



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 section 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.
2. These rules apply to new gaming machine entitlements that will take effect on or after 16 August 2022. The Gaming Machine Entitlement Allocation and Transfer Rules published in the Government Gazette (No. S205/15) 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. These gaming machine allocation and transfer rules also include the process for calculating an amount or amounts that must be paid by a person to whom a gaming machine entitlement is allocated.
5. I intend to determine further gaming machine entitlement allocation and transfer rules in relation to the process for allocating new gaming machine entitlements that take effect on or after 16 August 2022 and the requirements to be complied with by a person wishing to participate in the process for allocating those new gaming machine entitlements.
6. **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**.

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

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

Gaming Revenue has the same meaning given to that term in section 3.6.2 of the Act.

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 one or more 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 Hotel means a Hotel who either:

- (a) held one or more 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 Venue Operator means an Incumbent Club or an Incumbent Hotel.

Minister means the Minister responsible for administering the Act.

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

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.

Notional Venue has the meaning given to that term in rule 11(c).

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

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

Reference Venue means an approved venue which at the Specified Date is recorded on the Register as an approved venue of the venue operator and which, at the Specified Date, has less than 105 attached gaming machine entitlements.

Specified Date means 7 July 2017.

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.

7. **Price**

- (a) The Minister will determine the price payable by a venue operator for a new gaming machine entitlement that will take effect on or after 16 August 2022, in accordance with these rules.
- (b) The price determined by the Minister in accordance with these rules relates to an initial period of 10 years. If, in accordance with the Act, the new gaming machine entitlement is in force for a period greater than 10 years, the Minister may require the venue operator to pay a further amount for the further period.

8. **Minimum Price**

- (a) The minimum price payable by a venue operator for a new club gaming machine entitlement is \$5,170.
- (b) The minimum price payable by a venue operator for a new hotel gaming machine entitlement is \$32,714.

9. **Price – Incumbent Venue Operators (other than Non-Operating Incumbent Venue Operators)**

- (a) This rule 9:
- (i) does not apply to Non-Operating Incumbent Venue Operators; see rule 11 instead;
 - (ii) cannot be used to calculate the price applicable to those new gaming machine entitlements equivalent to Unattached Entitlements; see rule 10 instead; and
 - (iii) cannot be used to calculate the price of new gaming machine entitlements to be purchased with respect to a Proposed Venue; see rule 12 instead.
- (b) Subject to rule 9(a), rule 13 and the minimum prices specified in rule 8, the price payable by an Incumbent Venue Operator for a new gaming machine entitlement is calculated in accordance with this rule 9.
- (c) The price payable by an Incumbent Venue Operator for a new gaming machine entitlement, with respect to an approved venue, will be calculated as follows:

$$P = ((A/N) \times 10\% + (B/N) \times 20\% + (C/N) \times 30\% + (D/N) \times 40\%) \times M$$

Where:

P = price payable for a new gaming machine entitlement with respect to an approved venue

A = the Gaming Revenue at the approved venue for the financial year 2013–2014

B = the Gaming Revenue at the approved venue for the financial year 2014–2015

C = the Gaming Revenue at the approved venue for the financial year 2015–2016

D = the Gaming Revenue at the approved venue for the financial year 2016–2017

N = the number of gaming machines operating in the approved venue for the relevant financial year determined in accordance with rule 9(d)

M = 46.3643988224133%

- (d) For the purposes of calculating ‘N’ in rule 9(c), the Minister will determine the number of gaming machines operating in an approved venue for each relevant financial year in accordance with the following formula:

$$N = \frac{E + F}{2}$$

Where:

E = the number of gaming machines operating in the approved venue as at 30 June in the relevant financial year

F = the number of gaming machines operating in the approved venue as at 30 June in the previous financial year

10. **Price – Incumbent Venue Operators (other than Non-Operating Incumbent Venue Operators) with Unattached Entitlements**

- (a) This rule 10 does not apply to Non-Operating Incumbent Venue Operators; see rule 11 instead.
- (b) References in this rule 10 to the geographic area condition of an Unattached Entitlement is a reference to the geographic area condition of the Unattached Entitlement at the Specified Date.
- (c) Subject to rule 13 and the minimum prices specified in rule 8, the price payable by an Incumbent Venue Operator for new gaming machine entitlements equivalent to Unattached Entitlements will be calculated in accordance with this rule 10.

- (d) If the Incumbent Venue Operator operates only one approved venue at the Specified Date, the price applicable to each new gaming machine entitlement equivalent to an Unattached Entitlement will be the same as the price determined in accordance with rule 9 for a new gaming machine entitlement with respect to that approved venue.
- (e) If the Incumbent Venue Operator operates more than one approved venue at the Specified Date, the price applicable to each new gaming machine entitlement equivalent to an Unattached Entitlement will be as follows:
 - (i) If there are one or more Reference Venues operated by the Incumbent Venue Operator in the geographic area that matches the geographic area condition of an Unattached Entitlement, the applicable price will be the same as the price for one new gaming machine entitlement with respect to the Reference Venue in that geographic area with the highest new gaming machine entitlement price (determined in accordance with rule 9).
 - (ii) If there are no Reference Venues operated by the Incumbent Venue Operator in the geographic area that matches the geographic area condition of an Unattached Entitlement, the applicable price will be the same as the price for one new gaming machine entitlement with respect to the Reference Venue with the highest new gaming machine entitlement price (determined in accordance with rule 9).

11. **Price – Non-Operating Incumbent Venue Operators**

- (a) This rule 11 cannot be used to calculate the price of new gaming machine entitlements to be purchased with respect to a Proposed Venue; see rule 12 instead.
- (b) Subject to rule 13 and the minimum prices specified in rule 8, the price payable by a Non-Operating Incumbent Venue Operator for a new gaming machine entitlement will be calculated in accordance with this rule 11.
- (c) Only for the purposes of determining the price payable by a Non-Operating Incumbent Venue Operator for a new gaming machine entitlement, the Minister will treat the Non-Operating Incumbent Venue Operator as intending to operate a venue (**Notional Venue**) with the following characteristics:
 - (i) a geographic location that matches the geographic area condition (at the Specified Date) of the gaming machine entitlements held by the Non-Operating Incumbent Venue Operator at the Specified Date, and;
 - (ii) the same number of gaming machine entitlements attached to the venue as the number of gaming machine entitlements held by the Non-Operating Incumbent Venue Operator at the Specified Date.
- (d) The price payable by a Non-Operating Incumbent Venue Operator for a new gaming machine entitlement will be the same as the price payable by an Incumbent Venue Operator for a new gaming machine entitlement with respect to the approved venue determined by the Minister to be the most similar to the Notional Venue, in accordance with rule 11(e).
- (e) The Minister will determine, in her sole discretion, which approved venue of an Incumbent Venue Operator is the most similar to the Notional Venue, taking into account:
 - (i) the number of gaming machine entitlements deemed to be attached to the Notional Venue;
 - (ii) whether the Non-Operating Incumbent Venue Operator is a Club or a Hotel;
 - (iii) the geographic location of the Notional Venue; and
 - (iv) any other matters the Minister considers relevant in making her determination.

12. Price – New Entrants and Incumbent Venue Operators with a Proposed Venue

- (a) Subject to rule 13 and the minimum prices specified in rule 8, the price to be paid by a New Entrant or an Incumbent Venue Operator for a new gaming machine entitlement for a Proposed Venue will be calculated in accordance with this rule 12.
- (b) The price payable by a New Entrant or an Incumbent Venue Operator for a new gaming machine entitlement for a Proposed Venue will be the same as the price payable by an Incumbent Venue Operator for a new gaming machine entitlement with respect to the approved venue determined by the Minister to be the most similar to the Proposed Venue, in accordance with rule 12(c).
- (c) The Minister will determine, in her sole discretion, which approved venue of an Incumbent Venue Operator is the most similar to each Proposed Venue, taking into account:
 - (i) the number of gaming machines intended to be operated in the Proposed Venue;
 - (ii) whether the Proposed Venue will be operated by a Club or a Hotel;
 - (iii) the geographic location of the Proposed Venue; and
 - (iv) any other matters the Minister considers relevant in making her determination.

13. Minister's discretion

- (a) The Minister retains her discretion to apply any other method to determine the price payable by a venue operator for a new gaming machine entitlement that takes effect on or after 16 August 2022, including her discretion not to apply the formula set out in rule 9(c). Without limitation, for the purposes of determining the price to be paid by an Incumbent Venue Operator for a new gaming machine entitlement with respect to an approved venue, if it appears to the Minister that gaming operations were disrupted at an approved venue for an appreciable part of a relevant financial year, that financial year may be disregarded and the weightings attributed to a financial year's Gaming Revenue per attached gaming machine adjusted in a manner determined by the Minister.
- (b) The Minister retains her discretion to provide a Pre-Offer Letter to an entity who has not complied with the requirements of rules 5(b)(iv), 5(c)(iii) or 5(e)(ii) of the First Rules.

14. Successor Venue Operator and acquisition of gaming business prior to Pre-Offer Date

For the purpose of allocating new gaming machine entitlements and determining the price payable for such new gaming machine entitlements, if a venue operator's (**previous venue operator**) gaming business at an approved venue was acquired by a Successor Venue Operator after the Specified Date but before the Pre-Offer Date:

- (a) the previous venue operator is deemed not to have held the gaming machine entitlements attached to that approved venue on the Specified Date and that were transferred to the Successor Venue Operator as part of the Successor Venue Operator's acquisition of the gaming business;
- (b) the Successor Venue Operator is deemed to have held at the Specified Date, with respect to that approved venue, the lesser of:
 - (i) the number of gaming machine entitlements attached to the approved venue on the Specified Date; and
 - (ii) the number of gaming machine entitlements transferred from the previous venue operator to the Successor Venue Operator as part of the Successor Venue Operator's acquisition of the gaming business;

- (c) the Successor Venue Operator, not the previous venue operator, will receive a Pre-Offer Letter and an offer to purchase gaming machine entitlements in relation to that approved venue; and
- (d) if there are any gaming machine entitlements attached to the approved venue on the Specified Date, but which are not transferred to the Successor Venue Operator as part of its acquisition of the gaming business (**remaining entitlements**), then:
 - (i) if the previous venue operator has an approved venue at the Pre-Offer Date, the remaining entitlements will be deemed to be Unattached Entitlements of the previous venue operator; or
 - (ii) if the previous venue operator does not have an approved venue at the Pre-Offer Date, that venue operator will be deemed to be a Non-Operating Incumbent Venue Operator.

15. **Pre-Offer Letter**

Subject to rules 13(b) and 14 and before making an offer in respect of the allocation of new gaming machine entitlements that take effect on or after 16 August 2022, the Minister will provide each entity who satisfies the requirements of rule 5 of the First Rules, by letter, details of the price payable for a new gaming machine entitlement that takes effect on or after 16 August 2022 as determined in accordance with these rules. The Minister's letter will be for information purposes only and does not constitute an offer in respect of the allocation of new gaming machine entitlements.

16. **Price review**

- (a) If an entity is of the opinion that the price payable for a new gaming machine entitlement as set out in a Pre-Offer Letter does not accord with these rules, the entity must, within 10 business days after the Pre-Offer Date, deliver to the Minister a written statement clearly setting out the reasons why the entity considers that the price does not accord with these rules.
- (b) The Minister will consider any written statement received from an entity under rule 16(a) and decide whether the determination made requires amendment in order to accord with these rules or whether the determination as made will stand. Within 10 business days after receipt of the entity's written statement, the Minister will give the entity written notice of her decision under this rule, including (where appropriate) a revised determination.
- (c) The Minister will not consider any submission from an entity in relation to the matters set out in the Pre-Offer Letter that is not made in accordance with this rule 16.

17. **Changes and further rules**

In accordance with the Act, the Minister may determine:

- (a) any changes to these rules at any time and provide notice of such changes to Incumbent Venue Operators and New Entrants; and
- (b) further gaming machine entitlement allocation and transfer rules, including without limitation rules relating to the process for allocating new gaming machine entitlements.

18. **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 7 November 2017

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

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