

Gambling Regulation Act 2003

DETERMINATION OF GAMING MACHINE ENTITLEMENT ALLOCATION AND TRANSFER RULES

I, the Hon Melissa Horne 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. All gaming machine entitlement allocation and transfer rules previously made under sections 3.4A.3 and 3.4A.5(9) of the Act are revoked and replaced with 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, surrendered, designated for surrender or bought back by the State and gaming machine entitlements that have been created by the Minister but not allocated.

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.).

Allocation Amount means the amount to be paid for a gaming machine entitlement, as determined by the Minister under section 3.4A.5(9)(b) and recorded in an entitlement-related agreement between the Minister and the venue operator that held the gaming machine entitlement on the Allocation Date for that gaming machine entitlement (and if applicable, that amount as adjusted under the entitlement-related agreement).

Allocation Date means the date that a gaming machine entitlement was allocated to a venue operator by the Minister under section 3.4A.5 of the Act.

Commission means the Victorian Gambling and Casino Control Commission.

HAP means the hypothetical allocation price referred to in section 3.4A.18A of the Act.

Minister means the minister responsible for administering the Act.

Nominated Approved Venue means the approved venue in which the transferee proposes to operate the gaming machine entitlements.

Pre-Offer Letter means the letter provided by the Minister to the venue operator relating to the allocation of gaming machine entitlements that take effect on 16 August 2022, specifying the price payable for those gaming machine entitlements.

Specified Date means 7 July 2017, which is the specified date used by the Minister when determining the Allocation Amount for entitlements that take effect on or after 16 July 2022.

Unpaid Allocation Amount means the remainder of the Allocation Amount which is due to be paid by instalments under the deferred payment terms recorded in an entitlement-related agreement, between the Minister and the venue operator that held the gaming machine entitlement on the Allocation Date for that gaming machine entitlement.

5. Transfer scheme and registers

- (a) The Commission must maintain a transfer scheme to govern the transfer of gaming machine entitlements between venue operators and to facilitate the allocation of gaming machine entitlements.
- (b) The transfer scheme will incorporate a register to record details of:
 - (i) all allocated gaming machine entitlements that had been advertised by the Commission on the transfer market website in accordance with rule 9, including the information required under section 3.4A.8 of the Act, the price payable for the 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 sale price;
 - (B) the date of execution of the transfer;
 - (C) particulars of the transferor and transferee;
 - (D) the quantity of gaming machine entitlements transferred;
 - (E) the geographic area and venue conditions to which the gaming machine entitlements transferred are subject; and
 - (F) any other particulars relating to the transfer as determined by the Commission.
- (c) The Commission must make the register referred to in paragraph (b) available to the public on its website.

6. Transfer market website

- (a) The Commission must maintain a transfer market website on which venue operators:
 - (i) may record details of any gaming machine entitlements available for transfer; 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.

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(b).
- (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;
 - (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;
 - (iii) the transferor has provided to the Commission the information contained in rule 5(b)(ii);
 - (iv) the transferee holds a venue operator's licence; and
 - (v) the transferee has provided an executed counterpart to the Commission of:
 - (A) where a gaming machine entitlement that is the subject of the transfer expires on 15 August 2022, an agreement, in a form approved by the Minister, that deals with matters related to the gaming machine entitlement; and
 - (B) where relevant, a deed of assumption (or any other entitlement-related agreement) for the relevant obligations with respect to the gaming machine entitlement, in a form approved by the Minister, as required under rule 12(c).
- (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. Restriction on transfer of gaming machine entitlements that take effect on or after 16 August 2022

- (a) A venue operator must not transfer a gaming machine entitlement that takes effect on or after 16 August 2022 before the day which is 6 months before the day on which the gaming machine entitlement takes effect.
- (b) Notwithstanding rule 8(a), a venue operator may transfer a gaming machine entitlement that takes effect on or after 16 August 2022 before the day which is 6 months before the day on which the gaming machine entitlement takes effect, if:

- (i) the venue operator who transfers the gaming machine entitlement has sold, or has entered into an agreement to sell, an approved venue to the venue operator to whom the gaming machine entitlement is transferred; and
 - (ii) the Commission is satisfied that the transfer is related to the sale of the approved venue.
- (c) The maximum number of gaming machine entitlements that may be transferred under rule 8(b) in relation to the sale of a particular approved venue is the number of gaming machines that, immediately before the agreement for the sale was entered into, was specified in the transferor's venue operator's licence under section 3.4.12(2)(b) of the Act, as the number of gaming machines permitted in the venue.

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, surrendered, designated for surrender 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 that had been advertised by the Commission on the transfer market website in accordance with this rule 9, the Commission must record the details of the allocated gaming machine entitlements on the register referred to in rule 5(b).

10. Allocation of bought back, surrendered and previously unallocated gaming machine entitlements

- (a) The Minister may direct the Commission to advertise:
 - (i) a previously allocated gaming machine entitlement that has been bought back by the State in accordance with the Act;
 - (ii) a previously allocated gaming machine entitlement that has been surrendered or designated for surrender in accordance with the Act, or
 - (iii) a gaming machine entitlement that has not previously been allocated by the Minister,with or without a geographic area and/or venue condition.
- (b) If the Minister directs the Commission under rule 10(a) to advertise a 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 directs the Commission under rule 10(a) to advertise a gaming machine entitlement with a geographic area and/or venue condition, then:
 - (i) the Commission must advertise the gaming machine entitlement on the transfer market website as a gaming machine entitlement with the specified geographic area and/or venue condition;
 - (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 gaming machine entitlements that are forfeited to the State

- (a) The Minister may direct the Commission to advertise a gaming machine entitlement that has been forfeited to the State in accordance with the Act.
- (b) If the Minister directs the Commission under rule 11(a) to advertise a gaming machine entitlement that has been forfeited to the State then:
 - (i) the Commission must 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) 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 rule 11(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 rule 10(b) as if the gaming machine entitlements had been bought back by the State.

12. Payment of amounts owing to State on settlement of transfers

- (a) The Commission must not record a transfer of a gaming machine entitlement, (except as provided in rule 12(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 Allocation Amount 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 or deferred instalments for gaming machine entitlements under an 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.18A of the Act.
- (b) The Commission must calculate any amount payable to the Treasurer under section 3.4A.18A and advise the Treasurer and the liable party of the amount due.
- (c) The Commission may record a transfer, without the amount referred to in rule 12(a)(i) being first paid, if satisfied that the transferee has executed a deed of assumption (or any other entitlement-related agreement) in relation to such amounts, in a form approved by the Minister.

13. Calculation of amounts payable to the Treasurer under section 3.4A.18A

- (a) This rule applies to entitlements that take effect on or after 16 August 2022 that are transferred during the period specified by section 3.4A.18A(1) of the Act.
- (b) If a gaming machine entitlement is transferred during the period specified by section 3.4A.18A(1) of the Act, the transferee must notify the Commission, prior to the transfer of the entitlements being registered by the Commission:
 - (i) of the name of the Nominated Approved Venue; or
 - (ii) that there is no Nominated Approved Venue.
- (c) If any entitlements were allocated to a venue operator to be operated in the Nominated Approved Venue under section 3.4A.5 of the Act, the HAP is the Allocation Amount for those entitlements.
- (d) If no entitlements were allocated for the Nominated Approved Venue, the HAP is:
 - (i) where the transferee received a Pre-Offer Letter in respect of the Nominated Approved Venue, the price specified in that letter; or
 - (ii) where the transferee did not receive a Pre-Offer Letter, the median of the Allocation Amounts for entitlements with the same geographic area condition and venue condition as the entitlements being transferred.
- (e) If the transferee proposes to operate the entitlements in premises not yet approved under Part 3 of Chapter 3 of the Act, the HAP is as follows –
 - (i) If the transferee operated any approved venues on the Specified Date with entitlements that have the same geographic area condition and venue condition as the entitlements being transferred, the HAP will be the highest Allocation Amount for entitlements allocated to the transferee to be operated at those venues.
 - (ii) If the transferee operated any approved venues on the Specified Date, but not any with entitlements that have the same geographic area condition and venue condition as the entitlements being transferred, the HAP will be the median Allocation Amount for entitlements to be operated at approved venues operated by the transferee.
 - (iii) If the transferee did not operate any approved venues on the Specified Date, the HAP will be the median of the Allocation Amounts for entitlements that take effect on or after 16 August 2022 that have the same geographic area condition and venue condition as the entitlements being transferred.

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

This determination takes effect on the day it is gazetted.

Dated: 7/7/2022

A handwritten signature in blue ink, appearing to read "Melissa Horne". The signature is fluid and cursive, with a large initial "M" and "H".

Hon Melissa Horne MP
Minister for Consumer Affairs, Gaming and Liquor Regulation