of whether a coach assists the qualified bidder representative.

15 **Bidder disqualification**

- (a) A venue operator (or prospective venue operator) may be refused qualification as a qualified bidder by the Minister or may be disqualified as a qualified bidder as determined by the Commission or the Minister by written notice to the venue operator (or prospective venue operator) if:
  - (i) that person –
    - (A) fails to comply with any provision of these rules or the event management rules;
    - (B) fails to comply with the notice for registration;
    - (C) does not continue to hold a venue operator's licence;
    - (D) has submitted information in its registration which is considered by the Minister or the Commission to be false, misleading or incorrect in any material respect, or fraudulent;
    - (E) has breached a requirement under the deed poll; or
    - (F) is found by the Minister not to meet any requirement of the Act relevant to the issue of gaming machine entitlements or otherwise relevant to the auction; or
  - (ii) a relevant person of that person –
    - (A) fails to comply with any provision of these rules or the event management rules; or
    - (B) has breached a requirement under the deed poll or the qualified bidder representative deed poll.

- (b) The venue operator (or prospective venue operator) ceases to have an ability under these rules to participate in the auction –
  - (i) immediately upon the receipt of notice under rules 15(a)(i)(A)–(C), rule 15(a)(i)(E) or rule 15(a)(ii); or
  - (ii) within five days from the receipt of notice under rule 15(a)(i)(D) or rule 15(a)(i)(F), unless an objection is received in accordance with rule 15(c).
- (c) If a venue operator (or prospective venue operator) objects to the notice under rule 15(a)(i)(D) or rule 15(a)(i)(F) –
  - (i) the venue operator (or prospective venue operator) must make the objection in writing, identifying the basis for the objection, within 5 days of receiving notice under 15(a)(i)(D) or rule 15(a)(i)(F); and
  - (ii) the Minister or Commission must consider the objection and notify the venue operator of the outcome of that consideration.
- (d) After considering the objection under rule 15(c)(ii) –
  - (i) the Minister may refuse the venue operator (or prospective venue operator) qualification as a qualified bidder; or
  - (ii) the Minister or the Commission may disqualify the venue operator (or prospective venue operator), by written notice to the venue operator (or prospective venue operator) if –
    - (iii) the Minister or the Commission considers that the venue operator (or prospective venue operator) has submitted information in its registration which is false, misleading or incorrect in any material respect, or fraudulent; or
    - (iv) the Minister finds that the venue operator (or prospective venue operator) does not meet any requirement of the Act relevant to the issue of gaming machine entitlements or otherwise relevant to the auction.
- (e) The venue operator (or prospective venue operator) ceases to be eligible to participate in the auction immediately upon the receipt of written notice under rule 15(d).
- (f) Where the period of notice and objection under rules 15(b)(ii) will not expire prior to the commencement of the first stage of the auction, the Commission or the Minister may determine a shorter period for the notice and objection that will allow for resolution of the notice and objection under the rules prior to the commencement of the first stage of the auction.
- (g) The venue operator (or prospective venue operator) must immediately notify the Minister if it is subject to any of the circumstances or is reasonably likely to be subject to any of the circumstances set out in rule 15(a).
- (h) If notice of disqualification is given to a qualified bidder during the second stage of the auction, notice shall be sufficiently given if handed to a qualified bidder representative of the venue operator.
- (i) If a venue operator is disqualified as a qualified bidder, any actions of the venue operator immediately prior to disqualification are deemed to be valid and of full force and effect unless otherwise determined by the Commission or the Minister. Subject to the Act and these rules, the Commission or the Minister may determine the obligations which continue to apply to the venue operator, and any other matter, arising as a consequence of any such disqualification.



**16 Bidder representative disqualification**

- (a) A person may be refused qualification as a qualified bidder representative by the Minister, or may be disqualified as a qualified bidder representative as determined by the Commission or the Minister, by written notice to the venue operator (or prospective venue operator) he or she represents if that person –
  - (i) fails to comply with any provision of these rules or the event management rules;
  - (ii) has submitted information in the process of qualification which is considered by the Minister or the Commission to be false, misleading or incorrect in any material respect, or fraudulent; or
  - (iii) has breached a requirement under the qualified bidder representative deed poll.
- (b) Immediately upon notice under rule 16(a), that qualified bidder representative is excluded from further participation in the auction. If notice of disqualification is given to a qualified bidder representative during the second stage of the auction, notice shall be sufficiently given if handed to the qualified bidder representative.
- (c) Each qualified bidder representative (and the venue operator and a prospective venue operator if it is aware) must immediately notify the Minister or the Commission if the qualified bidder representative is subject to any of the circumstances or is reasonably likely to be subject to any of the circumstances set out in rule 16(a).

**17 Auctioneer**

- (a) The Commission will perform the role of auctioneer. A function of the Commission as auctioneer may be performed by any commissioner.
- (b) The auctioneer will conduct the auction and may exercise any discretion and make any determinations on the day of the auction relating to, arising out of or in connection with the conduct of the auction, including the status of any order.

**18 Auction announcements**

The auctioneer may make announcements which will be –

- (a) consistent with these rules;
- (b) binding on each qualified bidder and each qualified bidder representative; and
- (c) made available by or on behalf of the auctioneer to qualified bidders at the event venue by public announcement, in person or on the auction system.

**19 Conduct of auction**

- (a) The auction will be conducted in accordance with the process and procedures established by these rules, the auction system and any announcements.
- (b) The auctioneer may pause, postpone or cancel the auction in whole or in part at any time notwithstanding that the auction may have commenced.

**20 Processing by the auction system**

- (a) Each gaming machine entitlement is subject to an opening bid price determined by the Minister.
- (b) An order will not be accepted by the auction system where the relevant order does not exceed the opening bid price.
- (c) For each market, the auction system will calculate for each round –
  - (i) a separate market price for gaming machine entitlements; and
  - (ii) provisionally successful orders.

- (d) The auction system will use a mathematical algorithm to optimise the sum of the values of successful orders across all markets subject to the market limitations set out in rule 21. The mathematical algorithm will determine the market price in each market.
- (e) All orders with order prices above the market price are accepted as provisionally successful orders. All orders with order prices below that price are provisionally rejected. Orders exactly at the market price may be provisionally successful orders (in whole or in part) or may be provisionally rejected depending upon the quantity of entitlements available.
- (f) The auction system will display the number of entitlements that results from a provisionally successful order and this may be less than the quantity stated in the order having regard to the entitlements that are available in the geographic area.
- (g) At the end of each round, the auction system will display –
  - (i) each market price; and
  - (ii) for each qualified bidder, the number of entitlements (if any) for which it is the provisionally successful bidder at the market price.

#### 21 **Market limitations**

The following limitations are designated for the auction process and the auction system –

- (a) the auction system will only allow for the potential allocation of 27,500 gaming machine entitlements;
- (b) the auction system will limit the number of gaming machine entitlements so that when allocated the number in aggregate must not exceed 50% of the maximum number of gaming machine entitlements created for club entitlements and 50% for hotel entitlements;
- (c) the auction system will limit the aggregate allocation of gaming machine entitlements for the Melbourne Statistical Division to not more than 80%;
- (d) except for the excluded precincts, the auction system will provide for a maximum number of gaming machine entitlements that may be allocated in each geographic area, being the lesser of ten for each 1,000 adults or the number of gaming machines for each 1,000 adults as provided for under the current Ministerial direction made under section 3.2.4 of the Act; and
- (e) for the purpose of this rule 21, club entitlements to be allocated under the club offer rules will be included in all calculations.

#### 22 **Orders**

- (a) Each order –
  - (i) may be either a single order for a quantity of gaming machine entitlements at a specified price or a schedule of orders for different quantities of gaming machine entitlements at specified prices;
  - (ii) must be submitted in the auction system for a specific market which the qualified bidder has nominated in its registration;
  - (iii) is made when it is recorded by the auction system;
  - (iv) may be made at any time during a round; and
  - (v) may be withdrawn or cancelled during any round of the auction unless it is a provisionally successful order or a successful order.
- (b) Upon submission, an order is a binding obligation on the qualified bidder to take, upon allocation, the number of entitlements allocated to it up to a maximum number of gaming machine entitlements specified in the order, at any price equal to or below the price specified in the order.

- (c) An order may become a provisionally successful order at any time unless previously withdrawn by the qualified bidder.
- (d) Qualified bidders may adjust existing orders subject to the following rules –
  - (i) the price and/or quantity of an order which is not a provisionally successful order may be increased or decreased;
  - (ii) a provisionally successful order cannot be cancelled once recorded by the auction system as a provisionally successful order;
  - (iii) the price and/or quantity of a provisionally successful order may be increased and may not be decreased except where –
    - (A) if the price component of a provisionally successful order is greater than an amount equal to the sum of the provisional market price and the minimum order price increment (if any), a qualified bidder may decrease the price component of the order provided that it remains greater or equal to the sum of the provisional market price and the minimum order price increment (if any); and
    - (B) if the quantity component submitted in a provisionally successful order is greater than the quantity calculated by the auction system to result from that provisionally successful order, a qualified bidder may decrease the quantity component of the order provided that it is greater or equal to the quantity calculated by the auction system to result from that provisionally successful order.
- (e) The number of gaming machine entitlements identified in each order represents the maximum number of gaming machine entitlements that a qualified bidder offers to take upon allocation at the price specified in the order.
- (f) Where an order consists of a schedule of orders for different quantities of gaming machine entitlements at specified prices –
  - (i) orders increasing in price must decrease in quantity and vice versa; and
  - (ii) no two orders in the schedule can specify the same quantity or price.

#### 23 **Order price increments**

- (a) The auctioneer may determine the minimum order price increment from time to time having regard to the level of bidding activity.
- (b) The minimum order price increment for each gaming machine entitlement –
  - (i) will be the minimum amount by which the order price must be increased over the market price at that time, as established in the previous round, to be eligible to become a new provisionally successful order;
  - (ii) will be the percentage expressed as a whole dollar amount for each market as the auctioneer announces from time to time during the course of the auction.
- (c) A qualified bidder may increase an order price by an amount that is equal to, or more than, the minimum bidding increment for a gaming machine entitlement, but may not increase an order price by less than the minimum bidding increment.

#### 24 **Activity requirements**

The auctioneer may impose activity requirements during the second stage of the auction and all qualified bidders will be required to respond in accordance with those rules in order to submit an order.

#### 25 **Timing of auction rounds**

- (a) On the auction day, the auctioneer will announce to qualified bidders, at the beginning of each round, the length of time for that round.
- (b) The auctioneer may adjust the length of rounds remaining in the auction at its discretion having regard to the level of bidding activity.
- (c) The auctioneer may adjust the length of time between rounds remaining in the auction at its discretion having regard to the level of bidding activity.

**26 Auction monitoring and stopping**

- (a) The end of the auction will be dictated by two countdown monitors that indicate the rounds remaining in the auction according to the following rules –
- (i) the new order monitor is set with a minimum number of rounds and monitors new orders at or above the market price plus minimum order price increment (if any), and changes in accordance with new order activity;
  - (ii) if sufficient new orders at or above the market price plus minimum order price increment (if any) are submitted during a round, the remaining number of rounds on the new order monitor will reset to the original number;
  - (iii) if an insufficient number of new orders at or above the market price plus minimum order price increment (if any) are submitted during a round, the number of remaining rounds on the new order monitor will be reduced by one;
  - (iv) the successful order monitor is set with a minimum number of rounds and monitors successful orders, and changes in accordance with successful order activity;
  - (v) if sufficient provisionally successful orders are calculated during a round the remaining number of rounds on the successful order monitor will reset to the original number; and
  - (vi) if there is a round with an insufficient number of new provisionally successful orders, the number of rounds on the successful order monitor is reduced by one.
- (b) The auction ends when either the new order monitor or the successful order monitor reduces to zero and there are insufficient new orders at or above the market price plus minimum order price increment (if any) for that round.

**27 Successful orders**

- (a) Successful orders –
- (i) are those orders that are the provisionally successful orders in the last round at the time of auction end; and
  - (ii) will be shown for the qualified bidder on the auction system screen of the successful bidders.
- (b) Notice to successful bidders of their successful orders –
- (i) shall be provided to each successful bidder after auction end on the day of the auction; and
  - (ii) will specify the number of units (that represent gaming machine entitlements) won by each respective successful bidder in the auction and the market price of those gaming machine entitlements resulting from the auction.
- (c) The amount payable for the allocation of a gaming machine entitlement as a result of a successful order shall be the market price for gaming machine entitlements in the relevant market as shown by the auction system.

**28 Further matters**

- (a) The auctioneer may take reasonable action in order to preserve the outcome of the auction in progress if there is a malfunction of the auction system.
- (b) In the event of a malfunction or technology failure or processing delay in the auction system, the auctioneer may, in its sole discretion –
- (i) pause, postpone or cancel the auction in whole or in part; and
  - (ii) require that qualified bidders and qualified bidder representatives co-operate with any directions from the auctioneer in order to continue with the auction.

- (c) Qualified bidders and qualified bidder representatives must direct all communications through the contact nominated from time to time by the auctioneer or the Minister.
- (d) Qualified bidders and qualified bidder representatives must not communicate with other qualified bidders or their qualified bidder representatives prior to or during the auction in relation to any matters relevant to submitting orders in the auction, provided that this rule 28(d), clause 5.2(b) of the deed poll and clause 6.2(b) of the qualified bidder representative deed poll shall not, to the extent necessary, preclude a director of a company from discharging any obligation under the **Corporations Act 2001** (Cth). Notwithstanding anything in this rule 28(d), this rule 28(d) is subject to rule 28(e).
- (e) On the auction day, a venue operator's qualified bidder representatives may only communicate in relation to the auction amongst themselves and with –
  - (i) coaches, if the qualified bidder or its qualified bidder representatives has a question about the auction system during the auction;
  - (ii) the auctioneer (or its authorised representative), if the qualified bidder has a concern about the conduct of the auction.
- (f) If there is any dispute about the submission of orders or any other matter which arises during the auction, the auctioneer is the sole arbitrator and the auctioneer's decision is final.
- (g) The result of the auction shall provide the basis for the Minister to allocate entitlements to the successful bidders. The market price in the market shall be the amount payable by the successful bidder to whom the entitlement will be allocated. The Minister shall impose conditions on each entitlement under section 3.4A.5 of the Act that are consistent with the market in the auction.
- (h) The allocation of entitlements shall be subject to the venue operator duly executing a related agreement for payment:
  - (i) for all hotel entitlements that contains the terms of payment as determined by the Minister for hotel entitlements; and
  - (ii) for all club entitlements that contains the terms of payment as determined by the Minister for club entitlements.
- (i) Under section 10.1.4(2)(ae) of the Act, the Commission has the function of receiving and holding on behalf of the State any default bond, deposit, payment or security required to be made or provided to the State under or in connection with the gaming machine entitlement allocation and transfer rules (including the club offer rules).
- (j) Despite rule 21 of the club offer rules, any payment required to be made to the State or the Minister under a process for, or agreement for payment for, the allocation of gaming machine entitlements under section 3.4A.5 of the Act may be made in favour of the Commission to be received on behalf of and remitted to the State.

## 29 Notices

- (a) Any notice under these rules may be given to:
  - (i) the Minister or the State by delivering it to the Project Director, Gambling Licences Review, Department of Justice, 121 Exhibition Street, Melbourne, Victoria;
  - (ii) a venue operator or prospective venue operator by delivering it to the registered office or registered address of that entity or after the auction has commenced by delivering it to a qualified bidder representative of the venue operator.

Dated 17 March 2010

HON TONY ROBINSON MP  
Minister for Gaming

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