

South Australia

Gaming Machines Variation Regulations 2011

under the *Gaming Machines Act 1992*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Variation provisions

Part 2—Variation of *Gaming Machines Regulations 2005*

- 4 Insertion of heading to Part 1
- 5 Variation of regulation 4—Prescribed gaming machine components
- 6 Insertion of Part 2 and Part 3 heading

Part 2—Approved trading system (section 27B of Act)

- 5A Interpretation
- 5B Establishment of trading round
- 5C Offer to sell entitlement in trading round
- 5D Offer to purchase entitlement in trading round
- 5E Commissioner may reject offer or cancel trading round
- 5F Determination of offers and prices in trading round
- 5G Outcome of trading round
- 5H Default by purchaser of entitlement in trading round
- 5I Closure of trading round
- 5J Remainder of entitlements sold by non-profit associations to be taken into account in future trading rounds
- 5K Review of Part

Part 3—Other provisions

- 7 Variation of regulation 10—Minister may grant exemptions
 - 8 Revocation of regulations 14 and 15
 - 9 Variation of Schedule 2—Fees and charges
-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Gaming Machines Variation Regulations 2011*.

2—Commencement

These regulations will come into operation on the day on which they are made.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Gaming Machines Regulations 2005*

4—Insertion of heading to Part 1

Before regulation 1 insert:

Part 1—Preliminary

5—Variation of regulation 4—Prescribed gaming machine components

Regulation 4(1)—after "components" first occurring insert:

or regulating the form of a contract to sell or supply prescribed gaming machine components

6—Insertion of Part 2 and Part 3 heading

After regulation 5 insert:

Part 2—Approved trading system (section 27B of Act)

5A—Interpretation

In this Part—

purchaser price—see regulation 5F;

statutory objective means the objective of reducing the number of gaming machines that may be lawfully operated in the State to a number not exceeding 12 086 (that is, 3 000 less than the number approved by the Commissioner for operation in the State immediately before 1 February 2005);

trading day—see regulation 5B(2)(c);

trading round—see regulation 5B;

vendor price—see regulation 5F.

5B—Establishment of trading round

- (1) The Commissioner may, and must if directed to do so by the Minister, by notice in the Gazette, establish a trading round for gaming machine entitlements.
- (2) The notice must—
 - (a) invite offers to purchase or sell gaming machine entitlements from persons entitled to do so; and
 - (b) fix a closing date and time for the submission of the offers; and
 - (c) fix a day for the determination by the Commissioner of the offers that are to be regarded as accepted in the trading round (the *trading day*); and

- (d) fix the administration fees for the trading round for the submission of offers to purchase and the withdrawal of offers to sell.
- (3) A copy of the notice or the information contained in the notice must be given to each holder of a gaming machine licence or gaming machine entitlement (although non-compliance with this subregulation does not invalidate any sale of gaming machine entitlements).
- (4) However, a trading round may not be established once the statutory objective has been met.

5C—Offer to sell entitlement in trading round

- (1) Subject to this regulation, a person holding gaming machine entitlements may submit, for each entitlement the person wishes to sell in a trading round, an offer in a form approved by the Commissioner specifying the lowest price the person is willing to accept for the entitlement.
- (2) Club One may only submit an offer to sell a gaming machine entitlement if the Minister responsible for the administration of the *Recreational Greenways Act 2000* gives his or her approval.
- (3) An offer to sell a gaming machine entitlement must be accompanied by evidence to the Commissioner's satisfaction of the vendor's right to sell the gaming machine entitlement.
- (4) At any time before the closing date and time for the submission of offers in a trading round, an offer to sell a gaming machine entitlement may be withdrawn on payment of the applicable administration fee.
- (5) If it is determined in accordance with this Part that an offer to sell a gaming machine entitlement in a trading round is to be regarded as accepted, the amount to be paid to the vendor by the Commissioner for the entitlement will be the vendor price for the trading round determined in accordance with this Part, regardless of the actual amount of the offer.

5D—Offer to purchase entitlement in trading round

- (1) Subject to this regulation, a person who is eligible to purchase gaming machine entitlements may submit, for each entitlement the person wishes to purchase in a trading round, a written offer specifying the highest price the person is willing to pay for the entitlement and, except in the case of an offer by Club One, the premises to which the entitlement will relate.
- (2) An offer to purchase must be in a form approved by the Commissioner and, except in the case of an offer by Club One, be accompanied by the applicable administration fee.

- (3) The Commissioner may require a person who makes an offer to purchase a gaming machine entitlement to provide an irrevocable letter of credit from a financial institution, or other security to the satisfaction of the Commissioner, for payment of the purchase price (and, if the letter of credit or security is not provided within the time allowed by the Commissioner, the offer to purchase the entitlement will be taken to be withdrawn and the Commissioner will retain the administration fee for the offer).
- (4) At any time before the closing date and time for the submission of offers in a trading round, an offer to purchase a gaming machine entitlement may be withdrawn and the Commissioner will retain the administration fee for the offer.
- (5) If it is determined in accordance with this Part that an offer to purchase a gaming machine entitlement in a trading round is to be regarded as accepted, the amount to be paid by the purchaser to the Commissioner for the entitlement will be the purchaser price for the trading round determined in accordance with this Part, regardless of the actual amount of the offer.
- (6) For the purposes of this regulation, a person is eligible to purchase gaming machine entitlements if the person is—
 - (a) a licensee whose licensed premises are approved for the operation of more gaming machines than the number of gaming machine entitlements held by the licensee (but such a licensee is not eligible to purchase a number of gaming machine entitlements exceeding the difference between the number of gaming machine entitlements currently held by the licensee and the number of gaming machines approved for operation on the licensed premises); or
 - (b) Club One.

5E—Commissioner may reject offer or cancel trading round

- (1) The Commissioner has a discretion to reject (at any time before the trading day for a trading round) an offer to sell or to purchase a gaming machine entitlement in the trading round if the intending vendor or purchaser is subject to disciplinary proceedings under the Act or there is some other good reason to do so.
- (2) If an offer to purchase a gaming machine entitlement is rejected, the administration fee must be refunded.
- (3) The Commissioner may, by notice in the Gazette on or before the trading day for a trading round, cancel the trading round.
- (4) The notice must (unless the reason for cancellation arises from criminal intelligence) briefly set out the reasons for cancelling the trading round.
- (5) Notice of the cancellation must be given to each holder of a gaming machine licence or gaming machine entitlement and all administration fees must be refunded.

5F—Determination of offers and prices in trading round

- (1) For each trading round, the Commissioner will determine the offers to sell and the offers to purchase that, as of the trading day, are to be regarded as accepted and the purchaser price and the vendor price as follows:
 - (a) for each offer to sell a gaming machine entitlement, the minimum amount that the vendor will accept is to be multiplied by 4 and divided by 3 to produce a notional selling price;
 - (b) each offer to sell an entitlement is to be assigned a priority, with the highest priority (number 1) being assigned to the offer of the lowest amount and the lowest priority (the highest number) being assigned to the offer of the highest amount;
 - (c) if there is more than 1 offer to sell an entitlement for the same amount, the order of priority is to be determined by the drawing of lots;
 - (d) the priority numbers assigned to the offers to sell are then to be adjusted to produce a notional priority for each offer so that there are 2 offers for every priority number that is a multiple of 3, that is, the priority numbers are to be adjusted to match the following pattern: 1, 2, 3, 3, 4, 5, 6, 6, 7, 8, 9, 9, 10 and so on (with original priority 4 becoming priority 3, original priority 5 becoming priority 4, original priority 6 becoming priority 5, original priorities 7 and 8 becoming priority 6 and so on);
 - (e) even though the same priority number is notionally assigned to 2 offers to sell, the original order of priority as between those offers is preserved;
 - (f) each offer to purchase an entitlement is to be assigned a priority, with the highest priority (number 1) being assigned to the offer of the highest amount and the lowest priority (the highest number) being assigned to the offer of the lowest amount;
 - (g) if there is more than 1 offer to purchase an entitlement for the same amount, the order of priority is to be determined by the drawing of lots;
 - (h) the entitlements to be sold (if any) are to be determined in order of priority of the offers;
 - (i) an entitlement will be sold if the amount of the notional selling price of an offer to sell of a particular priority is the same as or less than the amount of the offer to purchase of the same priority (and those offers will be regarded as accepted as of the trading day);

- (j) the priority of an offer to sell referred to in paragraph (i) is the notional priority assigned under paragraph (d);
 - (k) the purchaser price of an entitlement is half of the sum of—
 - (i) the amount of the offer to purchase an entitlement that is of the lowest priority that is to be regarded as accepted; and
 - (ii) the amount of the notional selling price of the offer to sell an entitlement that is of the lowest priority that is to be regarded as accepted;
 - (l) the vendor price of an entitlement is three quarters of the amount of the purchaser price.
- (2) The Commissioner must publish on a website to which the public has access free of charge, or in some other form considered appropriate by the Commissioner, the Commissioner's determination of the purchaser price and the vendor price for a trading round.
 - (3) The Commissioner must inform each person with an offer to sell or purchase a gaming machine entitlement in a trading round of the Commissioner's determination for the round, including the purchaser price, the vendor price and whether or not the person's offer is to be regarded as accepted.

5G—Outcome of trading round

- (1) A person whose offer to purchase a gaming machine entitlement is, as of a trading day, to be regarded as accepted must, within 14 days after the trading day, pay to the Commissioner the purchaser price for the entitlement and, in addition, any GST applicable to the sale.
- (2) The difference between the aggregate of the amounts paid by purchasers and the aggregate of the amounts paid to vendors for gaming machine entitlements sold in a trading round is payable as commission into the Gamblers Rehabilitation Fund.
- (3) As the Commissioner receives the proceeds of sale of a trading round and at intervals following the trading day determined by the Commissioner, the Commissioner is to—
 - (a) make payments to the vendors in the order of priority of the offers to sell gaming machine entitlements to be regarded as accepted; and
 - (b) vest gaming machine entitlements in purchasers in the order in which they have made payments for the entitlements; and
 - (c) —
 - (i) vest in Club One every fourth entitlement sold in the trading round by non-profit associations; and
 - (ii) cancel every fourth entitlement sold in the trading round by persons other than non-profit associations, (those entitlements having been surrendered to the Crown).

- (4) An entitlement is taken to be transferred by the vendor or cancelled at a time specified by the Commissioner by notice in writing to the vendor and an entitlement is taken to be vested in a purchaser or Club One at the time specified by the Commissioner by notice in writing to the purchaser or Club One.

5H—Default by purchaser of entitlement in trading round

- (1) If a purchaser of a gaming machine entitlement in a trading round fails to pay the purchaser price for the entitlement within 14 days after the trading day—
- (a) the Commissioner may, at his or her discretion, offer to sell the entitlement at the purchaser price for the trading round to persons who submitted unsuccessful offers to purchase an entitlement in the round at or above the purchaser price for the round in the order of priority of those offers in the round; and
 - (b) the purchaser may not submit an offer to purchase a gaming machine entitlement (in respect of any premises) in the next trading round.
- (2) If a person to whom an offer is made under subregulation (1)(a) pays to the Commissioner the purchaser price for the gaming machine entitlement and, in addition, any GST applicable to the sale within the period allowed by the Commissioner, the person is to be regarded as a purchaser whose offer to purchase an entitlement is to be regarded as accepted (in substitution for the purchaser in default).
- (3) If at least 42 days have passed since a trading day and a vendor whose offer to sell a gaming machine entitlement is, as of that day, to be regarded as accepted has not received payment for the entitlement, the vendor may, by notice in writing to the Commissioner, withdraw the entitlement from sale in the trading round.
- (4) If a gaming machine entitlement is withdrawn from sale under subregulation (3), the Commissioner must not accept payment for the last gaming machine entitlement that would otherwise have been vested in a purchaser in the trading round, and, if a second entitlement is withdrawn from sale under subregulation (3), for the second to last entitlement that would otherwise have been vested in a purchaser in the trading round, and so on.
- (5) If a vendor whose offer to sell a gaming machine entitlement is to be regarded as accepted in a trading round has not received payment for the entitlement before the publication of a notice in the Gazette establishing the next trading round, the entitlement is taken to be withdrawn from sale in the trading round and the Commissioner must not accept payment for the entitlement in that round.

5I—Closure of trading round

- (1) A trading round is closed when all payments for gaming machine entitlements that may be accepted in the trading round have been made.
- (2) On the closure of a trading round, 1 entitlement may remain available to be vested in Club One in a subsequent trading round (see regulation 5J) but otherwise the Commissioner is to cancel any entitlements sold in the trading round and not vested in purchasers or Club One or cancelled under regulation 5G(3) (those entitlements having been surrendered to the Crown).
- (3) The Commissioner must ensure that notice of the closure of a trading round is published on a website to which the public has access free of charge.

5J—Remainder of entitlements sold by non-profit associations to be taken into account in future trading rounds

If there is a remainder after the total number of entitlements sold in a trading round by non-profit associations is divided by 4, a number of entitlements equal to the remainder is to be taken into account in the next trading round for the purposes of determining the number of entitlements sold in that trading round by non-profit associations (and consequently the number of entitlements to be vested in Club One) as if they had been sold in that trading round by non-profit associations.

5K—Review of Part

- (1) When it becomes apparent that the statutory objective will soon be met, the Minister must review the operation of this Part with a view to determining how it should be modified following the trading round in which the statutory objective is met.
- (2) The Minister must seek and consider written submissions from a body representative of gaming machine licensees and from Club One when conducting a review.

Part 3—Other provisions

7—Variation of regulation 10—Minister may grant exemptions

Regulation 10—after subregulation (3) insert:

- (3a) The Minister may grant an exemption from section 77(1) of the Act in relation to the transfer of all gaming machines together with a gaming machine licence and all gaming machine entitlements held by the transferor immediately before the transfer.

8—Revocation of regulations 14 and 15

Regulations 14 and 15—delete the regulations

9—Variation of Schedule 2—Fees and charges

Schedule 2, item 13—after "components" insert:

(other than an application for approval to sell or otherwise dispose of a gaming machine as a result of the sale of a gaming machine entitlement in a trading round under Part 2)

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 14 July 2011

No 179 of 2011

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