



**Independent Gambling Authority**

**Inquiry into gaming machine entitlements**

**Report**

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## 1. INTRODUCTION

### 1.1 Terms of reference

This inquiry is established by terms of reference given by the Minister for Gambling, Hon. Michael Wright MP, under section 13(1)(b) of the *Independent Gambling Authority Act 1995*.

The terms of reference for this inquiry are—

#### 1. *General Scope*

1.1 The Authority must report on the introduction of gaming machine entitlements, the operation of the trading system for gaming machine entitlements and the effects on the gambling industry.

1.2 In designing its process and its reporting for this inquiry, the Authority must take into account that a purpose in commissioning the inquiry is to enable the Minister to comply with section 89 of the *Gaming Machines Act 1992*.

The Amendment Act was the end product of a very extensive debate in Parliament on a Bill to implement the recommendations of the Independent Gambling Authority in its *Report of Inquiry into the management of gaming machine numbers*, the most notable one being the recommendation to reduce gaming machine numbers by 3 000.

Certain provisions inserted into the Gaming Machines Act by the Amendment Act require the Minister to obtain a number of reports from the Authority. Of particular relevance is the new section 89:

#### **89—Minister to obtain reports**

- (1) The Minister must obtain the following reports from the Authority—
  - (a) a report on the introduction of gaming machine entitlements, the operation of the trading system for gaming machine entitlements, and the effects on the gambling industry;
  - (b) a report on the effects of the 2004 amendments on gambling in the State and in particular, on whether those amendments have been effective in reducing the incidence of problem gambling and the extent of any such reduction.
- (2) The reports must be delivered to the Minister—
  - (a) in the case of the report under subsection (1)(a)—before 31 December 2005;
  - (b) in the case of the report under subsection (1)(b)—as soon as practicable after the second anniversary of the commencement of the 2004 amendments.
- (3) The Minister must—
  - (a) if Parliament is sitting—have copies of a report received under this section laid before both Houses of Parliament within 6 sitting days; or
  - (b) if Parliament is not sitting—give copies of the report to the Speaker of the House of Assembly and the President of the Legislative Council so that they may lay copies of the report before their

respective Houses on resumption of sittings and, in the meantime, distribute copies of the report among Members of their respective Houses.

(4) In this section—

**2004 amendments** means the amendments to this Act made by the *Gaming Machines (Miscellaneous) Amendment Act 2004*.

## 1.2 Process for the inquiry

The process for this inquiry was designed with a view to the Authority gathering and having before it all the relevant material in time to report to the Minister in December 2005, noting that significant relevant events would not take place until after 1 July 2005.

The Authority wrote to all licensees who had participated in the trading process.

The Department of Treasury and Finance provided information upon written request.

In addition, other key stakeholders were identified and arrangements were made to meet with them. Following those meetings, summaries of the discussions were prepared and the stakeholders were invited to endorse them. This is the basis of the stakeholder submissions and information section.

## 2. GAMING MACHINE ENTITLEMENTS

### 2.1 Background—the “numbers” inquiry

In December 2003, the Authority presented the Minister for Gambling with the Report of its *Inquiry into the Management of Gaming Machine Numbers* (“the numbers inquiry”).

That inquiry had been commissioned of the Authority in June 2002, as a response to the legislated freeze on gaming machine numbers (imposed with effect from 7 December 2000) and the establishment of the Authority’s functions with respect to harm minimisation, problem gambling and responsible gambling under legislation passed in May 2001 and commenced in October 2001.

The numbers inquiry had involved extensive consultation with the stakeholders from Government, from industry and from the Concern Sector.

Among the recommendations of the inquiry were:

- ◆ that the number of gaming machines should be reduced by 20% (approximately 3 000 machines);
- ◆ that the number of gaming machines in each venue should be reduced by 8 (with the proviso that reduction should not reduce the number of gaming machines in a venue below 20);
- ◆ the maximum number of gaming machines permitted on site should remain at 40;
- ◆ that the gaming machine licensing process should take account of social impacts;

- ◆ that gaming machine licences should be renewable on a 5 yearly basis;
- ◆ that, once the number of gaming machines had been reduced, the right (or entitlement) to operate a gaming machine should become transferable (from site to site) through a centrally managed market priced sale process;
- ◆ that special legislative arrangements should be made to facilitate a scheme described in submissions made by Clubs SA as “Club One”.

## 2.2 The Gaming Machines (Miscellaneous) Amendment Bill 2004

The Government’s response to the numbers inquiry report was that it would sponsor a Bill to implement all of the Authority’s recommendations. (It was always understood that votes on matters concerning gaming machine numbers would continue to be unfettered by party discipline—that is, decided by a “conscience” vote.)

The Gaming Machines (Miscellaneous) Amendment Bill 2004, which was brought into the Parliament for its Spring 2004 session, was the vehicle by which these recommendations were put before the Parliament. The debate was extensive, with Members of Parliament clearly taking significant time and trouble to familiarise themselves with a wide range of the issues and with the views of all the stakeholders.

There were some significant changes made to the Bill.

Provisions relating to the renewal of gaming machines licenses were removed from the Bill.

The provisions for reduction in gaming machine numbers were amended so that they no longer would apply to non-profit (essentially club) venues.

The trading in gaming machine entitlements was to be regulated with a price fixed in the principle legislation.

After the completion of debate in both the House of Assembly and the Legislative Council, Royal Assent was given to the Bill, as the *Gaming Machines (Miscellaneous) Amendment Act 2004*, on 9 December 2004.

## 2.3 Entitlement trading system and gaming machine numbers reduction

The *Gaming Machines (Miscellaneous) Amendment Act 2004* made provision for the entitlement trading system and mandated the reduction in gaming machine numbers through amendments to the *Gaming Machines Act 1992*, the general statute which provides for the licensing of gaming machines in hotels and clubs. For the purposes of this inquiry that technicality is immaterial and, in this report, the combination of these statutes is referred to as the principal legislation or the machine numbers legislation.

The trading system itself is described in detail in regulations made under the principal legislation, primarily regulation 14 of the Gaming Machines Regulations 2005 (see Appendix B).

While the principal legislation can only be changed by Parliament, regulations can be made and altered by the Government (that is, the Governor acting formally with the

advice of her Ministers). It is not uncommon for matters of such fine detail as the trading system to be the subject of regulations.

Another matter which was left to the Government was the dates on which various provisions of the gaming machine numbers legislation would commence (subject to a direction that at least 4 months must pass between the commencement of certain provisions allowing for the grant of gaming machine entitlements and others requiring numbers to be reduced).

The key commencement dates were 1 February 2005 (for most of the provisions) and 1 July 2005 (for the provisions bringing into effect the gaming machine numbers reduction).

The way the gaming machine numbers legislation operated to reduce the number of gaming machines was firstly to provide for the issuing to licensees of a number of gaming machine entitlements and secondly, with effect from a later date, to require a licensee to have no more gaming machines than the number of entitlements.

Entitlements were to be issued to licensees on 1 February 2005 as follows:

- ◆ licensees of non-profit venues and of all other venues with 20 gaming machines or less received one entitlement for each gaming machine operated on that day;
- ◆ Licensees of for profit (hotel) venues with between 20 and 28 gaming machines received 20 entitlements;
- ◆ Licensees of for profit (hotels) venues with 29 to 40 gaming machines received 8 fewer entitlements than the number of machines allowed to be operated on that day.

Although there was no requirement to have an entitlement for each gaming machine in operation until 1 July 2005, the licensees were able to trade in the entitlements.

A trading round was conducted in May 2005 with new entitlements being distributed in June. Statistics for that trading round, and a subsequent trading round in October, are set out in Appendix A.

Provisions of the gaming machine numbers legislation coming into operation on 1 July 2005 required licensees to be operating only so many gaming machines as they had entitlements.

It was anticipated that arrangements would be made on 1 July 2005 for the excess gaming machines to be disabled, and for them to subsequently be physically removed. It was understood that this was a process which would take some weeks on account of provisions in the principal legislation designed to protect the integrity of the gaming machine network. (It is a requirement of the principal legislation that gaming machines can only be physically connected to the mandated monitoring system by an approved agent of the licensed service provider. In addition to the licensing requirement, there is also a question of the expertise required to undertake this task.)

As can be seen from the regulations, provision is made for dealing with the situation where the number of requests to purchase is more or less than the number of offers to sell entitlements. The trading system also provides for the withdrawal of up to 25% of

the entitlements offered for sale to provide entitlements to Club One and to facilitate further reduction in gaming machine numbers until the “statutory objective”—the target of a 20% reduction (defined as 3 000 fewer machines)—is reached.

#### **2.4 Club One**

The gaming machine numbers legislation also provided for the grant of a special club licence to an entity to be known as “Club One”.

This licence would enable Club One to acquire control over, and place in venues, entitlements held by non-profit licensees, for the benefit of the club sector generally. This acquisition of control and movement of entitlements is able to take place outside the trading system and on terms settled between Club One and the entitlement holders, subject to the regulatory scrutiny of the Liquor and Gambling Commissioner.

The regulations establishing the trading system provide for a number of entitlements to be withheld for transfer to Club One.

### **3. STAKEHOLDER SUBMISSIONS AND INFORMATION**

#### **3.1 Department of Treasury and Finance**

Following the passage of the *Gaming Machines (Miscellaneous) Amendment Act 2004*, the Department of Treasury and Finance (“DTF”) provided instructions to Parliamentary Counsel to draft necessary Regulations to establish the approved trading system for gaming machine entitlements. Industry consultation followed and on 31 March 2005, the Gaming Machines Regulations 2005 were gazetted—regulations 14 and 15 contain the provisions of the trading system.

DTF was kept informed of the trading rounds (by the Office of the Liquor and Gambling Commissioner) and considered that generally the first round was efficient. DTF considered that there were a significant and not surprising number of requests to purchase entitlements as the largest 281 hotels had had their gaming machine numbers reduced.

With regard to the selling of entitlements, licensees offered 169 entitlements from 21 venues (1.3 % of total entitlements issued); DTF looked to the Queensland system for comparison, where a trading system had come into effect in July 2004. There 174 “authorities” were offered for sale by 17 venues (0.9% of total authorities issued).

DTF was aware of minor speculation in industry that the \$50 000 fixed purchase price for an entitlement might be increased and that many licensees had chosen to await the outcome of the first round before deciding to sell entitlements. However, it was not known to what extent these factors affected decisions to sell entitlements.

So far as DTF was concerned, the trading system appeared to operate smoothly but there was a difficulty arising from a number of successful purchasers not making the required payment within the specified time; some of these ultimately elected to not proceed with the purchase. Those entitlements were balloted to other applicants, which created another delay due to the time allowed for payment. This payment delay

was understood to have caused some concern for licensees, particularly due to the trading round being near the end of the financial year.

DTF concluded that the issue was that a number of licensees did not give due consideration to their business or financial position prior to making commitments to the trading round; rather there was a sense of “keeping up” with those licensees wishing to return to 40 entitlements and simply being in the ballot to remain part of the process.

Ultimately, an efficient trading system would be assisted by participation of serious applicants only. In addition, the regulations provide the Commissioner with a power to secure a commitment for payment of the purchase price and it is understood that the Commissioner was considering this for subsequent trading rounds.

The Gaming Machines Act places restrictions on sales of entitlements by licensees in leased premises (essentially landlord agreement or a decision in the District Court is needed to sell entitlements). There is anecdotal evidence that some licensees were unable to obtain landlord agreement in time for the closing date for applications in the first trading round. It is thought that these entitlements might become available in subsequent trading rounds.

With regard to the second trading round, it is understood that there were no difficulties with non-payment by purchasers.

### **3.2 Liquor and Gambling Commissioner**

The Liquor and Gambling Commissioner is responsible for the daily monitoring and regulation of licensees under the Gaming Machines Act for compliance with the Act, regulations, licence conditions and other requirements.

The Commissioner has specific functions, under the Gaming Machines Regulations with respect to the issuing and trading in gaming machine entitlements and, separately from the entitlement trading arrangements, regulatory functions relating to the movement of gaming machines.

The Commissioner’s Office was the lead Government agency for processes for initial trading in gaming machine entitlements and for the removal of excess gaming machines on the commencement of the entitlement regime.

The Commissioner’s Office began to disseminate information about the gaming machine entitlement trading system to licensees in February 2005. Preliminary bulletins, on issues such as the landlord consent requirement for selling in the trade and transferring entitlements, were sent in February 2005. A comprehensive bulletin on the trade mechanism was sent on 6 April 2005—soon after the regulations establishing the trading process were made on 31 March 2005.

The Commissioner’s experience is that the best way to distribute information to licensees is to provide written information in the form of bulletins mailed out to licensees. This approach was consistently followed in the lead-up to the initial trading round and removal of excess gaming machines.

A comprehensive bulletin was compiled, explaining the trading system and the process for removal of machines. Licensees were mailed this bulletin approximately 6 weeks prior to the first round of trading.

An advertisement calling for applications (offers to sell or to purchase gaming machine entitlements) was placed in the *Advertiser* and the *South Australian Government Gazette*, on 14 April 2005, four weeks prior to the trading round. The closing date for applications was set as one week prior to the trading round. The first round of trading was fixed for 11 May 2005, a date considered close enough to the date fixed for the mandatory machine number reduction (1 July 2005).

Applications were required to be made in a form provided by mail and also available from the Commissioner's website and to be accompanied by a fee of \$165 per application. Arrangements were made with the cashier to ensure all application documents were directed to the Commissioner.

Staff of the office of the Liquor and Gambling Commissioner conducted the trading rounds. At the first trading round, applications were made by 186 licensees seeking to purchase 1346 entitlements and 21 licensees seeking to sell 169 entitlements.

Priority for grant of entitlements was allocated (in accordance with the Gaming Machines Regulations), as follows:

- ◆ first priority was given to licensees whose gaming machine numbers had been reduced by more than 20%, with enough entitlements being granted to put the licensee in the position of having lost 20% or less;
- ◆ second priority was given to any licensee whose gaming machine numbers had been reduced; and
- ◆ third priority was given to licensees whose gaming machine numbers had not been reduced—hotels with 20 or less machines and clubs—and new licensees (of which there were none).

There were sufficient gaming machine entitlements (34) available to satisfy applications made by the 20 licensees in first priority group. Some licensees were eligible to receive more than one gaming machine entitlement under this priority classification.

After gaming machine entitlements had been granted to the first priority licensees, the second priority licensees were placed into a ballot for the remaining entitlements, as the number of gaming machine entitlements available was less than the number sought by second priority licensees.

There were no residual entitlements for third ranked licensees.

In the second priority allocation, 93 licensees each received one gaming machine entitlement. Of these, 9 had also received entitlements as first priority licensees, while 84 licensees were allocated one gaming machine entitlement only.

A number of additional licensees had been drawn to allow for the contingency that further balloting as part of the initial round of trading might be required.

The ballot was conducted on 25 May 2005. It was scrutinised by representatives of the Department of Treasury and Finance, the Australian Hotels Association and Clubs SA. The Commissioner advised that the process had previously been discussed with the Auditor General who determined that no audit presence was required.

The ballot draw was videotaped and documented. The Commissioner's staff and the scrutineers signed off on the ballot and the results were reported back to the trade participants.

The Commissioner's staff observed that licensees had an incomplete understanding of the priority system. As all of the priority scenarios were seen as being clearly explained in the bulletins sent to licensees, this lack of understanding was attributed to licensees taking in information relating only to their perceived individual circumstances.

The Commissioner reported no feedback or queries from unsuccessful bidders.

The date for licensees to make payment for the entitlements that they had been granted had been fixed for 14 days after the conduct of the trading round. As the purchaser payments were to be pooled, seller payments were not to be made until all purchaser payments had been received.

At the payment date, 12 of the 100 successful buyers had not made payment. These 12 buyers were contacted by the Commissioner's office. Four buyers indicated that they did not wish to proceed with the purchase of entitlements. Those entitlements were reallocated by further ballot. The other 8 buyers were given a further two weeks to pay for the entitlements they had been granted.

No payments were made to sellers until all purchaser moneys had been received. The Commissioner reported that some sellers expressed a desire for more immediate payment, with the perception being that there were taxation implications arising from the sale of entitlements close to the end of the financial year.

All except one buyer paid within the extended time. The Commissioner cancelled the allocation of entitlements to that buyer and reallocated the entitlements by ballot.

Most buyers had requested a block of several gaming machine entitlements—the Commissioner reported a view among buyers that the allocation of just one entitlement was useless by those buyers who had their gaming machine numbers reduced.

The Commissioner also reported licensee concern at the arrangements for approved custodian storage of excess gaming machines. As part of the approval process, the storage facilities had been inspected by the Commissioner's staff. The Commissioner reported, as at late September 2005, that 131 machines were stored at the premises of MacMont (N.T.) Pty Ltd and that 6 machines were in the custody of Bytecraft Systems Pty Ltd.

As to the physical removal of excess machines, the Commissioner invited affected licensees to nominate which machines were to be removed from venues on 1 July 2005.

The majority of licensees complied within the deadlines set, although some needed to be pursued until quite close to 1 July 2005.

There was also a small number of licensees who removed machines well in advance of the 1 July deadline. The Commissioner understood these licensees as wanting to deal with the issues early, and not seeing much point in waiting until 1 July to start removing machines and rearranging their gaming areas. This factor raises a small uncertainty as to which machines were actually retired as a result of the machine numbers reductions.

The response to the Commissioner's invitation to nominate excess machines identified approximately 2 000—about 90% of the required reduction.

With regard to any patterns or preferences in the choices made, the Commissioner's officers have observed that licensees have selected older gaming machines—almost 75% were 5 years of age or older. This is thought to reflect licensees' pragmatic assessment of the life of the hardware and the end of support for these machines by manufacturers.

Of the newer machines retired, the Commissioner's staff observed that licensees appear to have selected those machines with games which generally “underperform”—they do not generate as much revenue as the popular games.

### **3.3 Independent Gaming Corporation Limited**

Independent Gaming Corporation Limited (“the IGC”) holds the one gaming machine monitor licence for South Australia. Hotel and club gaming machine licensees are required to have their gaming machines connected to the IGC's gaming machine monitoring system at all times. It was in this capacity that the IGC played a key role in the functional disabling of the gaming machines made excess by the machine numbers reduction legislation.

In early April 2005, following informal discussions with the Office of the Liquor and Gambling Commissioner, the IGC forwarded a proposal to the Commissioner about how the machine numbers reduction could best be managed from its perspective. IGC reporting requirements were settled with the Commissioner approximately two weeks prior to the scheduled date for the machine numbers reduction (1 July 2005).

It is part of the general functionality of the gaming machine monitoring system that an individual gaming machine will only operate if it has been so configured on the monitoring system. While it is the responsibility of gaming machine licensees to ensure that they only operate the number of machines for which they are licensed and hold entitlements, the gaming machine monitoring system provides a regulatory tool for the enforcement of the licensed number of operational machines and therefore for the implementation of the reduction in gaming machine numbers.

As part of the routine operation of the gaming machine monitoring system, a procedure known as a batch poll is conducted daily. In the daily batch poll, the central host connects with gaming machines in venues via the venues' site controller devices to verify that that machine continues to be configured as approved and to collect data

including the total amount bet and the total amount paid in prizes since the preceding batch poll.

In terms of process, the Commissioner provided the IGC with an authoritative list of machines nominated for disabling by venues in the form of an Excel spreadsheet. Both the IGC and the Commissioner's staff verified the spreadsheet against forms submitted by venues nominating the machines to be disabled. All machines to be disabled had been identified on or before 30 June 2005.

The process of disabling the excess gaming machines involved the data from the spreadsheet being manually entered into the gaming machine monitoring system for each machine being disabled. That process was scrutinised by the IGC's system administrator and took approximately four hours. A batch poll was commenced at 4.00am on 1 July 2005 to disable all machines so nominated.

That batch poll was to bring to 2 195 the number of gaming machines being disabled as a result of the gaming machine numbers reductions. (Approximately 600 machines had been disabled prior to 1 July 2005 at licensees' request.)

Of those, 110 gaming machines at 20 venues were not disabled as (contrary to the Commissioner's directions) they had apparently been powered off in anticipation of the machine number reductions coming into force. The gaming machine monitoring system can only verify or change the status of a machine which is powered. Each affected venue was contacted and asked to power the machines back on so they could be disabled. Subsequent daily batch polls were checked to verify that the remainder of the machines had been disabled.

The Auditor General included the process for disabling the excess gaming machines in the scope of his audit of the IGC. No exception was noted in the audit report.

The IGC reported that the process for disabling the excess gaming machines had a less than expected impact on resources. The IGC had requested that there be a hold on commencement of physical machine removal or reconfiguration until 4 July 2005 to allow it to establish a reporting baseline following the reduction. However, the reduction went sufficiently smoothly that the IGC allowed service agents to commence removal of gaming machines on 2 July 2005.

The IGC has profiled the machines that were selected for removal from venues. The machines most nominated for removal were Aristocrat Mark IV and Mark V machines.

The reduction in number of machines had an impact on the regulated monitoring fee charged by the IGC. This fee is structured on the basis that the cost of gaming machine monitoring is recovered on a machine-by-machine basis.

The cost of the gaming machine monitoring system being essentially a fixed overhead, the IGC sought and received Ministerial approval for an increase in the monitoring fee from \$1.12 (plus GST) per machine per day to \$1.30 per machine per day.

The IGC's overall view is that the reduction process worked very well and that there is nothing that it would change about the process.

### 3.4 Australian Hotels Association

The Australian Hotels Association (SA) is the peak industry body for hotels licensed for gaming. There are over 500 hotels with gaming machine licences, most of which are members of the AHA.

The AHA noted that the entitlement trading process established by the Commissioner was consistent with the legislation.

The AHA was of the view that the first trading round was conducted fairly and openly and that there was nothing untoward in the process. The only criticism that the AHA had about the trading process was that the ballot was stopped after the last gaming machine entitlement was allocated.

The AHA considers that the ballot should have continued to rank the order of priority of the unsuccessful buyers for use in subsequent trading rounds. The AHA's position was that all buyers should have been ranked in the first instance to "fix their luck".

The AHA noted that approximately 400 venues did not participate in the trading system and has formed some views based on anecdotal information as to why that was so.

One view is that some licensees might have been unwilling to engage in the process because of perceived uncertainty over the capital gains tax treatment of the sale proceeds.

This concern is premised on the statutory establishment, on 1 February 2005, of a gaming machine entitlement that can be bought and sold creating a proprietary right (thing in action) with a zero value cost base at that date. The concern was that the proceeds of disposal of such an interest in any trading round prior to 1 February 2006 might be treated as income, while a later disposal would attract a concessional capital gains tax treatment. An alternative view is that the sale of the gaming machine entitlement might be regarded as the sale of part of the existing goodwill of the business.

The AHA was unaware of any ruling or advice from the Commissioner of Taxation on the issue. Nonetheless, it regarded the potential concern as a credible explanation for the level of activity to date.

Another view formed was that industry participants wanted to see how the first round of trading was conducted before committing to the process.

There was some further perceived uncertainty within the industry about whether the Government might offer a better selling price than the \$50 000 that had been fixed by the gaming machine numbers legislation.

The AHA was of the opinion that \$50 000 was an appropriate selling price for the gaming machine entitlements as it gave more venues the chance to participate in the trading process. If a market price were offered, major players would always outbid smaller venues.

With respect to the arrangements for custodianship of excess gaming machines, the AHA's position was that the concerns about machine storage were overdone.

It was suggested that there are components of gaming machines which are non-prescribed components and could therefore be lawfully salvaged, by licensees, from the machines for use as spare parts. There was also a view that machines should be able to be swapped in and out of storage more freely and that the regulations are unnecessarily rigid. (The regulations concerning custody of gaming machines do not allow for either activity.)

### **3.5 Clubs SA**

Clubs SA advised that there were few complaints from clubs about the trading process and that licensees understood the process. Clubs SA acknowledged that the office of the Liquor and Gambling Commissioner had put together a comprehensive information package that assisted licensees with understanding the trading process.

Clubs SA stated that club licensees did not seek to buy entitlements during the trading process; clubs were sellers only. If a club decided to sell, all it had to do was to fill out a form, send it to the Liquor and Gambling Commissioner and wait for payment.

A representative of Clubs SA attended the first round of gaming machine entitlement trading. Clubs SA was satisfied that the ballot had been conducted randomly and fairly but noted that the manual ballot method was a long process.

Insofar as the timing of the first trading round, Clubs SA raised two points. The first point was that the lead time into the trading round could have been longer to ensure that club boards had adequate notice and information about the process. The second issue related to the establishment of Club One (holder of the Special Club Licence). Club One was, at the time Clubs SA spoke to the Authority, yet to be licensed. Clubs SA expressed intense frustration that Club One had not been able to bid for gaming machine entitlements, stating that the system was premised on Club One existing.

Clubs SA is of the view that the fixed price offered for each gaming machine entitlement (in practical terms, \$37 500) was too low, having the effect of discouraging involvement in the trading scheme.

Clubs SA stated that there was a rumour or belief amongst the industry that the fixed price may be abolished or that a higher fixed price might be set. Clubs SA indicated that if Club One were licensed, it would be prepared to contract with licensees (as is provided for in the Gaming Machines Act) to pay more than the fixed trading price for gaming machine entitlements. Clubs SA stated that if the price were high enough, all but 20 clubs would sell their entitlements.

Clubs SA received no complaints about the timing of the removal of machines from venues, indicating that most clubs were closed between midnight and 6.00am on 1 July 2005.

### **3.6 State Procurement Board**

The State Procurement Board (“SPB”—until 4 October 2005 called the State Supply Board) holds 2 licences under the *Gaming Machines Act 1992*: the *gaming machine supplier licence* and the *gaming machine service licence*.

In its capacity as supply licensee, the SPB operates through agents, who are the licensed dealers. However all contracts for the supply of gaming machines have the SPB as a party, whether as supplier or as acquirer.

Under the service licence, the SPB operates through approved service agents. Approved service agent contracts were granted as a result of a tender process completed in 2003. In the first half of 2005, one of the approved service agents acquired the other. Accordingly the board now discharges its service agent obligations through the agency of one company, Bytecrafft Systems Pty Ltd.

The direct involvement which the SPB had in the trading process was to be the custodian of the funds.

Following the trading, and on instructions for the Office of the Liquor and Gambling Commissioner, the SPB issued invoices to all successful bidders for gaming machine entitlements. Moneys received were credited to a trust fund from which payments to sellers of entitlements were disbursed, again in accordance with instructions from the Office of the Liquor and Gambling Commissioner.

There were consequential involvements for the SPB arising from the initial trading round and the 1 July full implementation of the entitlement scheme.

From 1 July 2005, there just under 2 100 gaming machines in premises more than the number of entitlements held by licensees. The gaming machine licensees who owned those machines were required to remove them from their licensed gaming areas, either by placing them in storage with an approved custodian or by divesting them. Approximately 130 machines were placed in storage. This left 1 939 machines needing to be sold. Each of these machine sales involves a transaction with the SPB, and the on-sale by the SPB to the dealer or other party taking the machines. Of those machines, 1 362 changed hands for zero-dollar consideration. Of the 577 machines for which valuable consideration was paid, the average price was \$514, in a range from \$56 to \$4 400.

The SPB reported that in excess of 800 machine plates (required to removed for machines being scrapped or sent out of South Australia) were returned to the Liquor and Gambling Commissioner as part of this process.

The SPB observed that the process put in place by the Office of the Liquor and Gambling Commissioner for coordination of the removal of gaming machines, and otherwise relating to the trading processes was effective. Although some licensees made queries of the SPB which might have been more appropriately directed to others, this was not exceptional. The board noted that the larger dealers (particularly Aristocrat and IGT) had been active in seeking to buy those of the surplus machines which they had manufactured.

The SPB noted no difficulties with the schedule for the two trading rounds, or its relationship to the 1 July implementation of the entitlement scheme. The SPB's staff observed that some licensees were better organised than others, but that the number that were late in their paperwork was not exceptional.

### **3.7 Bytecrafft Systems Pty Ltd**

Bytecrafft Systems Pty Ltd was one of two companies appointed as gaming machine service agents in a public tender process completed in early 2003. (Under the Gaming Machines Act, the State Procurement Board holds the gaming machine service licence, but is required to act through appointed service agents.)

Bytecrafft became the sole service agent in South Australia when it purchased the business of other service agent (AWA) early in 2005.

If a gaming machine is to be connected to, disconnected from or re-connected to the physical infrastructure for the monitoring system, this can only be done by an approved agent of the service licensee. Accordingly, any re-arrangement of gaming machines, and the removal of excess gaming machines, requires the attendance of a Bytecrafft technician. This is the principal involvement that Bytecrafft has had with the arrangements surrounding the entitlement trading system.

With the commencement of the gaming machine entitlement system on 1 July 2005, it became necessary for approximately 2100 machines to be physically removed from the gaming areas of 261 venues. This was a task accomplished by Bytecrafft within a 5 week period following 1 July. The task required effective coordination between the Office of the Liquor and Gambling Commissioner, gaming machine dealers, approved custodians of gaming machines, gaming machine licensees and Bytecrafft.

While those 5 weeks following 1 July were particularly busy, Bytecrafft also experienced increased activity in the lead up to 1 July as some licensees re-arranged their gaming rooms so that removal of excess machines would not leave gaps in the banks of gaming machines. Bytecrafft had made the suggestion as part of its involvement in the planning process for the 1 July changes that, if venues were to arrange their machines in anticipation of the 1 July changes, the work required immediately post 1 July would be reduced.

Bytecrafft also observed that there would be further pressures for machine relocation within venues with the commencement of further smoking restrictions at the end of October 2005, as licensees arranged their premises to ensure that 50% of gaming machines were smoke free.

In terms of the planning and timelines for the 1 July process, Bytecrafft stated that it had been given enough notice to make appropriate arrangements. For instance, with the IGC indicating there should be no new installations for two days following the disabling of gaming machines, Bytecrafft was able to arrange its rosters so that this did not disrupt normal operations.

Bytecrafft had a team of 6 technicians doing installation and de-installation of gaming machines.

Bytecrafft has also been approved as a custodian of gaming machines. It sought this approval solely to be able to provide a full service to clients. As at October 2005, Bytecrafft was holding only 6 gaming machines in its capacity as a custodian. (Bytecrafft did, at the same time, hold approximately 100 machines in temporary

storage on behalf of licensees undertaking gaming room renovations). Bytecraft was charging an administration fee of \$27, plus \$6.60 per machine per week for storage.

Bytecraft was asked to comment whether the large number of older machines leaving service presented an opportunity to “harvest” spare parts. Bytecraft indicated that the principle maintenance issue with older gaming machines related to the cathode ray tube (CRT) monitors on which the spinning reels are displayed. This principally relates to the Aristocrat Mark IV gaming machine, which is no longer supported by the manufacturer.

Because this model is no longer supported by the manufacturer, there is no source of new replacement parts for which the necessary approvals have been granted. The only available source of those parts is existing stocks held by Bytecraft either in South Australia or other parts of Australia.

Bytecraft observed that the deterioration in CRTs or monitor assemblies is primarily a factor of age. Where licensees were relinquishing Mark IV machines, it was likely that the display would already be significantly degraded, and therefore of doubtful salvage value.

The other component which presents most difficulty with older gaming machines is the power supply; often these can be repaired.

Bytecraft’s position was that the retirement of 2100 gaming machines did not present a practical opportunity to harvest spare parts to extend the support which might be provided to the older gaming machines which remained in service.

Bytecraft observed that is it contractually committed to fixed pricing for most service functions. Those fixed prices were settled in the context of a particular number of gaming machines being in service. Bytecraft observed that there may be some reduction in its revenues as a result in the reduction in the numbers of gaming machines in service.

Bytecraft advised that gaming machines which had been in service, and therefore continuously operating, for a period of many years were often unlikely to restart once they had been powered down. It is possible that a number of the machines which are held by Bytecraft or the other custodian will not be able to be re-started if they are brought back out of storage.

### **3.8 MacMont (N.T.) Pty Ltd (SA Power Gaming)**

MacMont (N.T.) Pty Ltd conducts a hospitality supply business, which includes the supply of gaming machines and accessories (such as coin dispensers and scales), under a *dealer’s licence* granted by the Liquor and Gambling Commissioner under the Gaming Machines Act. It operates its gaming accessories business under the trading name SA Power Gaming.

In addition to holding a dealer’s licence, MacMont has been approved as a custodian of gaming machines for the purposes of regulation 12 of the Gaming Machines Regulations 2005, and has received the dispensations necessary to enable it to hold gaming machines on behalf of their owners.

In order to procure the Commissioner's approval, MacMont established a separate area within its warehouse facility for the storage of excess gaming machines, and established physical processes and documentary procedures to ensure the appropriate reception, recording and tracking of gaming machines held in storage.

This process involves the physical inspection of MacMont's premises by staff of the Liquor and Gambling Commissioner and the provision of official seals to MacMont to preserve the physical integrity of gaming machines in storage.

MacMont had, as at October 2005, 126 gaming machines in storage, on behalf of 35 licensees, for the purposes of regulation 12. MacMont charges those licensees \$3 per machine per week, in addition to a \$2 fee each time a machine is handled.

Each movement of a gaming machine (whether from a venue into storage, or from storage to a venue, or for another disposition) requires the approval of the Commissioner.

On reception of a gaming machine into custody, the physical machine is shrink wrapped. This affords protection from dust, in a way which would also make any tampering with the machine evident. The machine is sealed with an official seal provided by the Commissioner's office, and physically located separately from gaming machines held by MacMont as part of its sale inventory. A separate database has been established to record the receipt into storage of gaming machines and their removal.

MacMont has observed that the process of establishing the custody arrangements and facility was required to be undertaken in a relatively short period of time (essentially the fortnight preceding 1 July 2005) and that it was in this period that licensees made decisions about their options for the disposal of excess gaming machines—whether to sell the machines through the State Procurement Board to a dealer, or to place them in custodial storage.

MacMont had factored into its planning the prospect that up to 500 machines might need to be stored. As things turned out, there was significantly less demand for storage. In addition to storing excess gaming machines on behalf of licensees, MacMont had also purchased approximately 150 machines from licensees as part of the gaming machine reduction process, with an indicative range of prices from \$3 000 for a potentially in demand resaleable machine to peppercorn prices for machines which would ultimately be sold for scrap.

As a dealer in second hand machines, MacMont will refurbish a machine likely to be in demand. For machines with no local resale value, MacMont undertakes a physical decommissioning process, which involves the controlled removal (and return to the Commissioner) of the machines' identification plates, following which the machine is either disposed of outside South Australia or to a scrap metal dealer.

From time to time, the service agent (Bytecraft) will inquire of MacMont whether it has any surplus machines pending scrapping, and whether there might be particular parts salvageable from those machines. While MacMont is happy to accommodate such requests on an *ad hoc* basis, it is not part of MacMont's business to systematically salvage components from the gaming machines it holds.

MacMont's view is that, if gaming machine manufacturer withdraws support for a particular model or range, it is not appropriate for measures to be put in place to extend the life of those machines beyond the existing stocks of original components held by the service agent.

### **3.9 Other stakeholders**

Responses were received from licensees of 13 hotel and club venues (some of which were under common ownership).

The key themes were that the system was well administered and relatively easy to follow.

One selling licensee noted the time taken after the first trading round for the making of payment.

The opportunity was taken by a number of hotel respondents to reiterate the position of the Australian Hotels Association (SA) that the reduction in the numbers of gaming machines was not considered to be an effective way of addressing problem gambling. Reference was made to "confiscation without compensation", and the fact that machine numbers were not reduced in clubs or in the Adelaide Casino.

The opportunity was also taken by some hotels to suggest that one fee of \$165 should cover applications to purchase gaming machine entitlements in both the first and subsequent trading rounds.

## **4. ISSUES**

### **4.1 Administration of the trading rounds**

Responsibility for administration of the trading rounds was principally with the Office of the Liquor and Gambling Commissioner. It was clear that significant thought and planning had gone into both what would be required for trading, and also for the disabling of the excess gaming machines on 1 July 2005.

On all accounts the process was conducted effectively, and no stakeholder raised any concern that the rounds or the removal process could have been conducted more efficiently.

This experience demonstrates that the Office of the Liquor and Gambling Commissioner has the capacity to execute difficult and complex tasks effectively and within tight time frames.

Likewise, Independent Gaming Corporation Limited, in its role as monitoring licensee, undertook what was required of it both professionally and without incident. The same may be said for the roles played by the State Procurement Board, Bytecraft Systems Pty Ltd (both as service agent and as custodian) and MacMont (NT) Pty Ltd (the second custodian).

The brevity of these observations should not be taken as diminishing the intensity of effort or professional competence shown by these participants. The comments are brief because these matters went essentially as well as could be expected.

It also appears that most (but unfortunately not all) gaming machine licensees also performed roles satisfactorily. It must, however, be regarded as a disappointment that significant difficulty arose from the lack of genuine engagement by a small number.

The Authority is aware that the gaming machine numbers legislation attracted significant attention over the extended period of Parliamentary debate in the second half of 2004 and that there was intense industry involvement in the process in the Parliamentary stages of the legislation. Accordingly, it is improbable that any gaming machine licensee was unaware of the changes.

Particularly noting the unequivocal detail in the information provided by the Liquor and Gambling Commissioner, it should not have been the case that any licensee was not ready to nominate the gaming machines which were to be disabled on 1 July 2005 or that any licensee was not ready to make payment when payment was due.

Concerning licensees who did not make payment when it was due, it was other industry participants who suffered, because of the delays in payments to sellers caused by the non-attendance to either their financial arrangements or the detail of payment requirements.

The Authority notes the option of the Commissioner requiring security for payment of moneys. The obvious form of security would be an indemnity from an authorised deposit taking institution (bank guarantee). However, more than one stakeholder observed in the course of the consultation that the level of banks' charges would make it onerous and very expensive to provide security.

Another observation made in the course of consultation related to the possibility that the trading system could be automated to avoid what was a tedious manual process. While this may be the case, the Authority notes that the trading system is a complex one which will be activated on a small number of occasions each year. It is understandable that no commitment has been made to the development of a computer system to manage this process.

#### **4.2 Application fees**

The AHA, on behalf of the hotel industry, expressed a view that it should not be necessary to pay an application fee of \$165 for each trading round.

(It should be noted that application fees were only payable in respect of people wishing to purchase entitlements, and that the only licensees seeking to purchase entitlements were hotels.)

The Authority understands that the application fee is intended to meet the cost, and only the cost, of processing the application. The Authority assumes that most of these costs will be incurred each time there is a trading round. Accordingly, the Authority does not see it as being inappropriate or unfair that those wishing to participate in a trading round contribute to the cost of the round on each occasion.

The regulations provide for the application fee to be fixed by the Liquor and Gambling Commissioner. As the application fees are required to be set by reference to cost recovery principles, the Authority would encourage the Commissioner to review the fee from time to time to ensure that the total amount of application fees received does indeed recover no more than the cost of the total process.

The Authority notes that the most likely cause of publicans having to participate in multiple trading rounds will be the demand for entitlements greatly exceeding supply. The extent of trading is discussed below. However, if the factors likely giving rise to the imbalance between supply and demand (such as the fixed price, uncertainty over capital gains tax) are resolved, the issue of payment of multiple application fees is also likely to be resolved.

#### **4.3 Special club licence issues**

Clubs SA observed that the special club licence had not been granted at the time of the first trading round and that a number of clubs, which might have made arrangements to place their entitlements with Club One if it had then been licensed, had chosen to sell them into the trading round.

The Authority has, separately to the process of this inquiry, become aware that the special club licence has now been granted.

It was not within the scope of this inquiry to consider the process by which the special club licence was granted or how effectively the proponents of the Club One model had gone about their business.

Non-profit (club) venues sold proportionately more entitlements into the trading system than did hotels, and hotels were the only acquirers. If Club One, once active, acquires control over significant numbers of gaming machine entitlements held by not for profit licensees, this may increase the extent to which demand for entitlements exceeds supply.

#### **4.4 Extent to which trading occurred**

The first two trading rounds indicated a clear imbalance between the number of entitlements licensees wished to purchase and the number of entitlements offered for sale.

While it was not considered within the scope of this inquiry to exhaustively canvass the reasons for this imbalance, one logical conclusion is that the fixed price of \$50 000 for the acquisition of an entitlement (providing an effective sale price of \$37 500) did not provide a sufficiently attractive return to encourage many licensees to relinquish. Indeed, it may have been the case that if the special club licence had been granted at the time of the first trading round, there would have been even fewer entitlements available to the market.

It is worth noting that the Australian Hotels Association posited another factor which could have affected the availability of entitlements, namely uncertainty as to the capital gains tax treatment of the proceeds of trading within the first 12 months after the statutory provision recognising the existence of the entitlements commenced.

Another suggestion which arose in consultations was that licensees were deferring a sale decision on the basis that the Government might increase the fixed price. If this were the case, those licensees' views were misconceived. As the price was fixed in the principal legislation, it would require agreement of both Houses of Parliament to amend the fixed price.

It is unusual for Parliament to revisit major initiatives within a period as short as 12 months. In addition, at the time the gaming machines legislation was being debated, the next State election had already been fixed (by law) for 18 March 2006. It was never likely that a change to the fixed price would occur within the first 12 months following the establishment of the trading scheme.

A further view was that some licensees were adopting a "wait and see" attitude. If this is the case, those licensees were still "waiting to see" during the second round.

While recognising the validity of observations about capital gains tax and industry uncertainty, the size of the difference between the numbers of entitlements sought and offered is most likely to be explained by the level of the fixed price.

Because of the structure of the trading system, it is important that there be a particular level of trading if there are to be further meaningful reductions in gaming machine numbers. If in trading rounds conducted after 1 February 2006 (the first anniversary of the notional creation of the entitlements), there is not a narrowing of the imbalance between potential purchasers and willing sellers, it may be that Parliament should reconsider the fixed price scheme—either moving to a market based price or, at the very least, changing the level at which, or means by which, the price is fixed.

#### **4.5 Extension of the ballot**

The Australian Hotels Association raised an issue that it would have preferred the ballot for the first round to have continued until all licensees had been drawn, thereby enabling the "luck" to be fixed for future trading rounds.

The Authority has examined the regulations concerned, and is satisfied that, whatever its merits, the suggestion would not be consistent with the regulations as presently framed.

The Authority can see that if, as a result of the draw conducted in one trading round, licensees gain a very good understanding of their prospects of obtaining entitlements in a subsequent trading round this will lead to a significant diminution in unnecessary activity and effort.

This is a matter which could be addressed by changes to the regulations. Such changes may be worth considering if there is evidence to suggest that there will be a long term structural imbalance between the numbers of entitlements licensees wish to purchase and the number of entitlements licensees are wishing to relinquish.

#### **4.6 Removal of machines**

The process for the physical removal of excess gaming machines appears to have been an effective one. In assessing the time taken, it is important to be aware of the

statutory requirements for connections to and disconnections from the licensed monitoring system to be undertaken by an employee of the service licensee's agent and for the attendance of an inspector. These of necessity limited the number of venues which could be physically addressed in any given period.

A preliminary analysis of the machines removed from service indicates that, while some of the machines removed from service were those offering games apparently less profitable for licensees, there was substantial representation of machines with games known to be popular. The composition of the machines removed will be the subject of further analysis when the Authority undertakes the inquiry referred to in section 89(1)(b) of the Gaming Machines Act—the general inquiry into the effects of the gaming machines legislation.

#### **4.7 Custodian arrangements**

With respect to custodian arrangements generally, the Authority was satisfied that the arrangements were more than adequate to protect the integrity of the equipment under custody.

The Australian Hotels Association indicated that it believed the regulatory arrangements for custody of excess gaming machines were unnecessarily restrictive.

A particular concern was expressed that, had the requirements been less restrictive, there could have been cost benefits for licensees in being able to use excess gaming machines as sources of replacement components for existing ageing gaming machines.

While the suggestion that excess gaming machines could be used in this way is intuitively attractive, the Authority did not find any evidence of a genuine opportunity lost. In consultations with both custodians, one of which is also the only authorised service agent, they unequivocally indicated that the excess gaming machines were not a practical source of suitable replacement components. They noted particularly the age and condition of the machines which came out of service on 1 July 2005.

Further, there is a significant legal impediment. Section 45(d) of the Gaming Machines Act makes it an offence for a person to *install, service or repair* a gaming machine without being licensed to do so. Only the State Procurement Board, acting through Bytecraft Systems Pty Ltd, is so licensed or able to be so licensed. Accordingly, the AHA's suggestion would not have been a matter of the Government making different regulations; it would have required the Parliament to change the principal legislation.

This issue gives rise to another concern, unrelated to the impact upon the industry of the reduction in gaming machine numbers. That concern is that there are now many gaming machines in operation in South Australia which are not only becoming old and unreliable, but are also no longer supported by their manufacturers. This is a potential integrity concern.

## 5. CONCLUSIONS

The Authority found that—

- ◆ the trading process, and related machine removal process, was well planned and co-ordinated by the Commissioner's staff;
- ◆ machines were disabled as required, although a small number of licensees failed to fully follow procedure;
- ◆ all of the major participants (regulator, monitoring licensee, service agent, etc) undertook and completed their tasks on time and to specifications;
- ◆ the level of trading was lower than it might have been—the legislated fixed price is the most likely inhibitor, but there are other credible factors (tax implications of disposals within the first 12 months, general industry uncertainty) which could have inhibited activity;
- ◆ this level of trading (and its underlying cause) is the reason why further significant progress has not been made towards the 3 000 machine reduction intended by the gaming machine numbers legislation;
- ◆ if it is expected that the number of entitlements sought will continue to be significantly greater than the number offered in future trading rounds, and if this is not to be addressed by other measures, consideration might be given to establishing an on-going priority list;
- ◆ the arrangements for custodianship of excess gaming machines were appropriate and did not give rise to any lost opportunities.

The Authority recommends that—

- ◆ the application fee be reviewed from time to time by the Liquor and Gambling Commissioner;
  - ◆ the fixed price per entitlement be the subject of a review after the first trading round following 1 February 2006.
-

**APPENDIX A**

**Statistics**

**Offers to sell and requests to purchase**

*(Source: Liquor and Gambling Commissioner Bulletins)*

Licensee classification	First round				Second round				Aggregate Sold
	Sell		Buy		Sell		Buy		
Non-profit venues	(9)	62	(0)	0	(7)	49	(0)	0	111
For profit venues	(12)	107	(186)	1346	(3)	26	(149)	976	133
All venues	(21)	169	(186)	1346	(10)	75	(149)	976	244

1. Figures in parentheses ( ) are numbers of venues; figures without brackets are numbers of gaming machine entitlements.
2. Aggregate sold only is given, as on each occasion the requests to purchase could not be satisfied and therefore the bids cannot be aggregated.

**Entitlements available for purchase by licensees**

*(Source: Liquor and Gambling Commissioner Bulletins)*

	First round	Second round	Aggregate
Offered for sale	169	75	244
Allocated for Club One	15	12	27
Cancelled	27	7	34
Sold to licensees	127	56	183

**First trading round—priority system allocations**

*(Source: Liquor and Gambling Commissioner Bulletin)*

No. allocated	Priority 1		Priority 2		Overall	
4	(0)	0	(0)	0	(2)	8
3	(2)	6	(0)	0	(7)	21
2	(10)	20	(0)	0	(7)	14
1	(8)	8	(93)	93	(84)	12
Total	(20)	34	(93)	93	(100)	127

1. Figures in parentheses ( ) are numbers of venues; figures without brackets are numbers of gaming machine entitlements.
2. The Priority 1 and Priority 2 columns cannot (and therefore do not) add across to the Overall column on a row-by-row basis.

**Second trading round—priority system allocations**

*The number of entitlements available (56) did not exceed the number of Priority 1—unsuccessful prior round bidders (149) in this round*

## APPENDIX B

### Extract of Gaming Machines Regulations

#### 14—Approved trading system (section 27B)

- (1) The Commissioner may, from time to time, by public notice—
  - (a) fix a date for trading in gaming machine entitlements; and
  - (b) invite offers to buy or sell gaming machine entitlements from persons entitled to do so; and
  - (c) fix a closing date for the submission of the offers.

- (2) A person holding gaming machine entitlements, who wishes to sell 1 or more of those entitlements, may submit an offer, in a form approved by the Commissioner, nominating the number of gaming machine entitlements offered for sale.

Club One, however, may only submit an offer to sell gaming machine entitlements if the Minister for Recreation, Sport and Racing approves.

- (3) An offer to sell gaming machine entitlements must be accompanied by evidence to the Commissioner's satisfaction of the vendor's right to sell the gaming machine entitlements.

#### **Example—**

The Commissioner may require the vendor to provide a statutory declaration stating whether the consent of a lessor or mortgagee is required under a lease or mortgage relating to the licensed premises, and, if so, a copy of the consent.

- (4) An offer to sell gaming machine entitlements cannot be withdrawn but the Commissioner has a discretion to reject such an offer if the vendor is subject to disciplinary proceedings or there is some other good reason to do so.

- (5) A person who is eligible to purchase gaming machine entitlements may submit a written offer to purchase gaming machine entitlements specifying the number of entitlements subject to the offer.

The offer must be in a form approved by the Commissioner and accompanied by a fee determined by the Commissioner.

- (6) The Commissioner may require a person who makes an offer to purchase gaming machine entitlements 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.

- (7) If, when offers for a particular trading day close, the number of gaming machine entitlements sought by eligible purchasers equals or exceeds 75% of the number of gaming machine entitlements offered for sale, the Commissioner will proceed as follows:

- (a) a trading pool consisting of 75% of the entitlements offered for sale will be established;
- (b) if the number of the pooled entitlements is exactly equal to the number of the gaming machine entitlements sought under offers to purchase from eligible purchasers, the offers to purchase will be satisfied in full;

- (c) if the pooled entitlements are insufficient to satisfy all offers to purchase—the offers to purchase will be satisfied in the following order of priority:

- (i) first—offers to purchase from licensees—

- (A) who made offers to purchase which were accepted into the trading system for the last preceding trading day; and

## Appendix B: Extract of Gaming Machines Regulations—continued

- (B) who failed, in a ballot between offers entitled to be accorded the same order of priority, to acquire an entitlement,  
are to be satisfied to the extent of 1 entitlement each;
- (ii) secondly—offers to purchase from licensees who have suffered or stand to suffer a reduction of more than 20% in gaming machine numbers as a result of the relevant legislation are to be satisfied to the extent necessary to ensure that the reduction does not exceed 20%;
- (iii) thirdly—offers to purchase from licensees who have suffered or stand to suffer any reduction of gaming machine numbers as a result of the relevant legislation are to be satisfied to the extent necessary to recoup their loss in the number of gaming machines they are authorised to operate;
- (iv) fourthly—offers that are not entitled to priority under the above provisions and offers that exceed the level up to which they have priority under the above provisions,  
and in allocating between offers of a particular category, separate allocations of 1 gaming machine entitlement to each offer will be made until an offer is satisfied in full, its order of priority is reduced, or the pool is exhausted and if, on the last of those allocations, insufficient gaming machine entitlements remain to allocate 1 gaming machine entitlement to each unsatisfied offer of the relevant category, the offers to which they will be allocated will be determined by ballot;
- (d) the gaming machine entitlements withheld from the pool will be dealt with as follows:
- (i) a proportion equivalent to the proportion that the number offered for sale by non-profit associations bears to the total number offered for sale will be transferred to Club One;  
and
- (ii) those not transferred to Club One will be cancelled.
- (8) The order of priority established under subregulation (7)(c) operates only for the first 2 years after the commencement of this regulation or for a period ending at the conclusion of the third trading day (whichever is the longer period) and thereafter all offers will be treated equally as belonging to a single category.
- (9) If, when offers for a particular trading day close, 75% of the gaming machine entitlements offered for sale are more than sufficient to satisfy the offers to purchase, the Commissioner will proceed as follows:
- (a) the Commissioner will exclude from the sale sufficient gaming machine entitlements to bring 75% of the number offered for sale into equality with the number sought under offers to purchase;
- (b) the Commissioner will then proceed to deal with the remaining entitlements in accordance with subregulation (7).
- (10) The gaming machine entitlements to be excluded from sale are to be taken from the gaming machine entitlements offered for sale in the following order of priority:
- (a) first—the Commissioner is to have recourse to any gaming machine entitlements offered for sale by the Crown;
- (b) secondly—the Commissioner is to have recourse to the gaming machine entitlements offered for sale by licensees seeking to reduce the number of their gaming machine entitlements but not to dispose of all of them (and if, in order to make the necessary reduction, the Commissioner needs to have recourse to some, but not all, the gaming machine entitlements offered for sale by such licensees, the Commissioner will allocate the burden of the reduction by making separate reductions of 1 gaming machine entitlement for each offer until an offer is exhausted and thus drops out of the allocation or the necessary reduction is achieved and, if on the last of those

Appendix B: Extract of Gaming Machines Regulations—continued

allocations the number of offers exceeds the number required to achieve the necessary reduction, the reduction will be allocated among the offers on a basis determined by ballot);

- (c) thirdly—the Commissioner is to have recourse to gaming machine entitlements offered for sale by vendors seeking to dispose of all of their gaming machine entitlements by excluding offers from the sale in their entirety (ie all entitlements comprised in the excluded offers) on a random basis determined by ballot until the necessary reduction is achieved.
- (11) The Commissioner must give a prospective vendor affected by the exclusion of gaming machine entitlements from sale under this regulation notice of how the offer has been amended or, if the offer has been excluded in its entirety, of that fact.
- (12) An eligible purchaser must, within 14 days after the relevant trading day, pay to the Commissioner a purchase price calculated by multiplying \$50 000 by the number of gaming machine entitlements purchased and, in addition, any GST applicable to the sale.
- (13) If an eligible purchaser defaults in compliance with subregulation (12), the Commissioner may, at his or her discretion—
- (a) recover the amount in default as a debt due to the Crown; or
  - (b) cancel the sale to the person in default and sell the relevant entitlement or entitlements to any other person who made, or was eligible to make, an offer to purchase the entitlement or entitlements.
- (14) On receipt of the proceeds of sale, the Commissioner will—
- (a) fix a date (not more than 42 days after the trading day) for vesting of the gaming machine entitlements in the purchasers; and
  - (b) divide the proceeds of sale between the vendors in proportion to the number of gaming machine entitlements accepted for sale from each of them.
- (15) When the Commissioner is satisfied that the statutory objective has been achieved, the Commissioner will publish a notice to that effect in the Gazette and this regulation will expire.
- (16) For this regulation—
- (a) a reference to a person who is **eligible to purchase** gaming machine entitlements is a reference to—
    - (i) 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
    - (ii) Club One;
  - (b) a reference to the **statutory objective** is a reference to the objective of reducing the number of gaming machines that may be lawfully operated in the State to a number not exceeding 12 086 (ie 3 000 less than the number approved by the Commissioner for operation in the State immediately before the commencement of the relevant legislation);
  - (c) a reference to **the relevant legislation** is a reference to Division 3A of Part 3 of the Act inserted by the *Gaming Machines (Miscellaneous) Amendment Act 2004*;

Appendix B: Extract of Gaming Machines Regulations—continued

- (d) a percentage or proportion of a number is to be rounded up or down to the nearest whole number and, if the percentage or proportion is exactly 50% or one-half, it is to be ignored.

**Note—**

It is intended that, when this regulation expires, a new trading system will be implemented involving no forfeiture of entitlements except from non-profit associations whose forfeited entitlements will be transferred to Club One as under the above regulation. However, other licensees who will not be subject to the forfeiture requirements will be required to pay a commission of one-third of the sale price.

## APPENDIX C

### Lists of participants and contributors

#### *Government agencies*

Department of Treasury and Finance  
(Mr David Reynolds)

Office of the Liquor and Gambling Commissioner  
(Mr Darryl Hassam, Ms Kylie Harder and Mr Phil Harrison)

#### *Statutory licensees*

Independent Gaming Corporation Limited—gaming machine monitoring licence  
(Mr Harry Bourlotos)

State Procurement Board—gaming supplier’s licence, gaming machine service licence)  
(Messrs Sam Minervini and Roy Worthington)

#### *Industry bodies*

Australian Hotels Association (SA)  
(Messrs Ian Horne, Michael Jeffries and Wally Woelherth)

Clubs SA  
(Mr Michael Keenan)

#### *Non-government industry support parties*

Bytecraft Systems Pty Ltd (approved service agent and approved custodian)  
(Messrs Andy Robson and Tony Williams)

MacMont (N.T.) Pty Ltd (approved custodian)  
(Mr John Schneebeckler)

#### *Gaming machine licensees*

Brahma Lodge Hotel—Lasseters Hotels  
(SA)

Bremen Hotel—Lasseters Hotels (SA)

Castle Tavern, Hindmarsh—Central  
Properties Pty Ltd

The Clubhouse—The Tanunda Club  
Incorporated

Edwardstown Bowling Club Inc

Glenelg Jetty Hotel—Glenelg Jetty Hotel  
group

Hampstead Hotel—Faheys’ Hotels

The Lakes Resort Hotel—Faheys’ Hotels

Maid of Auckland Hotel, Edwardstown—  
Hurley Hotels

Millicent and District Community Club  
Inc

Paradise Hotel—Faheys’ Hotels

Prince of Wales Hotel, Queenstown—  
Glenelg Jetty Hotel group

Ramada Plaza Hotel, Glenelg—Glenelg  
Jetty Hotel group

Royal Exchange Hotel, Kadina

Royal Hotel, Kent Town—Glenelg Jetty  
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Strathmore Hotel, Adelaide

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