

Report of Independent Review Panel

Gaming Machines Licensing Process: Allocation

23 October 2018

Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

October 2018

Printed by Doculink Australia, Port Melbourne

ISBN: 978-1-925549-95-9 (Print)

ISBN: 978-1-925549-96-6 (pdf/online/MS word)



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Also published on justice.vic.gov.au

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Ordered to be published

VICTORIAN
GOVERNMENT PRINTER
October 2018

PP 5, Session 2018-19



**Gambling and Lotteries Licence
Independent Review Panel**

Level 24, 121 Exhibition Street
Melbourne Victoria 3000
Telephone: (03) 8684 0010
IRP@justice.vic.gov.au

Our ref: CD/18/732994

23 October 2018

Hon. Marlene Kairouz MP
Minister for Consumer Affairs, Gaming and Liquor Regulation
Level 26, 121 Exhibition Street
MELBOURNE VIC 3000

Dear Minister

Re: Gaming Machines Licensing Process: allocation

I am pleased to provide the report of the Independent Review Panel in relation to the Gaming Machines Licensing Process: allocation.

This report is provided to you pursuant to s10.2A.10(1) of the *Gambling Regulation Act 2003*.

A copy of the report is enclosed.

Yours sincerely

Geoff Giudice AO
Chair
Gambling and Lotteries Licence Independent Review Panel

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Note: Information has been excluded from this report in accordance with section 10.2A.11(6) of the *Gambling Regulation Act 2003*

1. Purpose of this report

This is a report to the Minister for Consumer Affairs, Gaming and Liquor Regulation (the Minister) by the Independent Review Panel (the Panel) in relation to the allocation of gaming machine entitlements in the State of Victoria from 16 August 2022. The report is provided to the Minister pursuant to section 10.2A.10(1) of the *Gambling Regulation Act 2003* (Act). Publication of the report is dealt with in section 10.2A.11 of the Act.

2. Role of the Panel

The Panel is established under section 10.2A.2 of the Act. The role of the Panel is to report to the Minister on the process associated with the allocation of gaming machine entitlements in the state of Victoria from 16 August 2022 (Gaming Machines Licensing Process) in accordance with the section 10.2A.3 of the Act. The Panel consists of a chairperson and three other members appointed by the Governor in Council on the recommendation of the Minister.

3. Gaming Machines Licensing Process

The Gaming Machines Licensing Process consists of two stages:

- Stage 1: regulatory review
- Stage 2: allocation

3.1 Regulatory review

The regulatory review stage involved a review of the policy and regulatory framework relating to gaming machines and consideration of options for the allocation of gaming machine entitlements to operate within the Victorian club and hotel sectors after 15 August 2022 (post 2022). This regulatory review concluded with the introduction of legislation giving effect to policy decisions announced by the Minister on 7 July 2017 and 11 August 2017.

The Panel forwarded its report on the regulatory review stage to the Minister on 9 July 2018.

3.2 Allocation of gaming machine entitlements

The allocation stage involved application of the policies announced at the conclusion of the regulatory review - and reflected in relevant legislative amendments and Ministerial rules - to the distribution to eligible venues of post 2022 gaming machine entitlements.

This report deals with the allocation stage.

4. Criteria and scope of the Panel's inquiry

Under s.10.2A.3(1)(b) of the Act, the Panel is to *consider and report to the Minister whether, in the preparation of recommendations or reports to the Minister by a relevant entity with respect to the authorisation and licensing process-*

- all registrants (if applicable) and applicants for an authorisation or a licence have been treated equally and impartially and have been given the same opportunity to access information and advice about the authorisation and licensing process; and*
- all protected information has been managed to ensure its security and confidentiality; and*

- iii. *all registrants and applicants referred to in subparagraph (i) have been evaluated in a systematic manner against explicit predetermined evaluation criteria; and*
- iv. *every relevant entity involved in the authorisation and licensing process has been required to declare any actual or perceived conflict of interest before participating in the process; and*
- v. *any conflict of interest referred to in subparagraph (iv) has been appropriately addressed; and*
- vi. *there has been any improper interference with the making of a recommendation or report; and*
- vii. *the preparation of a recommendation or report discloses bias or anything that could lead to a reasonable apprehension of bias;*

It is not the role of the Panel to review decisions made by the Minister. The Panel's role is to evaluate the preparation of recommendations and reports to the Minister by the Department and other relevant entities against the statutory criteria.

4.1 Relevant entities

The term 'relevant entity' is defined in s.10.2A.1 of the Act as follows:

- a *the Commission; or*
- b *a public official (within the meaning of the **Public Administration Act 2004**) employed in—*
 - i *the Department administered by the Minister; or*
 - ii *the Department administered by the Premier; or*
 - iii *the Department administered by the Treasurer; or;*
- c *a person engaged to provide services to an entity referred to in paragraph (a) or (b);*

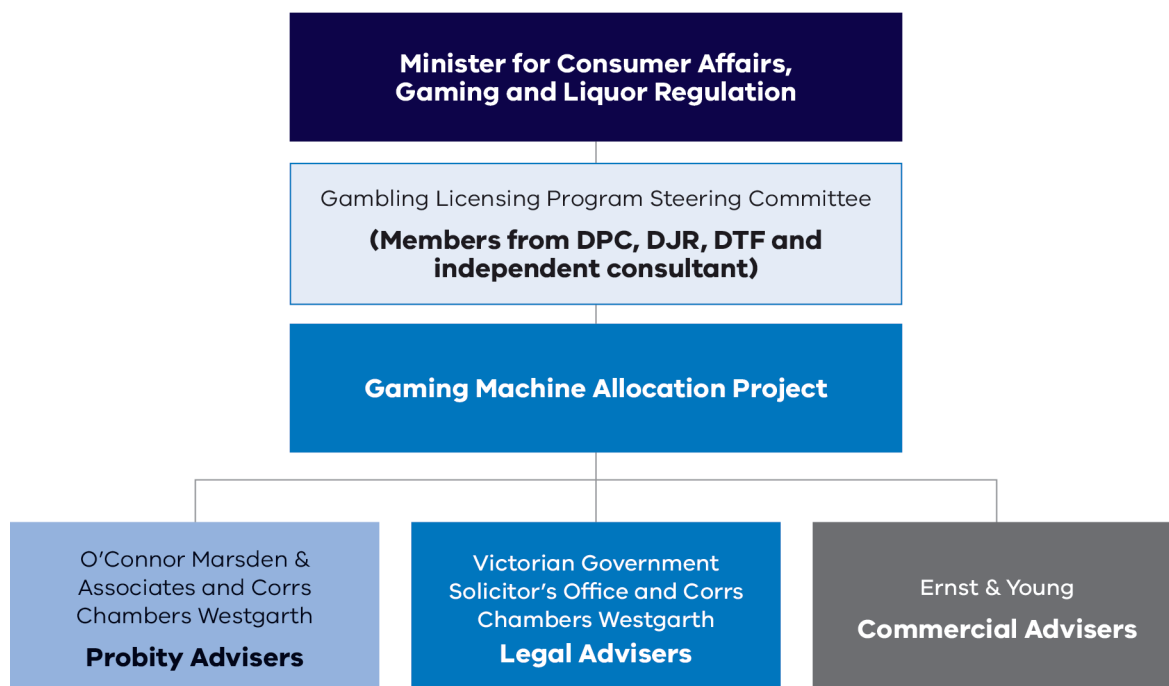
For the purposes of this report, the Panel has identified the following relevant entities:

- relevant public officials within the Department of Justice & Regulation (the Department) and the Departments of Premier and Cabinet (DPC) and Treasury and Finance (DTF);
- the legal advisers for the Department, Corrs Chambers Westgarth (Corrs) and the Victorian Government Solicitor's Office (VGSO);
- the probity advisers for the Department, O'Connor Marsden and Associates (OCM) and Corrs;
- the commercial advisers for the Department, Ernst and Young (EY); and
- the independent consultant to the Gambling Licensing Program Steering Committee.

In allocating gaming machine entitlements across the State the Minister is supported by the Department. There is a Gambling Licensing Program Steering Committee which oversees the allocation process. It comprises representatives from the Department, DPC DTF and an independent consultant from Zenith Consulting.

The supporting organisation chart at Figure 1 sets out the decision-making process.

Figure 1. Supporting Organisational Chart



5. Panel's proceedings

The Panel met with the Department and received periodic briefings on the allocation process. The Panel reviewed a range of documents, including project and probity plans, technical and expert reports, probity and legal advice, briefings and submissions to the Minister.

To assist it to carry out its functions the Panel retained the services of experienced probity auditors, Dench McClean Carlson (Panel's probity auditors). The Panel's probity auditors provided a detailed report to the Panel. Parts of that report are set out and some of the conclusions are referred to in this Report. The Panel's probity auditors' report has been made available to the Department.

The dates that the Panel convened are set out in Appendix 1.

The Panel was supported by a Secretariat in a separate Division within the Department.

To ensure the security and confidentiality of documents considered by the Panel, access was provided to documents remotely through the use of dedicated ipads and secure encryption software.

6. Pre-allocation process

Prior to the commencement of the allocation, the Government decided on the key features of the process and these were announced by the Minister on 7 July 2017¹. At the same time, the Minister wrote to incumbent venue operators advising them of the process.

On 11 August 2017 the Minister announced further decisions relating to:

- taxation structure;
- pricing of entitlements; and
- payment arrangements².

¹ <https://www.premier.vic.gov.au/victoria-freezes-pokie-numbers-for-25-years/>

² <https://www.premier.vic.gov.au/a-fairer-pricing-system-for-gaming-machines-in-victoria/>

On 19 September 2017 the Government introduced legislation implementing the new framework. The *Gambling Regulation Amendment (Gaming Machine Arrangements) Act 2017* was passed on 30 November 2017 and received Royal Assent on 12 December 2017.

7. Governance arrangements for the Allocation stage

The Gaming Machines Licensing Process was managed by the Department under specifically developed governance arrangements. Those arrangements are found in a number of documents:

- the Probity Plan
- the Stakeholder and Communications Management Strategy (Communication Strategy), and
- the Project Plan (including the Expressions of Interest Stage Plan and the Allocation Stage Plan).

The Probity Plan applied to the entirety of the Gaming Machines Licensing Process. The plan applied to all team members responsible for delivering the project and all relevant stakeholders including:

- the Minister
- the Victorian Government
- members of the Gaming Machine Allocation Project which included contractors, consultants and advisers engaged by the Department, and
- any other person engaged to assist the Gaming Machine Allocation Project team to conduct the allocation process.

The Probity Plan contained procedures designed to ensure that the process was fair and that no person or organisation received any kind of unfair advantage or disadvantage. The Plan provided for:

- the allocation of specific probity responsibilities
- procedures for disclosing and managing related interests
- secure document management, and
- management of probity issues.

Each member of the Department's project team was required to attest to their understanding of and adherence to the Probity Plan.

The Communications Strategy applied to everyone involved in the project. This document provided guidance on how to assess interest and influence, described the methods of communication to be used to engage effectively with stakeholders and provided for an evaluation of that engagement. It outlined the regular, planned and sporadic communication with stakeholders and assigned responsibility for communication to specific people within the Gaming Machine Allocation Project team.

The Project Plan was supplemented by two separate project planning documents developed specifically to guide the Expressions of Interest and Allocation phases. These documents contained procedures designed to monitor the progress of each of the phases of the project and to ensure key deliverables were met. They set out how and when the objectives of the project would be achieved and detailed the major products, activities and resources required.

8. Phases of the Allocation

The allocation process consisted of five phases:

- **Expressions of Interest**
- **Pre-offer**
- **Offer to Apply**
- **Provisional Allocation; and**
- **Final Allocation and Award.**

The allocation process was governed by relevant sections of the Act and a number of sets of Ministerial rules which prescribed how each of the phases should be implemented. Conformance with the Ministerial rules was assessed by the VGSO at each phase of the allocation process. In advising the Minister on conformance issues, the Department relied on conformance reports [REDACTED] as well as intermittent advice received from its legal advisers and probity advisers.

8.1 Expressions of Interest

The objective of the Expressions of Interest phase (EOI phase) was to enable potential new entrants seeking new entitlements, and incumbent venue operators seeking additional entitlements for proposed new venues, to notify the Government of the number and type of post 2022 entitlements they were interested in purchasing and the geographical area in which they wished to operate.

Ministerial rules governing the EOI phase and setting out eligibility requirements for participation in the allocation process were published in the Victorian Government Gazette on 5 October 2017 (first set of rules³).

On the same day the Minister invited new entrants⁴ and incumbent venue operators seeking additional entitlements to submit an expression of interest. Interested parties were required to submit their expressions of interest by 3 November 2017.

Incumbents seeking only to renew existing entitlements were not required to submit an expression of interest for these entitlements.

8.2 Pre-offer

The purpose of the Pre-offer phase was to advise each applicant of the pricing applicable to each category of entitlements for which that entity was eligible to apply.

Pricing of post 2022 entitlements for each venue was calculated in accordance with a methodology approved by the Minister on 10 August 2017 and Ministerial rules published in the Government Gazette on 9 November 2017 (second set of rules⁵). For incumbent venue operators, prices were calculated based on the weighted average of each venue's player loss data over the four financial years to June 2017. For new entrants, prices were based on player loss for a venue of similar size, type and location to the new entrant's proposed venue. These calculations were carried out using a model developed for the purpose by EY and utilising publicly available data published on the VCGLR website.

3 Minister for Consumer Affairs, Gaming and Liquor Regulation (Vic), *Gambling Regulation Act 2003 (Vic)*, 'Determination of gaming machine entitlement allocation and transfer rules', *Victorian Government Gazette*, No G40, 5 October 2017, 2184

4 New entrants were those who held no entitlements as at 7 July 2017

5 Minister for Gaming (Vic), *Gambling Regulation Act 2003 (Vic)*, 'Determination of gaming machine entitlement allocation and transfer rules', *Victorian Government Gazette*, No s 379, 9 November 2017, 1

On 15 and 16 November 2017 the Minister sent letters to 395 incumbent venue operators and 25 potential new entrants (collectively referred to as eligible entities) detailing the price, number of new gaming machine entitlements for that entity that were attached to a particular venue at 7 July 2017, weighted average gaming machine revenue per machine and name of approved venue (or proposed venue location for new entrant). The terms of the letter made it clear that no offer of entitlements was being made at that stage and provided an opportunity for applicants to seek a review of the pre-offer price within 10 business days of the pre-offer date, 29 and 30 November 2017.

To address the risk of speculative purchasing of new entitlements, the Minister also announced a restriction on the transfer of gaming machine entitlements from the date of allocation of those entitlements until 6 months before 16 August 2022, the expiration date of entitlements⁶. This decision was published in the form of transfer rules in the Victorian Government Gazette on 21 November 2017 (transfer rules⁷)⁸.

8.3 Offer to Apply

Following receipt of the responses to the Pre-offer phase and resolution of any requests for review of pre-offer prices, on 21 December 2017 the Minister made formal written offers to each eligible entity to apply for new gaming machine entitlements to enable them to operate gaming machines between 16 August 2022 and 15 August 2042.

The Minister's Offer to Apply letter was accompanied by a Deed Poll detailing relevant pricing for each entity and directing the entity to specify the number of entitlements it wished to purchase in each category. Those seeking additional entitlements were also directed to nominate their minimal additional entitlement request. While the offer to apply letter did not constitute an offer of entitlements, execution of the Deed Poll did commit entities to agree to purchase all entitlements for which they had applied at the specified prices should they be allocated to them.

Eligible entities were required to respond to the formal offer to apply by 28 February 2018 (lodgement date), and pay a deposit at this stage.

The Minister's formal offer to apply was made in accordance with Ministerial rules published in the Victorian Government Gazette on 20 December 2017 (third set of rules⁹). These rules also detailed how the number of entitlements to be allocated to each entity would be determined, as described below.

8.3.1 Priority order in allocation of gaming machine entitlements

As set out in the third set of rules, and in accordance with the policies announced by the Minister on 7 July 2017 and 11 August 2017, the allocation of post 2022 gaming machine entitlements was to commence with an unallocated pool of available entitlements (27,372 in total) that would be progressively reduced as the allocation proceeded through the following priority sequence:

6 Transfers of gaming machine entitlements made as part of the sale of gaming business were exempt from this restriction.

7 Minister for Gaming (Vic), *Gambling Regulation Act 2003 (Vic)*, 'Determination of gaming machine entitlement allocation and transfer rules', *Victorian Government Gazette*, No s395, 21 November 2017, 1

8 The intent behind the transfer rules was to address the risk that smaller and less profitable venues might buy a larger number of entitlements than they required, and on-sell some of those entitlements to more profitable venues for a lower price than those venues would have had to pay at the time of allocation.

9 Minister for Gaming (Vic), *Gambling Regulation Act 2003 (Vic)*, 'Determination of gaming machine entitlement allocation and transfer rules', *Victorian Government Gazette*, No s450, 20 December 2017, 1

First stage (clubs and hotels)

All incumbent venue operators would be allocated up to the number of entitlements they held on 7 July 2017.

Second stage (clubs only)

- a. New entrant clubs would be allocated entitlements for proposed club venues up to a maximum of 420 entitlements for each new club;
- b. Incumbent clubs would then be allocated entitlements for requested top-ups for existing venues up to 420 entitlements;
- c. Next, incumbent clubs would be allocated entitlements for any proposed venues up to 420 entitlements; and
- d. Any remaining entitlements within the club sector would then be allocated to New Entrant and Incumbent clubs seeking more than 420 entitlements in total.

Third stage (hotels only)

- a. New entrant hotels would be allocated entitlements for proposed hotel venues;
- b. Incumbent hotels would then be allocated entitlements for requested additional entitlements for existing venues; and
- c. Finally, any remaining entitlements would be allocated to incumbent hotels for any proposed venues.

8.3.2 Review of 50/50 split between clubs and hotels

The regulatory framework requires an equal split of new entitlements between clubs and hotels although the Minister has the power to alter the proportions by declaration. Before completing the third stage, described at 8.3.1, the Minister was to review the proportion of new club and hotel entitlements and determine whether there should be a change in the proportions, in light of the applications in each sector.

8.4 Allocation

The allocation phase involved the progressive allocation of the total pool of available entitlements to eligible entities in accordance with the priority sequence set out in the third rules and summarised at para 8.3.1, above. The allocation was carried out using the GMAP Entitlement Allocation Model - an Excel model developed by EY to ensure the allocation conformed both with the Minister's rules and with relevant provisions of the Act (including the club/hotel split and regional and municipal limits on gaming machine numbers).

At the conclusion of the first two stages of the prioritised allocation process a number of post 2022 entitlements reserved for the club sector remained unallocated. The Minister received advice from the Department on options for altering the 50/50 split between clubs and hotels and, on 3 July 2018, announced her decision to convert 413 new gaming machine entitlements from clubs to hotels. In order to give effect to this change the Minister made a declaration under section 3.4A.5AA(3) of the *Gambling Regulation Act 2003* which was published in the Victorian Government Gazette on 9 July 2018¹⁰.

¹⁰ Minister for Gaming (Vic), *Gambling Regulation Act 2003 (Vic)*, 'Ministerial declaration under section 3.4A.5AA(3)', *Victorian Government Gazette*, No s330, 9 July 2018, 1

8.4.1 Provisional Allocation

To allow eligible entities a final opportunity to satisfy themselves that their proposed allocation of post 2022 gaming machine entitlements had been determined in accordance with the Act and the various Ministerial rules, the allocation phase commenced with a provisional allocation.

On 27 July 2018 the Minister issued a letter to each eligible entity notifying it of the number of gaming machine entitlements it would be allocated together with an entitlement-related agreement (Agreement) setting out payment terms.

The Minister's provisional allocation letter provided the eligible entity with an opportunity to seek a review of the entitlements provisionally allocated to it within 15 business days of the provisional allocation date (27 July 2018). An eligible entity which had no issue with the proposed allocation were instructed to return executed Agreements by this date.

8.4.2 Final Allocation and Award

In anticipation of the award of entitlements, the Minister created and gave effect to two new instruments under the Act. The first instrument was a determination that created 27,372 new gaming machine entitlements to take effect on 16 August 2022¹¹. The second was a notice specifying 16 August 2022 as the date on and after which venue operators must hold a new entitlement¹². Both instruments were published in the Victorian Government Gazette on 10 September 2018.

Following advice from the Department confirming the provisional allocation of 27 July 2018, on 4 October 2018 the Minister approved the outcomes of the new entitlement allocation process and approved the provision of letters to both new and incumbent venue operators notifying them of her decision on their respective post 2022 entitlements.

9. Aspects of the Allocation Process considered by the Panel

The Panel has considered each phase of the allocation process and whether it conformed to the governance arrangements and the relevant Ministerial rules. The Panel has identified a number of aspects of the allocation process potentially relevant to the Panel's consideration, under section 10.2A.3(1)(b) of the Act.

9.1 EOI phase

The Panel notes that a number of Expression of Interest (EOI) forms were received after 3 November 2017, the closing date specified in the first set of rules.

Under the first set of rules the Minister retains the discretion to provide a Pre-offer letter to an entity who has not complied with the time limit for lodgement of an EOI form.

The Department sought advice from OCM and, following this advice, it recommended that the Minister exercise her discretion on the basis that there would be no material advantage to the parties who failed to comply with the requirements and that there was evidence that the EOI forms had been completed by the closing date. Following the Steering Committee's endorsement, the Minister approved the recommendation to accept EOI forms submitted after the closing date.

The Panel considered whether acceptance of EOI forms which had been received late was of concern and concluded that all eligible entities involved in the EOI phase were treated fairly and impartially and were evaluated in a systematic manner against the first set of rules.

¹¹ Minister for Gaming (Vic), *Gambling Regulation Act 2003 (Vic)*, 'Ministerial determinations under sections 3.4A.5(1)(A) and 3.4A.5(9)(E)', *Victorian Government Gazette*, No s416, 10 September 2018, 1

¹² Minister for Gaming (Vic), *Gambling Regulation Act 2003 (Vic)*, 'Ministerial notice under section 3.4A.1(2)', *Victorian Government Gazette*, No s416, 10 September 2018, 1

9.2 Pre-offer phase

A relevant consideration in this phase, and in the process overall, is the integrity of the method and data used by the Department to calculate the price and number of new entitlements. As noted in para 8.2, each venue's entitlement price was calculated on a percentage of historic player loss for that venue, while the price for new entrants was calculated on the basis of player loss for similar venues. The pricing of entitlements for each entity at both pre-offer and offer to apply phase was carried out using an Excel spreadsheet based financial model developed by EY. That model used the VCGLR revenue data from the gaming machine monitoring data set. The model was thoroughly tested and reviewed. The Panel's probity auditors have also reviewed the relevant processes, noting that the choice of pricing methodology explicitly took into account equity considerations. The Panel has no reason to suspect any bias in the model itself or in its application.

As noted above, a review process was incorporated into the pre-offer phase. Recipients of a pre-offer were invited to seek a review if they wished to query the proposed price of their potential entitlements. A number of requests were made for a review on 29 and 30 November 2017. Of the 18 review requests six were found to be substantiated and the price variations were accepted.

In the course of carrying out these reviews, however, an issue arose concerning the number of gaming machine entitlements held by an eligible entity at 30 June in the four years prior to 2017. This number was important because it was used in the calculation of the pre-offer entitlement price. It emerged that the publicly available VCGLR data indicating the number of entitlements held at 30 June each year was in fact an average of the entitlements held during the month of June. It was these data which the Department had used in calculating the pre-offer prices. When this came to light the Department took the view that the second set of rules required that the entitlements held at 30 June should have been used in calculating the price rather than the average for the month of June. Because of the potential effect on other relevant entities, the Department recalculated all pre-offer prices on the end of month entitlement figures. After this recalculation it was clear that the pre-offer price of a number of eligible entities was affected. While the second set of rules permits a price revision following a review, there is no express provision for the situation where a miscalculation is discovered through some other means, such as a Department initiated audit. The Department sought legal advice [REDACTED] the Minister write to each of the affected eligible entities advising them of the miscalculation and the revised price. Following Steering Committee endorsement, the Minister approved this approach and on 14 December 2017 issued letters containing the revised price to the eligible entities concerned.

The Panel notes that a complaint was received from a venue operator whose price increased marginally as a result of the correction of data and subsequent recalculation in accordance with the second set of rules. The venue operator alleged inaccuracies in the reporting of gaming machine entitlement data to VCGLR however no evidence was produced to verify this allegation. Therefore the price adjustment was confirmed and the venue operator was notified on 9 February 2018.

In considering the resolution of pricing challenges the Panel has drawn advice from its probity auditors who reviewed the Department's approach and concluded that the pricing rules had been applied fairly and without bias. This includes the manner in which the Department recalculated all pre-offer prices on the end of June entitlement figures. [REDACTED] the Panel's probity auditors concluded that there had been a systematic evaluation against explicit predetermined criteria set out in the Ministerial rules.

9.3 Offer to Apply phase

The Minister received 399 applications in response to the offer to apply for entitlements. Each application was assessed [REDACTED] for compliance with the third set of rules. Of the

applications received, 80 were deemed not to conform to requirements either because of errors or because the application was received after the lodgement date.

In addition, while not a non-conformance issue, a number of incumbent venue operators failed to specify a minimum number of additional entitlements that they wished to purchase for existing venues (minimum additional number).

The Department sought advice from its probity [REDACTED] advisers and developed a recommendation for dealing with the non-conformance and submitted it to the Gambling Licensing Program Steering Committee in accordance with the Probity Plan. The Steering Committee accepted the Department's recommendations and in due course so too did the Minister.

Under the third set of rules 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:

- (a) exceptional circumstances; or
- (b) the venue operator being required by the State to correct an error in its original application,

and that the integrity of the gaming machine allocation process would not be compromised by the Minister accepting the application after the date determined under the rules.¹³

In relation to applications containing errors, the Minister determined to exercise her discretion to consider those applications after the eligible entities had been given an opportunity to correct the errors. The Department then contacted the relevant eligible entities directing them to correct the errors in their applications. [REDACTED] all of the revised applications conformed to the application requirements.

In relation to applications received after the lodgement date, the probity advice received by the Department from Corrs indicated that in the circumstances it was open to conclude that each of the late submissions was due to exceptional circumstances and that the integrity of the process would not be compromised. The Department and the Steering Committee endorsed this conclusion and the Minister exercised her discretion to consider those applications.

The Department sought to rectify the 'minimum additional number' issue it had identified in a number of applications by seeking an explanation from the relevant incumbent venue operator and requiring the operator to correct any error in that regard.

The Panel has considered the Department's approach to non-conformance and has also taken advice from the Panel's probity advisers, who concluded that both the conformance report and the Corrs advice demonstrated an intention to treat applicants equitably and fairly and to evaluate applications in a systematic manner. The Panel has concluded that all eligible entities were treated equally and impartially and in a systematic manner against the third set of rules.

9.4 Provisional Allocation

The provisional allocation of post 2022 entitlements was carried out using the GMAP Entitlement Allocation Model developed by EY and described in para 8.4 above. The technical operation of the model had been tested and approved by a separate area of EY before the commencement of the provisional allocation, while the outcomes of each stage of the allocation process were audited [REDACTED] for compliance with the Ministerial rules

¹³ Rule 6(f) of the Minister's third set of allocation and transfer rules published in the Victorian Government Gazette on 20 December 2017.

and the legislation. The Panel's probity auditors have also reviewed the relevant processes and, while noting that best practice would suggest the testing of the functionality of the allocation model be undertaken by experts completely independent of the model's designer, the probity auditors and consequently the Panel have no reason to suspect any bias in the model itself or in its application.

The prioritised allocation process set out in the Minister's third set of rules required demand from both incumbent and new entrant clubs to be satisfied - up to the club sector's 50 per cent share - before consideration could be given to applications from new hotel entrants or applications for additional entitlements from incumbent hotel venue operators. After completion of the first two stages of the allocation process, 475 club sector entitlements remained unallocated. By contrast, demand for post 2022 entitlements from the hotel sector was well in excess of the number of entitlements available within that sector's 50 per cent share (with 862 entitlements sought for new hotel venues and additional entitlements for incumbent venues, compared to just seven entitlements remaining for allocation within the hotel sector).

As the Minister has the power, under Section 3.4A.5AA(3) of the Act, to make a declaration that changes the 50/50 split in relation to new entitlements, the Department provided advice to the Minister setting out a range of options including a recommended option for dealing with the unallocated club entitlements. After considering this advice the Minister announced her decision to convert 413 new club entitlements to new hotel entitlements. This decision allowed venues proposed by new hotel entrants to be allocated the minimum number of new entitlements in the ranges nominated in their respective expressions of interest, whilst retaining 62 new gaming machine entitlements to enable further growth in the club sector post 2022.

As noted earlier provisional allocation letters were issued on 27 July 2018. Following the discovery of a printing error in the Agreements related to hotels¹⁴, the Department mailed revised agreements for execution to all hotel venue operators on 3 August 2018. The due date for submission of these agreements did not change. In response, the Minister received 398 Agreements from eligible entities. Each Agreement was assessed [REDACTED] for compliance with the third set of rules. Twenty-seven were deemed not to conform to requirements either because of errors or because the application was received after the lodgement date. The third set of rules prescribes the circumstances in which the Minister may consider an Agreement received after the lodgement date. The circumstances are set out in paragraph 9.3.

In relation to agreements containing errors, the Minister determined to exercise her discretion to consider those applications after the eligible entities had been given an opportunity to correct the errors. The Department contacted the relevant eligible entities directing them to correct the errors in their agreements. [REDACTED] all of the revised Agreements conformed to the application requirements and Corrs endorsed this advice. Similar to the Offer to Apply phase, the Minister later exercised her discretion under the third set of rules to accept the Agreements.

In relation to Agreements received after the lodgement date, the Department sought probity advice from Corrs and developed a recommendation that the Minister should consider the agreements on the basis that the circumstances were exceptional and the integrity of the allocation process would not be compromised. The Steering Committee endorsed the Department's recommendation and, on 18 September 2018, the Minister decided to consider the Agreements.

¹⁴ The error was an incorrect clause reference in clause 5.1(b) of the hotel related agreement. It did not affect the number of new gaming machine entitlements provisionally allocated as detailed in Schedule 1 to the Agreement.

During this phase the Department also received a written statement requesting a review of provisional allocation of gaming machine entitlements from an incumbent hotel venue operator in respect of a proposed new gaming venue site. The original determination was that no new gaming machine entitlements would be allocated to the venue operator on the basis that there were insufficient new gaming machine entitlements available to provisionally allocate to a new venue. In accordance with the third set of rules, the Department advised the Minister that provisional allocation was finalised and to confirm allocation. The Minister reviewed the recommendation and on 4 October 2018 determined that the provisional allocation was correct.

The Panel has considered the Department's approach to non-conformance and has concluded that all eligible entities were treated equally and impartially and evaluated in a systematic manner against the third set of rules. The Panel also considered the Department's advice to the Minister on the objection from the incumbent in respect of a proposed new venue and concluded that the advice conformed with the third set of rules.

10. Consideration of the Statutory Criteria in relation to the Allocation Process

The Panel has come to the following conclusions in relation to the issues it is required to consider section 10.2A.3(1)(b).

(i) all applicants for an authorisation or a licence have been treated equally and impartially and have been given the same opportunity to access information and advice about the authorisation and licensing process

The Panel's review of the documents and the review carried out by the Panel's probity auditors indicate that all eligible entities have been treated equally and impartially within the constraints of the regulatory framework and been given the same opportunity to access information and advice about the licensing process. It is also noted that there has been no suggestion to the contrary by any applicant or potential applicant for an entitlement.

(ii) all protected information has been managed to ensure its security and confidentiality

The Panel's probity auditors have reported in the following terms:

1.179 We have considered the report of the Probity Adviser for the Allocation Project, OCM, and we note that OCM determined that access to documents on TRIM, the secure room, the email account used for communications and the hard copy documentation was controlled.

1.180 OCM's findings did not identify any security and confidentiality issues.

On the basis of these observations the Panel is satisfied that protected information has been managed in the required way.

(iii) all registrants and applicants referred to in subparagraph (i) have been evaluated in a systematic manner against explicit predetermined evaluation criteria

The Panel is satisfied that the EY pricing model and the GMAP Entitlement Allocation Model were sound and that, where issues of non-conformance arose or challenges were made in relation to price or number of entitlements, these matters were dealt with in a systematic way in accordance with the regulatory framework and the various sets of Ministerial Rules.

(iv) every relevant entity involved in the authorisation and licensing process has been required to declare any actual or perceived conflict of interest before participating in the process; and

(v) any conflict of interest referred to in subparagraph (iv) has been appropriately addressed.

The Panel's probity auditors reported that OCM has sighted all declarations where interest has been declared and there do not appear to be any substantive issues.

(vi) (whether) there has been any improper interference with the making of a recommendation or report.

There is nothing on the face of the documents the Panel has sighted or in the circumstances overall to suggest that there has been any improper interference with the making of a recommendation or report. Neither OCM nor the Panel's probity auditors have raised any grounds for suspecting such interference.

(vii) the preparation of a recommendation or report discloses bias or anything that could lead to a reasonable apprehension of bias.

In relation to the possibility of bias, the following summary contained in the Panel's probity auditors' report generally reflects the Panel's views:

1.190 The Allocation process was well designed to demonstrate clarity in the assessment and decision-making tasks. The Allocation model was designed to accommodate the Rules and the data fed into the model was taken from the VCGLR. The VCGLR data is publicly available on its website and will be known to the venue operators. The new entrants were directed to the VCGLR website and would have become familiar with the VCGLR requirements and data collection during their applications for a venue operator licence.

1.191 None of the documentation that we reviewed indicated bias or contained any opinions or commentary that could lead to a reasonable apprehension of bias.

11. Conclusion

The Panel has concluded that there is no basis for any adverse report under s.10.2A.3(1) (b) of the Act in relation to the allocation of gaming machine entitlements in the State of Victoria from 16 August 2022.

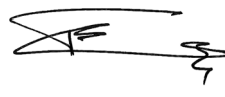
Dated 23 October 2018



Geoff Giudice AO
Chair



Claire Thomas PSM
Member



Tim Garrood
Member



Bill Jaboor
Member

12. Appendix 1

12.1 Panel Meeting Dates

The Panel convened on the following dates:

27 July 2017

3 August 2017

28 September 2017

7 December 2017

30 January 2018

9 April 2018

30 April 2018

22 May 2018

14 June 2018

27 June 2018

16 July 2018

26 July 2018

20 August 2018

10 September 2018

24 September 2018

1 October 2018

8 October 2018

13. Appendix 2

13.1 Acronyms

Department	Department of Justice & Regulation
DTF	Department of Treasury and Finance
DPC	Department of Premier and Cabinet
VGSO	Victorian Government Solicitor's Office
OCM	O'Connor Marsden and Associates
Corrs	Corrs Chambers Westgarth

