

GUIDE TO THE OFFER TO APPLY FOR ENTITLEMENTS

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1. Introduction

The Minister for Consumer Affairs, Gaming & Liquor Regulation is making an offer to eligible entities to apply for gaming machine entitlements (**Offer to Apply**).

The Minister will allocate a maximum of 27,372 gaming machine entitlements (**entitlements**) via the Offer to Apply and allocation process.

1.1 What is the purpose of this document?

The Offer to Apply Guide (**the Guide**) has been prepared to assist eligible entities in responding to the Offer to Apply.

The purpose of the Guide is to:

- explain the Offer to Apply from the Minister, including the legal deed that eligible entities will need to execute in order to apply for entitlements
- specify what an eligible entity must do to respond to the Offer to Apply and submit an application for entitlements
- outline the requirements that an eligible entity must meet in order to receive an allocation of entitlements
- explain when entitlements will be allocated.

The purpose of each individual Offer to Apply document is provided in section 2.

1.2 Who should read this Guide?

Existing and prospective venue operators that are proposing to operate a gaming business on or after 16 August 2022 will need to read all information in this Guide and the Offer to Apply documentation.

1.3 Eligible entities to inform themselves

Eligible entities are responsible for developing their understanding about the allocation requirements that must be met before entitlements that eligible entities have applied for can be allocated.

By understanding these requirements and the deadlines for meeting these requirements, eligible entities can reduce the risk of unintentionally missing a compliance requirement and losing their opportunity to obtain entitlements through the Offer to Apply.

In reaching a decision about their future participation in the Victorian gaming industry, eligible entities will need to consider a number of business, regulatory and technical issues. Eligible entities should seek professional independent advice to assist them in reaching an informed decision about their own participation.

1.4 What further information will be available?

The government remains committed to releasing information to the industry and other stakeholders in a timely manner.

Section 5 outlines what further information is available to entities to enhance and reinforce their understanding of the Offer to Apply.

2. What is included in the Offer to Apply documentation?

The Offer to Apply documentation consists of three components:

- (i) The Minister's Letter – Offer to Apply, which constitutes an offer to eligible entities to apply for entitlements.
- (ii) The Entitlement Offer Deed Poll, which should be executed and returned by those eligible entities applying for entitlements by **5PM (Melbourne time) on 28 February 2018**.
- (iii) The Guide to the Offer to Apply (this document), containing information to assist eligible entities in understanding all requirements associated with the Offer to Apply.

The purpose and use of each document is explained below.

2.1 Document 1 – Minister's Letter – Offer to Apply

The Minister's Letter constitutes an offer to the eligible entity to apply for entitlements. It details:

- the requirements for submitting an application for entitlements
- the date by which applications must be submitted.

THIS LETTER DOES NOT HAVE TO BE RETURNED

2.2 Document 2 – Entitlement Offer Deed Poll

The venue operator must complete, sign and submit this Deed to apply for entitlements.

By signing this Deed, the venue operator is agreeing to purchase up to the number of entitlements it nominates to purchase.

SUBMIT DEED BY 5PM (MELBOURNE TIME) ON 28 FEBRUARY 2018 IF SUBMITTING AN APPLICATION FOR ENTITLEMENTS

2.3 Document 3 – Guide to the Offer to Apply

The Guide provides information to assist eligible entities in responding to the Offer to Apply.

THIS GUIDE DOES NOT HAVE TO BE RETURNED

3. General Information

The Offer to Apply invites eligible entities to submit applications to buy entitlements to operate gaming machines from 16 August 2022 until 15 August 2042, up to the maximum number of entitlements nominated by the eligible entity in its Deed.

3.1 Does an eligible entity have to be a venue operator in order to receive the Offer to Apply?

It is not necessary for an eligible entity to be a venue operator to receive the Offer to Apply.

3.2 Does an eligible entity have to be a venue operator to submit an application for entitlements?

Yes, in order to apply for entitlements, an eligible entity must be a venue operator (i.e. hold a venue operator's licence).

Applications submitted by eligible entities who do not hold a venue operator's licence will not be accepted.

If an eligible entity has received this Offer to Apply but is not yet a venue operator, the eligible entity should apply to the Victorian Commission for Gambling and Liquor Regulation for a venue operator's licence as soon as possible.

3.3 Can an eligible entity transfer the Offer to Apply to another entity?

An application for entitlements can only be submitted by the entity who received the Offer to Apply from the Minister. An Offer to Apply is not transferable.

3.4 How many entitlements can a venue operator receive?

The Minister will allocate entitlements to eligible venue operators in accordance with the Allocation and Transfer Rules, a copy of which is provided on the website referred to in section 5.

The Offer to Apply allows each eligible venue operator to nominate the maximum number of entitlements they would be prepared to purchase. The number of entitlements the Minister allocates a venue operator will be either:

- less than the maximum number of entitlements nominated by a venue operator (and in some cases, may be zero)

OR

- equal to the maximum number of entitlements nominated by a venue operator.

In allocating entitlements, the Minister will take into account the regional caps and municipal limits (see further information on the website referred to in section 5).

The Minister will also take into account relevant requirements under the *Gambling Regulation Act 2003 (Act)*, including the following requirements under section 3.2A.7:

- 35% rule – a venue operator must not hold more than 35% of hotel gaming machine entitlements (either on its own, or together with other venue operators to whom the venue operator has a prescribed connection)
- 840 rule – a venue operator must not hold more than 840 club gaming machine entitlements (either on its own, or together with other venue operators to whom the venue operator has a prescribed connection).

3.5 What price is payable for entitlements?

The price for entitlements has already been determined by the Minister and advised to each eligible entity.

Those determinations are now final and are set out in Schedule 2 of each eligible entity's Deed.

The price set out in the Deed relates to an initial period of 10 years (i.e. the period from 16 August 2022 – 15 August 2032). As entitlements are valid for a period of 20 years, it is anticipated that the price for the second 10 year period will be determined on or around the expiry of the initial 10 year period. Subject to determinations of the Minister at the time in his or her sole discretion, venue operators may be able to surrender entitlements at the end of the initial 10 year period in accordance with rules made under section 3.4A.20AA of the Act, if the venue operator does not wish to pay the price for the further period.

3.6 Do venue operators have to enter into a payment agreement?

All venue operators receiving an allocation of entitlements will need to execute and submit one of the two Entitlement-Related Agreements for Payment. Which of the two a venue operator will need to submit will depend on whether a venue operator is receiving an allocation of club entitlements or hotel entitlements.

The Entitlement-Related Agreement for Payment must be submitted before entitlements can be allocated. Drafts of the agreements are available on the website referred to in section 5.

The final versions of these agreements will be provided to eligible venue operators when the Minister notifies the venue operator of the number of entitlements provisionally allocated to the venue operator.

3.7 What payment arrangements apply?

A deposit is payable when the venue operator submits an application for entitlements. The deposit is described in detail in section 4.1(b).

The next instalment payable for an entitlement is due one year after allocation, and is equal to 2.5% of the price for club entitlements, and 5% of the price for hotel entitlements.

The balance of the entitlement price is due on or after 16 August 2022, as set out in the Entitlement-Related Agreement for Payment.

3.8 Can the terms of the payment agreement be varied?

In order to be allocated entitlements, the venue operator must execute the applicable Entitlement-Related Agreement for Payment. Prior to allocation, the terms of this agreement cannot be varied.

If a venue operator experiences serious financial hardship, after allocation the venue operator may request a variation to their payment terms. Further details on applying for hardship consideration are available on the website referred to in section 5.

3.9 Is there another way to obtain entitlements?

The Offer to Apply is the only way that the Minister is allocating entitlements for use from 16 August 2022.

After entitlements have been allocated under the Offer to Apply, a venue operator may be able to obtain entitlements on the transfer market, subject to any transfer rules made by the Minister pursuant to the Act.

3.10 Where can entitlements be used?

Each entitlement will have two conditions attached to it that will limit where the gaming machine associated with it can be used.

The entitlement conditions specify the:

- type of venue in which a gaming machine may be operated (club venue or hotel venue)
- geographic area in which the gaming machine may be operated.

Entitlements allocated to venue operators who hold a club venue operator's licence will allow their use in club venues, and entitlements allocated to venue operators who hold a hotel venue operator's licence will allow their use in hotel venues.

3.11 Can a venue operator transfer its entitlements to another entity?

Transfers of entitlements must be made in accordance with the Act and Allocation and Transfer Rules made by the Minister.

In accordance with Allocation and Transfer Rules made by the Minister (available on the website referred to in section 5), a venue operator cannot transfer gaming machine entitlements which take effect on 16 August 2022 to another venue operator until 6 months prior to 16 August 2022, unless the transfer is related to the sale of an approved venue.

In accordance with section 3.4A.18A of the Act, if a venue operator transfers an entitlement which takes effect on 16 August 2022 at any time up to 18 months after 16 August 2022, the venue operator must pay an amount to the Treasurer as set out in that section (unless an exemption is granted by the Treasurer).

3.12 When will entitlements be allocated?

The Minister anticipates allocating entitlements in or around June 2018.

3.13 Key dates

21 December 2017	Release of Offer to Apply	The Minister is making an offer to eligible entities to apply for entitlements
5PM (Melbourne time) on 28 February 2018	Application due date	This is the cut-off date for eligible venue operators to submit their application for entitlements
Anticipated May 2018	Notice of Provisional Allocation	This is the date by which the Minister will notify venue operators who have submitted applications of how many entitlements the Minister intends to allocate the venue operator
15 Business Days after date of Minister's Notice of Provisional Allocation, anticipated May 2018	Close of dispute period	This is the cut-off date by which venue operators can lodge a dispute about how many entitlements the Minister intends to allocate the venue operator
40 Business Days after date of Minister's Notice of Provisional Allocation, anticipated June 2018	Submit Entitlement-Related Agreement for Payment	This is the date by which those venue operators who have submitted an application for entitlements must submit the Entitlement-Related Agreement for Payment
Anticipated 30 June 2018	Allocation of Entitlements	The Minister will allocate entitlements to those venue operators that have met all of the allocation requirements

4. Responding to the Offer to Apply

An eligible entity receiving the Offer to Apply is free to:

- submit an application for entitlements
- not submit an application for entitlements.

This section explains the steps that an eligible entity needs to take to submit an application.

4.1 How to complete an application

To submit an application for entitlements, the eligible entity must be a venue operator (see section 3.3) and must submit:

- the Entitlement Offer Deed Poll
- a deposit.

These should be submitted no later than **5PM (Melbourne time) on 28 February 2018**.

(a) Entitlement Offer Deed Poll

The Entitlement Offer Deed Poll (**the Deed**) is the legal document that must be submitted by the venue operator if the venue operator wants to apply for entitlements.

By executing the Deed, a venue operator is agreeing to purchase the number of entitlements allocated to it by the Minister, up to the maximum number of entitlements nominated by a venue operator.

There are two key requirements that eligible entities must observe to correctly complete and execute the Deed.

The Deed must:

- (i) record the maximum number of entitlements that the venue operator agrees to purchase
- (ii) be signed by duly authorised representatives of the venue operator.

Each of these requirements is explained further below.

Nominate the maximum number of entitlements

On the Deed, a venue operator must nominate the maximum number of entitlements the venue operator agrees to purchase (**Nominated Number**).

A Nominated Number must:

- not exceed 105 for a single approved venue
- in relation to unattached entitlements or non-operating entitlements, exceed the number of such equivalent entitlements held on 7 July 2017
- in relation to a proposed venue, must be in the range specified in the expression of interest form for that proposed venue.

The Venue Operator must specify a Nominated Number for each approved venue, proposed venue, unattached entitlements and non-operating entitlements (as applicable), as set out in the Deed.

The number of entitlements a venue operator may ultimately purchase will depend on the number of entitlements the Minister allocates the venue operator, in accordance with the Allocation and Transfer Rules.

The number of entitlements the Minister allocates a venue operator with respect to an approved venue, proposed venue, unattached entitlements or non-operating entitlements (if any) will be equal or less than the applicable Nominated Number.

Eligible entities should refer to section 3.5 regarding limits on the maximum number of entitlements the Minister can allocate a venue operator.

Executing the Deed

The Deed must be signed by duly authorised representatives of the venue operator.

The table below sets out how the Deed should be executed. For each entity type, methods (i) and (ii) are the State's preferred method of execution.

The correct way to execute will depend on an entity's particular circumstances. If you are unsure how to execute a document, you should seek legal advice.

If the venue operator is:

- not incorporated under the *Corporations Act 2001* (Cth); and/or
- executing the Deed pursuant to a power of attorney,

when submitting an application, the venue operator must provide evidence that the Deed has been correctly executed (as set out in the table below under 'other execution requirements').

Execution of Entitlement Offer Deed Poll

How incorporated?	Method	Document may be signed by	Other execution requirements
1. Under the Corporations Act 2001 (Cth)	(i) Without common seal	Either: <ul style="list-style-type: none"> • two directors, or • a director and the company secretary (must have two signatures)	Nil
	(ii) With common seal	Either: <ul style="list-style-type: none"> • two directors, or • a director and the company secretary (must have two signatures)	Execute the document under the common seal of the legal entity.
	(iii) Power of attorney	The duly appointed attorney plus a witness (must have two signatures)	Company must provide evidence of the authority of the attorney (such evidence must include a copy of the power of attorney appointing the attorney).

Execution of Entitlement Offer Deed Poll

How incorporated?	Method	Document may be signed by	Other execution requirements
2. Under the Associations Incorporation Reform Act 2012 (Vic)	(i) Without common seal	Subject to any restrictions in the Rules of the association, either: <ul style="list-style-type: none"> • two committee members, or • a committee member and the secretary of the association, if the secretary of the association is not a member of the committee (must have two signatures)	Association must provide evidence of the authority of the signatories (such evidence must include the association's Rules and applicable resolutions of the committee).
	(ii) With common seal	As required under the Rules of the association. If the association has adopted the Model Rules, this will be: <ul style="list-style-type: none"> • two committee members (must have two signatures)	Execute the document under the common seal of the association. Association must provide evidence of the authority of the signatories and the affixing of the seal (such evidence must include the association's Rules and applicable resolutions of the committee).
	(iii) Power of attorney	The duly appointed attorney plus a witness (must have two signatures)	Association must provide evidence of the authority of the attorney (such evidence must include a copy of the power of attorney appointing the attorney, the association's Rules and applicable resolutions of the committee).

(b) Deposit

Each venue operator that accepts the Offer to Apply is required to pay a deposit to the State.

The deposit must be:

- where the venue operator holds a club venue operator's licence and is therefore purchasing club entitlements – for an amount equal to 2.5% of the total purchase amount for the Nominated Number of entitlements

OR

where the venue operator holds a hotel venue operator's licence and is therefore purchasing hotel entitlements – for an amount equal to 5% of the total purchase amount for the Nominated Number of entitlements

- paid in Australian dollars
- paid by electronic funds transfer to the following account:
 - Account name:** VCGLR Revenue Account
 - BSB:** 033-222
 - Account number:** 111508
 - Lodgement reference:** Venue operator must include its venue operator licence number followed by DEP1 in the description of the transfer
- received by the State no later than **5PM (Melbourne time) on 28 February 2018**.

All deposits will be held by VCGLR until entitlements are allocated.

Calculating the amount of the deposit

To determine the amount of deposit payable, the venue operator will need to multiply the 2022-2032 price of the entitlement (as set out in Schedule 2 of the Deed) by the Nominated Number of entitlements.

If the venue operator holds a club venue operator's licence, 2.5% of this amount is the deposit.

If the venue operator holds a hotel venue operator's licence, 5% of this amount is the deposit.

This calculation will need to be repeated for each approved venue, proposed venue, unattached entitlements and non-operating entitlements in respect of which the venue operator wishes to purchase entitlements.

Example:

A venue operator holds a club venue operator's licence and wishes to purchase 100 entitlements for its approved venue. Its Nominated Number for the approved venue is therefore 100. The Deed states that the 2022-32 Price for an entitlement at the approved venue is \$6000.

The deposit payable for the 100 entitlements for the approved venue is calculated as:

$$100 \times \$6000 \times 0.025 = \$15,000$$

The same venue operator also wishes to purchase 50 entitlements for its proposed venue. Its Nominated Number for the proposed venue is therefore 50. The Deed states that the 2022-32 Price for an entitlement at the proposed venue is \$10,000.

The deposit payable for the 50 entitlements for the proposed venue is calculated as:

$$50 \times \$10,000 \times 0.025 = \$12,500$$

The total deposit the venue operator must pay for both the approved venue and the proposed venue is:

$$\$15,000 + \$12,500 = \$27,500$$

What will happen to the deposit?

Once the Minister has determined how many entitlements the Minister intends to allocate venue operators, the Minister will notify the venue operators. At this time, venue operators will be required to sign an Entitlement-Related Agreement for Payment (a draft of which is available on the website referred to in section 5).

The deposit will be used as the first instalment payment for the allocated entitlements. If the number of entitlements the venue operator is allocated is less than the Nominated Number, so that the deposit is greater than the amount required to be paid for the first instalment, the excess amount of the deposit will be refunded to the venue operator.

4.2 When must applications be submitted?

All venue operators applying for entitlements must submit the executed Deed and deposit by **5PM (Melbourne time) on 28 February 2018**.

4.3 How to submit an application

Eligible entities are able to submit their documents in one of two ways:

by Post Addressed to:
Director
Gambling Licensing Program
Office of Liquor, Gaming and Racing
121 Exhibition Street, Melbourne Victoria 3000

in Person To 121 Exhibition Street between the hours of 9 am and 5 pm.
This must be pre-arranged by phoning (03) 8684 0329.

Please note that an application is not considered to be submitted until both the executed Deed and deposit are submitted.

4.4 What if an eligible entity does not want to submit an application?

If an eligible entity does not want to apply for entitlements, no documents need to be submitted.

5. Further information

Further information on the allocation process is available on the following website:
justice.vic.gov.au/gamblinglicensingprogram

Information on this website includes:

- Allocation and Transfer Rules made by the Minister – these detail the process to be followed by the Minister in allocating entitlements and rules relating to the transfer of entitlements
- Draft Entitlement-Related Agreement for Payment (Club Entitlements)
- Draft Entitlement-Related Agreement for Payment (Hotel Entitlements)
- Geographic area caps and limits – Sections 3.2.4 and 3.4A.5(3A) of the Act authorise determinations to be made about the maximum permissible number of gaming machines available for gaming in a particular region or municipality
- Requesting a variation to payment terms after allocation, for venue operators experiencing serious financial hardship.

