



# Victoria Government Gazette

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## Gambling Regulation Act 2003

### DETERMINATION OF GAMING MACHINE ENTITLEMENT ALLOCATION AND TRANSFER RULES

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

1. 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 Act is revoked and replaced by this determination.
2. The following rules constitute gaming machine entitlement allocation and transfer rules.
3. For the purposes of sections 3.4A.3 and 3.4A.5 of the Act, these allocation and transfer rules specify –
  - (a) rules relating to the transfer of gaming machine entitlements between venue operators; and
  - (b) rules relating to the allocation by the State of gaming machine entitlements that are forfeited to or bought back by the State and gaming machine entitlements that have been created by the Minister but not allocated.

#### 4. Definitions

In these rules:

**Act** means the **Gambling Regulation Act 2003** (Vic.)

**Commission** means the Victorian Commission for Gambling and Liquor Regulation

**entitlement related agreement** means the agreement between the venue operator and the Minister under section 3.4A.6 of the Act

**Minister** means the Minister for Gaming

#### 5. Introduction

- (a) The Commission must establish and maintain a transfer scheme to govern the transfer of gaming machine entitlements between venue operators and to facilitate the allocation of entitlements.
- (b) The transfer scheme will commence on a date to be determined by the Minister.
- (c) The transfer scheme will incorporate a register to record details of –
  - (i) all allocated gaming machine entitlements including the information required under section 3.4A.8 of the Act, the purchase price of allocated gaming machine entitlements and any other information relating to the allocation determined by the Commission; and
  - (ii) all transfers of gaming machine entitlements including –
    - (A) the purchase price (including the market value of any financial benefit received) (and any GST payable);
    - (B) the date of execution of the transfer;
    - (C) particulars of the transferor and transferee;
    - (D) the quantity and identifying numbers of gaming machine entitlements transferred;
    - (E) the geographic area and venue conditions to which the gaming machine entitlements transferred are subject and any subsequent amendments made in accordance with the Act; and
    - (F) any other particulars relating to the transfer as determined by the Commission.

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- (d) The Commission must make the details of the register referred to in paragraph (c) available to the public on its website.

**6. Transfer Market Website**

- (a) The Commission must establish a transfer market website on which venue operators –
  - (i) must record details of any gaming machine entitlements available for transfer (subject to the exceptions stated in rule 8(a)); and
  - (ii) may register an interest in acquiring gaming machine entitlements.
- (b) The Commission must issue only one username and password to each venue operator to enable entries to be made on the transfer market website.
- (c) Each venue operator must keep the username and password secure and is solely responsible for its distribution and use.
- (d) A venue operator may request the cancellation of a username and password and the issue of a replacement username and password in the event of an actual or anticipated security breach.
- (e) The transfer market website will commence on or before the date that the transfer scheme commences.

**7. Validity of Transfer**

- (a) A transfer of a gaming machine entitlement is only valid for the purposes of the Act if it is recorded by the Commission on the register referred to in rule 5(c).
- (b) A transfer of a gaming machine entitlement may only be recorded by the Commission on the register if:
  - (i) the transfer is in accordance with the Act, regulations and any rules, directions, determinations or orders made under the Act; and
  - (ii) the relevant parties execute and date a transfer in the form required by the Commission on its website and submit the duly executed form to the Commission; and
  - (iii) the transferor has notified its intention to transfer the relevant gaming machine entitlements to the transferee by posting a notice on the transfer market website that includes the information contained in rule 8(c); and
  - (iv) The transferee holds a venue operator's licence and has provided an executed counterpart to the Commission of:
    - (a) all related agreements that are required to be made with the Minister under the Act relating to the gaming machine entitlements acquired under the transfer; and
    - (b) where relevant, a deed of assumption for the relevant amount with respect to the Entitlements, in the form required by the Minister, as required by Rule 13.
- (c) A venue operator must not acquire or attempt to acquire gaming machine entitlements through the transfer scheme that would cause it to be in breach of the Act, regulations made pursuant to the Act, or any rules, directions, determinations or orders made under the Act.

**8. Advertisement for Sale by Venue Operator**

- (a) Any gaming machine entitlement available for transfer must be advertised on the transfer market website unless the transfer of the gaming machine entitlement –
  - (i) is included in the sale of a gaming business;
  - (ii) is between a related body corporate within the meaning of section 9 of the Corporations Act 2001 (Cth); or

- (iii) is the subject of concluded negotiations for sale or is not intended to be entered into with an unrelated purchaser on the open market ; or
  - (iv) is in such other circumstances determined by the Commission.
- (b) A venue operator may also advertise gaming machine entitlements by any other means as long as those means do not involve or attempt to involve the completion of the sale.
- (c) Details of any transfer proposed to be submitted to the Commission for recording on the register referred to under rule 5(c) (including transfers that did not need to be advertised under rule 8(a)), must be entered on the transfer market website by the venue operator who has transferred gaming machine entitlements specifying the number transferred, the name of the venue operator to whom the entitlements were transferred and the purchase price paid (including the market value of any financial benefit received).

**9. Advertisement for Allocation as Directed by Minister**

- (a) If the Minister determines to allocate gaming machine entitlements after the commencement of the transfer scheme, then the Minister may direct the Commission to advertise the availability of those gaming machine entitlements for allocation on the transfer market website, including gaming machine entitlements that have not previously been allocated, or that have been previously allocated and were forfeited to or bought back by the State in accordance with the Act.
- (b) If directed by the Minister to advertise gaming machine entitlements for allocation on the transfer market website, then the Commission must:
  - (i) advertise the gaming machine entitlements on the terms directed by the Minister; and
  - (ii) inform all persons that make an offer to take up a gaming machine entitlement that offers are accepted at the discretion of the Minister and subject to any terms and conditions determined by the Minister in accordance with the Act.
- (c) The Commission must, within 28 days or otherwise within the time directed by the Minister, communicate offers to acquire the advertised gaming machine entitlements to the Minister, and with each offer, must provide to the Minister a written report that includes:
  - (i) confirmation that the person making the offer holds a current venue operator's licence;
  - (ii) if the gaming machine entitlement is being advertised subject to a venue condition that authorises the conduct of gaming in a venue in which a club liquor licence or a racing club licence is in force, confirmation that the person making the offer holds a current club venue operator's licence;
  - (iii) confirmation that if the Minister were to accept the offer and allocate the gaming machine entitlement, that the allocation would not be in breach of a regional limit or municipal limit and the requirements set out under sections 3.4A.5(5) and 3.4A.5(6) of the Act; and
  - (iv) any other information requested by the Minister.
- (d) Upon allocation of the gaming machine entitlements, the Commission must publish on the transfer market website (within 7 days of allocation), the information regarding the allocation that is specified and required under rule 5(c)(i).

**10. Allocation of Previously Allocated Gaming Machine Entitlements that are Bought Back by the State**

- (a) The Minister may determine to advertise a previously allocated gaming machine entitlement that has been bought back by the State in accordance with the Act, with or without a geographic area and/or venue condition.

- (b) If the Minister makes a determination under rule 10(a) to advertise a previously allocated gaming machine entitlement without a geographic area and/or venue condition then the Commission must –
  - (i) advertise the gaming machine entitlement on the transfer market website as a gaming machine entitlement without a geographic area and/or venue condition;
  - (ii) inform interested parties that they must submit their preferences for the geographic area and/or venue condition for the gaming machine entitlement as part of their offer to acquire that gaming machine entitlement; and
  - (iii) if the gaming machine entitlement is reallocated, record the geographic area and venue conditions that the Minister has imposed upon the gaming machine entitlement.
- (c) If the Minister makes a determination under rule 10(a) to advertise a previously allocated gaming machine entitlement with a geographic area and/or venue condition, then:
  - (i) the gaming machine entitlement must be advertised on the transfer market website as an entitlement with the specified geographic area and/or venue condition; and
  - (ii) the gaming machine entitlement, if allocated, will be endorsed with the relevant geographic area and/or venue condition specified in the advertisement; and
  - (iii) for the purposes of regional limits and municipal limits, and the requirements under section 3.4A.5(5) and 3.4A.5(6) of the Act, while the gaming machine entitlement rests with the State, the gaming machine entitlement is taken to have the relevant geographic area and/or venue condition specified in the advertisement.

#### **11. Allocation of Previously Unallocated Gaming Machine Entitlements**

- (a) The Minister may direct the Commission to advertise gaming machine entitlements that have not previously been allocated by the Minister with or without a geographic area and/or venue condition.
- (b) If the Minister directs the Commission to advertise a previously unallocated gaming machine entitlement under rule 11(a) without a geographic area and/or venue condition, then the Commission must:
  - (i) advertise the gaming machine entitlement on the transfer market website as a gaming machine entitlement without a geographic area and/or venue condition; and
  - (ii) inform interested parties that they must submit their preferences for the geographic area and/or venue condition for the gaming machine entitlement as part of their offer to acquire that gaming machine entitlement; and
  - (iii) if the gaming machine entitlement is reallocated, record the geographic area and venue conditions that the Minister has imposed upon the gaming machine entitlement.
- (c) If the Minister directs the Commission to advertise a previously unallocated gaming machine entitlement under rule 11(a), with a geographic area and/or venue condition, then:
  - (i) the gaming machine entitlement must be advertised on the transfer market website as an entitlement with the specified geographic area and/or venue condition; and
  - (ii) the gaming machine entitlement, if allocated, will be endorsed with the relevant geographic area and/or venue condition specified in the advertisement; and

- (iii) for the purposes of regional limits and municipal limits, and the requirements under section 3.4A.5(5) and 3.4A.5(6) of the Act, while the gaming machine entitlement rests with the State, the gaming machine entitlement is taken to have the relevant geographic area and/or venue condition specified in the advertisement.

**12. Allocation of Gaming Machine Entitlements that are Forfeited to the State**

- (a) The Minister may determine to advertise a gaming machine entitlement that has been forfeited to the State in accordance with the Act.
- (b) If the Minister makes a determination under rule 12(a) to advertise a gaming machine entitlement that has been forfeited to the State then the Commission must –
  - (i) advertise the gaming machine entitlement on the transfer market website as a gaming machine entitlement with the same geographic area and venue conditions that applied to the gaming machine entitlement at the time of its forfeiture to the State; and
  - (ii) to avoid any doubt, for the purposes of regional limits and municipal limits and the requirements under section 3.4A.5(5) and 3.4A.5(6) of the Act, the forfeited gaming machine entitlement continues to have the same geographic area and venue conditions that applied to it at the time of its forfeiture to the State.
- (c) Notwithstanding sub rule 12(b), if the Minister determines to allocate gaming machine entitlements that have been forfeited to the State pursuant to section 3.4A.27A of the Act, then the Minister must do so under sub rule 10(b) as if the gaming machine entitlements had been bought back by the State.

**13. Payment of Amounts Owed to State on Settlement of Transfers**

- (a) The Commission must not record a transfer of a gaming machine entitlement, (except as provided in rule 13(c)) until it has received all amounts owing to the State that are outstanding in relation to the gaming machine entitlement, by way of –
  - (i) any unpaid monies owing under the entitlement related agreement for the gaming machine entitlement;
  - (ii) any prescribed fees relating to the transfer of the gaming machine entitlement under the Act;
  - (iii) any interest payable on overdue instalments for gaming machine entitlements under entitlement related agreement;
  - (iv) any fines imposed in accordance with section 3.4.25 of the Act on the venue operator who is seeking to transfer the gaming machine entitlement (the transferor); and
  - (v) any amount payable to the Treasurer under section 3.4A.18 of the Act.
- (b) The Commission must calculate any amount payable to the Treasurer under section 3.4A.18 and advise the Treasurer and the liable party of the amount due.
- (c) The Minister may direct the Commission to record a transfer, without the amount referred to in rule 13(a)(i) being first paid, if the Minister is satisfied that:
  - (i) the transferee has executed all the necessary related agreements with the Minister in accordance with the Act which deal with matters related to the gaming machine entitlement; and
  - (ii) the transferee has executed a deed of assumption with respect to the gaming machine entitlement, in the form required by the Minister; and
  - (iii) if the amount assumed by the transferee under rule 13(c)(ii) is less than the outstanding amount owed by the transferor with respect to the gaming machine entitlement, the Commission has received the difference between the amount assumed under rule 13(c)(ii) and the outstanding amount owed by the transferor under the entitlement related agreement.

**14.    Transfer Fees**

- (a)    The specified payee of the fee prescribed under section 3.4A.15 of the Act is the Commission.
- (b)    The specified payer of the fee prescribed under section 3.4A.15 of the Act is the transferee of the gaming machine entitlement.

**15.    The Date of Effect**

- (a)    The date of effect of the rules contained in this determination is the date of publication in the Victoria Government Gazette.

Dated 15 March 2012

HON. MICHAEL O'BRIEN MP  
Minister for Gaming

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