



Victoria Government Gazette

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Gambling Regulation Act 2003

DETERMINATION OF GAMING MACHINE ENTITLEMENT ALLOCATION AND TRANSFER RULES

I, the Honourable Marlene Kairouz MP, Minister for Consumer Affairs, Gaming and Liquor Regulation, acting under sections 3.4A.3 and 3.4A.5(9) of the **Gambling Regulation Act 2003** (the Act), determine as follows –

1. The following rules constitute gaming machine entitlement allocation and transfer rules under section 3.4A.3 of the Act and are in addition to the Gaming Machine Entitlement Allocation and Transfer Rules published in the Victoria Government Gazette (No. G40/17) on 5 October 2017 and the Victoria Government Gazette (No. S379/17) on 9 November 2017.
2. The Gaming Machine Entitlement Allocation and Transfer Rules published in the Victoria Government Gazette (No. S205) on 22 July 2015 remain in effect.
3. For the purposes of section 3.4A.5(9) of the Act, these gaming machine allocation and transfer rules specify –
 - (a) the process for allocating new gaming machine entitlements that take effect on or after 16 August 2022; and
 - (b) the requirements to be complied with by a person wishing to participate in the process for allocating those new gaming machine entitlements.

4. **Definitions**

Words not otherwise defined in these rules have the same meaning as in the Act, except where a contrary intention appears.

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

Club means the holder of a club venue operator's licence issued under Division 2 of Part 4 of Chapter 3 of the Act.

Deed Poll means the deed, containing the requirements to be complied with as determined by the Minister, that each venue operator must execute to receive an allocation of new gaming machine entitlements from the Minister, and under which the venue operator agrees to purchase the Nominated Number of new gaming machine entitlements (or such lesser number as determined by the Minister) and to the terms of the allocation of the new gaming machine entitlements.

EOI Response means:

- (a) a response from a New Entrant made in accordance with rule 5(b)(iv) of the First Rules; or
- (b) a response from an Incumbent Venue Operator made in accordance with rule 5(c)(iii) or 5(e)(ii) of the First Rules.

First Rules means the Gaming Machine Entitlement Allocation and Transfer Rules published in the Victoria Government Gazette (No. G40/17) on 5 October 2017.

Hotel means the holder of a hotel venue operator's licence issued under Division 2 of Part 4 of Chapter 3 of the Act.

Incumbent Club means a Club who either:

- (a) held gaming machine entitlements at the Specified Date that have not been transferred to a Successor Venue Operator on or before the Pre-Offer Date; or
- (b) is a Successor Venue Operator.

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Incumbent Hotel means a Hotel who either:

- (a) held gaming machine entitlements at the Specified Date that have not been transferred to a Successor Venue Operator on or before the Pre-Offer Date; or
- (b) is a Successor Venue Operator.

Incumbent Venue Operator means an Incumbent Club or an Incumbent Hotel.

Minimum Additional Number means in respect of an approved venue, the minimum number of new gaming machine entitlements in excess of the number of gaming machine entitlements held by the Incumbent Venue Operator and attached to that approved venue at the Specified Date that the Incumbent Venue Operator agrees to purchase, as specified in the Incumbent Venue Operator's Deed Poll.

Minimum Number means in respect of each Proposed Venue, the lowest number in the 'number of entitlements requested' range specified by the venue operator in its EOI Response for the Proposed Venue.

Minister means the Minister responsible for administering the Act.

New Club means a Club who satisfies the requirements of rules 5(b)(ii) to (iv) of the First Rules.

New Entrant means an entity who satisfies the requirements of rule 5(b) of the First Rules.

New Hotel means a Hotel who satisfies the requirements of rules 5(b)(ii) to (iv) of the First Rules.

New Venue Operator means a New Club or a New Hotel.

Nominated Number means the maximum number of new gaming machine entitlements that a venue operator agrees to purchase with respect to, as applicable, an approved venue, Proposed Venue, Unattached Entitlements or a geographic area, and for the price determined by the Minister, as specified in the venue operator's Deed Poll.

Non-Operating Incumbent Venue Operator means a venue operator who:

- (a) is an Incumbent Venue Operator; and
- (b) at the Specified Date, did not have an approved venue.

Pre-Offer Date means the date of the Pre-Offer Letter.

Pre-Offer Letter means the letter described in rule 5 of the First Rules and rule 15 of the Second Rules.

Proposed Venue means a venue:

- (a) in respect of a New Entrant: a venue with characteristics notified to the Minister in accordance with rule 5(b)(iv)(B) of the First Rules; or
- (b) in respect of an Incumbent Venue Operator: a venue with characteristics notified to the Minister in accordance with rule 5(c)(iii)(B) or 5(e)(ii)(B) of the First Rules, which was not an approved venue of the Incumbent Venue Operator on the Specified Date.

Second Rules means the Gaming Machine Entitlement Allocation and Transfer Rules published in the Victoria Government Gazette (No. S379/17) on 9 November 2017.

Specified Date means 7 July 2017.

State means the Crown in right of the State of Victoria and a reference to the State includes a reference to its servants, officers, agents and the Minister.

Successor Venue Operator means a venue operator who:

- (a) after the Specified Date, acquired the gaming business operating at an approved venue where gaming machines were permitted at the Specified Date;
- (b) as at the Pre-Offer Date, is recorded on the Register as the venue operator conducting gaming at that approved venue; and

- (c) as part of acquiring the gaming business operating at that approved venue, acquired gaming machine entitlements from the previous operator of the gaming business in order to operate gaming machines at the approved venue.

Unattached Entitlement means a gaming machine entitlement held by an Incumbent Venue Operator (other than a Non-Operating Incumbent Venue Operator) on the Specified Date but which, at the Specified Date, is not attached to an approved venue.

5. **Minister's offer to apply**

- (a) Each Incumbent Venue Operator and New Entrant will receive a written offer from the Minister, accompanied by a Deed Poll, for the entity to submit an application to purchase new gaming machine entitlements:
- (i) for a price determined by the Minister in accordance with the Second Rules; and
 - (ii) the number of which will be determined in accordance with rule 7.
- (b) An offer to apply from the Minister is conditional on the recipient holding a venue operator's licence by the date it submits an application in accordance with rule 6.
- (c) The Minister will determine the date that an offer to apply will be made to each relevant entity and the date by which an application must be submitted.

Incumbent Venue Operator (other than a Non-Operating Incumbent Venue Operator)

- (d) An Incumbent Venue Operator will receive an offer to submit an application to purchase new gaming machine entitlements with respect to:
- (i) its approved venue(s), subject to rule 14 of the Second Rules;
 - (ii) Unattached Entitlements; and
 - (iii) its Proposed Venue(s).

Non-Operating Incumbent Venue Operator

- (e) A Non-Operating Incumbent Venue Operator will receive an offer to submit an application to purchase new gaming machine entitlements with respect to:
- (i) the gaming machine entitlements held by the Non-Operating Incumbent Venue Operator at the Specified Date; and
 - (ii) its Proposed Venue(s).

New Entrant

- (f) A New Entrant will receive an offer to submit an application to purchase new gaming machine entitlements with respect to its Proposed Venue(s).

6. **Submitting an application**

- (a) To submit an application to purchase new gaming machine entitlements, an entity must be a venue operator and must, by the date determined by the Minister:
- (i) specify the Nominated Number(s) where indicated on the Deed Poll;
 - (ii) execute and return to the Minister a duly executed Deed Poll; and
 - (iii) at the same time pay the amount of the deposit required under the Deed Poll for the Nominated Number(s) of new gaming machine entitlements in the manner set out in the Deed Poll.
- (b) A venue operator must not specify a Nominated Number which is greater than 105.
- (c) A Nominated Number with respect to Unattached Entitlements with a particular geographic area condition must not exceed the number of Unattached Entitlements with that geographic area condition held by the Incumbent Venue Operator at the Specified Date.

- (d) Except in relation to a Proposed Venue, a Non-Operating Incumbent Venue Operator must not specify a Nominated Number which is greater than the number of gaming machine entitlements held by the Non-Operating Incumbent Venue Operator at the Specified Date.
- (e) If the venue operator is a New Venue Operator or an Incumbent Venue Operator with a Proposed Venue, the Nominated Number with respect to a Proposed Venue must be within the range specified by the venue operator in its EOI Response for that Proposed Venue.
- (f) The Minister may consider a late application to purchase new gaming machine entitlements if the Minister is satisfied that the submission of the late application was due to:
 - (i) exceptional circumstances; or
 - (ii) the venue operator being required by the State to correct an error in its original application,and that the integrity of the gaming machine entitlement allocation process will not be compromised by the Minister accepting that application after the date determined under rule 6(a).

7. **Number of gaming machine entitlements**

- (a) Subject to the venue operator's compliance with these rules and the Act, the number of new gaming machine entitlements that the Minister will allocate to a venue operator will be calculated in accordance with rules 8, 9 and 10.
- (b) The maximum number of new gaming machine entitlements that the Minister will allocate to a venue operator with respect to, as applicable, an approved venue, Proposed Venue, Unattached Entitlements or a geographic area, is the Nominated Number for that approved venue, Proposed Venue, Unattached Entitlements or geographic area.
- (c) If the Minister cannot allocate to a New Venue Operator or an Incumbent Venue Operator with a Proposed Venue at least the Minimum Number of new gaming machine entitlements for the Proposed Venue, the Minister will not allocate to the New Venue Operator or Incumbent Venue Operator any new gaming machine entitlements for the Proposed Venue.
- (d) If the Minister cannot allocate to an Incumbent Venue Operator at least the Minimum Additional Number of new gaming machine entitlements for an approved venue, the Minister will not allocate to the Incumbent Venue Operator any new gaming machine entitlements for the approved venue in excess of the number of gaming machine entitlements held by the Incumbent Venue Operator and attached to the approved venue at the Specified Date.

8. **Calculation of provisional allocation**

- (a) The Minister will determine the number of new gaming machine entitlements provisionally allocated to a venue operator in accordance with the stages set out in this rule 8 and subject to the principles in rule 9 and the limits set out in rule 10.
- (b) **First stage (Incumbent Venue Operators):**
Each Incumbent Venue Operator will be provisionally allocated the lesser of the applicable Nominated Number and the corresponding number of gaming machine entitlements held by the Incumbent Venue Operator at the Specified Date.
- (c) **Second stage (Clubs):**
Club gaming machine entitlements not provisionally allocated at the first stage will be provisionally allocated to Clubs as follows:
 - (i) First, to New Clubs in accordance with rule 9(a), up to a maximum total provisional allocation to each New Club of 420 new gaming machine entitlements.

- (ii) Secondly, to Incumbent Clubs with respect to approved venues where the applicable Nominated Number exceeds the number of gaming machine entitlements held by the Incumbent Club and attached to that approved venue at the Specified Date, in accordance with rule 9(b), up to a maximum total provisional allocation to each Incumbent Club of 420 new gaming machine entitlements.
 - (iii) Thirdly, to Incumbent Clubs with respect to Proposed Venues, in accordance with rule 9(a), up to a maximum total provisional allocation to each Incumbent Club of 420 new gaming machine entitlements.
 - (iv) Lastly, to Clubs whose Nominated Numbers total to more than 420, to the extent that a Club has not been provisionally allocated its Nominated Number in respect of any approved venue or Proposed Venue, in accordance with rule 9(c).
- (d) Third stage (**Hotels**):
- Gaming machine entitlements not provisionally allocated at the first or second stages will be provisionally allocated to Hotels as follows:
- (i) First, to New Hotels in accordance with rule 9(a).
 - (ii) Secondly, to Incumbent Hotels with respect to approved venues where the applicable Nominated Number exceeds the number of gaming machine entitlements held by the Incumbent Hotel and attached to that approved venue at the Specified Date, in accordance with rule 9(b).
 - (iii) Lastly, to Incumbent Hotels with respect to Proposed Venues, in accordance with rule 9(a).

9. Allocation principles

- (a) In allocating new gaming machine entitlements with respect to Proposed Venues under rule 8(c)(i), 8(c)(iii), 8(d)(i) or 8(d)(iii), the Minister will apply the following principles:
 - (i) new gaming machine entitlements will be allocated to enable all eligible venue operators to be allocated their Nominated Number(s);
 - (ii) where rule 9(a)(i) cannot be applied – new gaming machine entitlements will be allocated to enable all eligible venue operators to be allocated their Minimum Number(s);
 - (iii) where rule 9(a)(ii) has been applied, any remaining new gaming machine entitlements will be allocated equally amongst all eligible venue operators; and
 - (iv) where neither rules 9(a)(i) nor 9(a)(ii) can be applied, or to the extent that rule 9(a)(iii) cannot be applied – new gaming machine entitlements will be allocated in a way that maximises the monetary value to the State.
- (b) In allocating new gaming machine entitlements under rule 8(c)(ii) or 8(d)(ii) to Incumbent Venue Operators whose Nominated Number(s) exceed the number of gaming machine entitlements held by the Incumbent Venue Operator at the Specified Date, the Minister will apply the following principles:
 - (i) new gaming machine entitlements will be allocated to enable all eligible Incumbent Venue Operators to be allocated their Nominated Number(s);
 - (ii) where rule 9(b)(i) cannot be applied – new gaming machine entitlements will be allocated to enable all eligible Incumbent Venue Operators to be allocated their Minimum Additional Number(s);
 - (iii) where rule 9(b)(ii) has been applied, any remaining new gaming machine entitlements will be allocated equally amongst all eligible Incumbent Venue Operators; and

- (iv) where neither rules 9(b)(i) nor 9(b)(ii) can be applied, or to the extent that rule 9(b)(iii) cannot be applied – new gaming machine entitlements will be allocated in a way that maximises the monetary value to the State.
 - (c) In allocating new gaming machine entitlements under rule 8(c)(iv) to Clubs whose Nominated Numbers total to more than 420, the Minister will apply the following principles:
 - (i) new gaming machine entitlements will be allocated to enable all eligible Clubs to be allocated their Nominated Number(s);
 - (ii) where rule 9(c)(i) cannot be applied – new gaming machine entitlements will be allocated to enable all eligible Clubs to be allocated their Minimum Number(s) and Minimum Additional Number(s);
 - (iii) where rule 9(c)(ii) has been applied, any remaining new gaming machine entitlements will be allocated equally amongst all eligible Clubs; and
 - (iv) where neither rules 9(c)(i) nor 9(c)(ii) can be applied, or to the extent that rule 9(c)(iii) cannot be applied – new gaming machine entitlements will be allocated in a way that maximises the monetary value to the State.
 - (d) Where at any stage no other principle in this rule 9 can be applied, the Minister will allocate new gaming machine entitlements in her sole discretion.
10. **Market limitations**
- (a) The Minister will not allocate a gaming machine entitlement to a venue operator if the Minister considers, in her sole discretion, that to do so would result in a breach of the Act.
 - (b) The following limits also apply to the allocation of new gaming machine entitlements by the Minister:
 - (i) the maximum number of gaming machine entitlements under which gaming may be conducted in the State, pursuant to an Order of the Minister made under section 3.4A.5(3) of the Act;
 - (ii) the maximum number of gaming machine entitlements under which gaming may be conducted in a region or municipal district, pursuant to an Order of the Minister or determination of the Commission made under section 3.4A.5(3A) of the Act; and
 - (iii) if relevant, the permissible percentages of club gaming machine entitlements and hotel gaming machine entitlements specified in a declaration of the Minister made under section 3.4A.5AA of the Act.
11. **Provisional Allocation**
- (a) On the date determined by the Minister, the Minister will provisionally allocate new gaming machine entitlements in accordance with rule 8, to venue operators who have satisfied the requirements of rule 6.
 - (b) The Minister will notify each Incumbent Venue Operator and New Venue Operator, by letter, of how many new gaming machine entitlements the venue operator has been provisionally allocated.
 - (c) The Minister reserves the right to amend the number of new gaming machine entitlements provisionally allocated to a venue operator, if an allocation review process conducted in accordance with rule 12 identifies the need to amend the venue operator's provisional allocation (whether or not the venue operator delivered a written statement to the Minister under rule 12(a)). If the Minister amends the number of new gaming machine entitlements provisionally allocated to a venue operator, the Minister will notify the venue operator by letter.

12. Allocation review

- (a) If the venue operator is of the opinion that the number of new gaming machine entitlements provisionally allocated to it under rule 11(a) does not accord with the rules, the venue operator must, within 15 business days after the date of the Minister's letter under rule 11(b), deliver to the Minister a written statement that in the venue operator's opinion the number of new gaming machine entitlements provisionally allocated to it does not accord with the rules, and clearly identifying the reasons for that claim.
- (b) The Minister will consider a written statement received from the venue operator under rule 12(a) and decide whether the provisional allocation requires an amendment in order to accord with these rules or whether the provisional allocation as made will stand. Within 35 business days after the date of the Minister's letter under rule 11(b), the Minister will give the venue operator written notice of the outcome of the consideration under this rule, including (where appropriate) a revised provisional allocation.
- (c) If within the 15 business day period in rule 12(a) the venue operator does not write to the Minister under that rule, the Minister will not consider any other submission from a venue operator in relation to the number of new gaming machine entitlements provisionally allocated or allocated to that venue operator.
- (d) Rule 12(a) does not apply to a revised provisional allocation made by the Minister in accordance with rules 11(c) or 12(b).

13. Allocation

- (a) By the date determined by the Minister, the venue operator must duly execute and provide to the Minister an entitlement-related agreement relating to payment for the new gaming machine entitlements to be allocated to it.
- (b) After the Minister has received the duly executed entitlement-related agreement from the venue operator in accordance with rule 13(a) and any amount due and payable under such entitlement-related agreement, the new gaming machine entitlements provisionally allocated to the venue operator will be allocated to the venue operator by the Minister.
- (c) If the venue operator submits the entitlement-related agreement and/or pays any amount due and payable after the date determined under rule 13(a), the Minister may allocate new gaming machine entitlements to that venue operator if the Minister is satisfied that the late submission and/or payment was due to:
 - (i) exceptional circumstances;
 - (ii) the venue operator being required by the State to correct an error in its original executed entitlement-related agreement, or
 - (iii) the incorrect amount being paid by the venue operator,and that the integrity of the gaming machine entitlement allocation process will not be compromised by the Minister accepting that application after the date determined under rule 13(a).

14. Geographic area conditions

- (a) If an Incumbent Venue Operator is allocated new gaming machine entitlements (other than in relation to a Proposed Venue), those new gaming machine entitlements will have the same geographic area condition(s) as the corresponding gaming machine entitlements held by the Incumbent Venue Operator at the Specified Date.
- (b) If the geographic area condition of a gaming machine entitlement held by an Incumbent Venue Operator at the Specified Date differs from the geographic area condition of that gaming machine entitlement on the date that new gaming machine entitlements are allocated as a result of action initiated by the State, a new gaming machine entitlement which corresponds to the gaming machine entitlement held at the Specified Date will be allocated with the new geographic area condition.
- (c) All new gaming machine entitlements allocated to an Incumbent Venue Operator in respect of a particular approved venue will be endorsed with the same geographic area condition.
- (d) A gaming machine entitlement allocated to a venue operator in respect of a Proposed Venue will be endorsed with a geographic area condition that allows its use in the Proposed Venue.

15. Further matters

- (a) In accordance with section 3.4A.5(4) of the Act each new gaming machine entitlement allocated under these rules will, on allocation, be endorsed with:
 - (i) if the gaming machine entitlement is allocated to a Club, a venue condition that allows its use in an approved venue in respect of which a club licence or a racing club licence is in force; or
 - (ii) if the gaming machine entitlement is allocated to a Hotel, a venue condition that allows its use in an approved venue in respect of which a pub licence is in force; and
 - (iii) a geographic area condition in accordance with rule 14.
- (b) Pursuant to section 10.1.4.(2)(ae) of Act, the Commission has the function of receiving and holding on behalf of the State any 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.

16. Changes

In accordance with and subject to the Act, the Minister may determine any changes to these rules at any time and provide notice of such changes to Incumbent Venue Operators and New Entrants.

17. Notices

Any notice or communication under these rules may be given to the Minister by delivering it to the Director, Gambling Licensing Program, Office of Liquor, Gaming and Racing, Department of Justice and Regulation, 121 Exhibition Street, Melbourne, Victoria.

Dated 20 December 2017

THE HONOURABLE MARLENE KAIROUZ MP
Minister for Consumer Affairs, Gaming and Liquor Regulation

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