



# **GAMING MACHINES POST 2012 Discussion Paper**

## ***RESPONSE PAPER***

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## GLOSSARY

CMS	central monitoring system
EGM	electronic gaming machine
GRA	Gambling Regulation Act
Incumbent club	Clubs that currently have EGMs
LGA	local government area
LLV	Liquor Licensing Victoria
NFP	not for profit
NGR	net gaming revenue
Non-incumbent clubs	Clubs that currently do not have EGMs
R&D	research and development
VOL	venue operator licence
VCAT	Victorian civil and administrative tribunal
VCGR	Victorian commission for gambling regulation



## EXECUTIVE SUMMARY

ClubsVIC welcomed the announcement of the new post 2012 regime for the distribution and operation of EGMs in Victoria.

The new system offers many opportunities to the NFP community club sector. However, it also presents many challenges that will require careful management if the government is to avoid disenfranchisement of grassroots clubs, exploitation of the NFP club sector and dislocation, and is to meet its commitment to responsible gaming.

### *The minimum entitlement for pre-commitment proposal*

ClubsVIC submits that the next period (ie 2012 to 2022) should be treated as a transition period to competition, and not the start of a fully competitive regime. ClubsVIC recommends adoption of the **minimum entitlement for pre-commitment proposal** as the immediate solution to many of the challenges presented by the government's announcement. This proposal involves the setting aside of a number club entitlements for pre-auction distribution to incumbent clubs in a manner that is fair and transparent and addresses the identified challenges. The balance of the club entitlements available for auction should be sufficient to meet the estimated demand amongst bona fide club bidders.

### **Criteria for registration to bid for club entitlements**

In ClubsVIC's submission clubs should be required to meet pre-requisites in order to register to bid:

- i. VCGR approval of premises
- ii. Full club liquor licence
- iii. Proof of local/community bona fides
- iv. Proof of financial viability
- v. Subscription to a corporate governance program
- vi. Compliance with limits on concentration of control of club entitlements
- vii. Transparency of the identity of bidders and financial backers

Clubs should receive limited exemption from collusion prohibitions.

The bidding period should be extended.

### **Local council standing to object to premises approval**

It is submitted that local councils should not have standing to thwart the redistribution of entitlements by way of objecting to premises approval. Councils should not be permitted to object to approval of premises on the basis of numbers of EGMs, if the number of EGMs in the relevant area does not exceed the relevant cap.



## Communicating with clubs

ClubsVIC recommends that a general media campaign is the most appropriate means to facilitate participation by clubs, which campaign directs interested persons to a repository of information and training materials. ClubsVIC is happy to act as a conduit for information and training amongst the club sector, but will require financial assistance to discharge the responsibility.

## Transitioning to the new system

In order to make an informed decision regarding participation post 2012 clubs will need to be informed in a myriad of areas, including:

- i. Tax structure
- ii. Bundling and local council involvement in premises approval
- iii. Implementation and effect of pending harm minimisation measures
- iv. Funding of entitlements and EGM purchases
- v. Mutuality and tenure of entitlements
- vi. Cost and nature of monitoring
- vii. Assignability and mobility of entitlements
- viii. Financial modeling

ClubsVIC contends that face to face training with support materials is the most, and maybe only, effective training tool for small business.

ClubsVIC is happy to act as a conduit for the transmission of this information and provision of training with appropriate financial assistance.

## Transfers of entitlements

ClubsVIC contends that in order to properly structure a scheme to transfer club entitlements it is necessary to categorise the entitlements and then to set rules for the transfer of each category of entitlements.

ClubsVIC proposes that entitlements that have been purchased at auction and utilised should be freely traded between transferor clubs and approved transferee clubs. Entitlements that have been allocated pursuant to the **minimum entitlement for pre-commitment proposal** should also be able to be freely traded after 2015.

A system similar to the Queensland model should be established for the transfer of :

- i. Entitlements that have never been utilised
- ii. Entitlements that were allocated pursuant to the **minimum entitlement for pre-commitment proposal** and are sought to be transferred prior to 2015
- iii. Entitlements that are “handed-back” or confiscated from “delicensed” entitlement holders



The government should buy back these entitlements for the amount paid less one tenth of the amount for each expired year or part thereof since 2012.

ClubsVIC does not recommend a moratorium on transfers.

ClubsVIC proposes that in order to establish a workable transfer scheme it is necessary to determine definitively:

- i. the respective rights of landlords of approved premises and tenant entitlement holders,
- ii. the standing of local councils to object to premises approval
- iii. the mobility of entitlements across geographical areas

### **Monitoring arrangements**

ClubsVIC recommends the adoption of a SA-style NFP, industry-controlled, single monitor, and regulated monitoring fees set on a cost-recovery basis including R&D. The monitor should provide only compliance reporting and adopt an open protocol which would facilitate competition between service providers for other products.

Monitors should not be permitted to be operators in a different guise.

### **Other service providers**

It is inappropriate to regulate for the services that will be provided over the next 14 years, which will be a period of major technological change both in product and harm minimisation.

It is appropriate to regulate for maintenance of probity and quality standards amongst the providers of gaming services and products, without any limitation on numbers or nature of providers or range of products.

### **Contracts between venues and service providers**

ClubsVIC rejects the proposal for profit sharing as these arrangements potentially undermine the community and NFP nature of clubs with 2 possible exceptions – vis incentive for employees and pay-for use games, the latter exception being not strictly profit –sharing and being a precursor to the introduction of new technology.

Clubs need protection against opportunists exploiting the current uncertainties and the NFP nature of clubs for the commercial advantage of the service providers. This phenomenon has the potential to thwart the government's intention of ensuring full participation by NFP community clubs in gaming revenue at the expense of profits for commercial operators.



## INTRODUCTION

ClubsVIC welcomes the opportunity to respond to the Gambling Licences Review's Discussion Paper on Gaming Machines Post 2012.

ClubsVIC has consulted widely with its constituent clubs, and in presenting this response paper has attempted to fully address all the issues that are raised in the discussion paper and to provide responses that represent the views of the vast majority (almost unanimous) of ClubsVIC's constituent clubs.

ClubsVIC is committed to ensuring that Victoria continues to be served by a ubiquitous spread of viable, grassroots, community, NFP clubs, and that gaming is delivered in the most responsible manner. These goals underlie the comments in this response paper.

In some instances the different questions in the discussion paper involve the same phenomena, and it has been necessary in this response paper to expound on the same themes more than once from slightly different angles. However, we have made every effort to be succinct while remaining complete.

In this response paper we have addressed each issue from the perspective of the NFP club sector only.

Question 7 in the discussion paper invites a general response, and we have determined that prior to answering the directed questions, we will address the general question 7 first.



## QUESTION 7

### CLUBSVIC'S GENERAL COMMENTS ON THE TRANSITION ARRANGEMENTS FOR THE VENUE SYSTEM IN THE COMPETITIVE BIDDING PHASE

It is acknowledged that the government's objective is to provide a fair system whereby all those clubs which aspire to have EGMs have equal opportunity to bid for the chance to do so. Also, it is acknowledged that the government is sincere in its stated objective to provide for the NFP community sector by maintaining the 50:50 ratio between pub and club EGMs and by discouraging outcomes that would disadvantage true community, grass-roots clubs in favour of well-funded elite sports clubs, pseudo clubs, and hotels.

ClubsVIC is committed to working with the government to ensure that the introduction of the new system is as seamless as possible and that the government's objectives are met. To this end, we have identified a number of unfortunate, unintended consequences of the new system. We have also identified means by which these consequences can be avoided.

In answering question 7 we intend to set out the "challenges" and to suggest that the solution lies in the implementation of the ***minimum entitlement for pre-commitment proposal*** which proposal is explained in the answer to this question.

#### 7(a) THE CHALLENGES

##### 7(a) 1 Pseudo Clubs

The government's proposed model will encourage the establishment of pseudo clubs formed purely for the purposes of exploiting an opportunity for individuals to procure the financial benefits from club entitlements. There are many ways that this phenomenon may present itself – set out in the following paragraphs is one example of how it could be done.

The Carlton Wine Society Inc is formed today. It is a bona fide local community club. It consists of 20 friends who enjoy wine and who see the opportunity that the new system provides. While the club is controlled by the 20 friends, the committee signs binding agreements with a company controlled by the committee. The terms of the agreements provide that in the event of the club acquiring entitlements in the auction, the club will engage the company to provide management services and enter into a lease of the company's property for the period of the entitlements. The club applies for and gets a VOL.

The agreements bind any future committee. If the Carlton Wine Society Inc is a successful bidder, the company is the beneficiary of the revenue of the EGMs, at the expense of another true Carlton community club which may or may not currently have EGMs, and which was outbid for entitlements in the auction and lost its allocation of EGMs.



The requirement to have only a VOL and not approved premises will advantage management companies set up specifically to take advantage of the new regime (as in the case of the Carlton Wine Society) , current hotel operators and management companies which already hold VOLs, and are familiar with the phenomenon of managed clubs.

### **7(a) 2 Exploitation of Clubs**

Instead of a new club being formed, an opportunist may approach an existing club, eg the Carlton Tennis Club Inc and arrange for the Carlton Tennis Club Inc to acquire a VOL and enter into an agreement with company X to do all things necessary for Carlton Tennis Club Inc to bid for gaming machines. Company X is controlled by the opportunist. In return for the Carlton Tennis Club Inc receiving, say \$50,000 a year if it is a successful bidder, the club enters into an agreement with company X to provide management services and lease premises to the Carlton Tennis Club Inc at, say \$500,000 per year. All the Carlton Tennis Club committee had to do was fill in the forms to be eligible for \$50,000 a year.

Again, the agreements bind any future committee of the Carlton Tennis Club Inc, and the company (which may already hold a VOL) receives the vast majority of the revenue from the EGMs. Again, another true Carlton community club which was outbid for entitlements in the auction will lose its allocation in favour of the Carlton Tennis Club Inc and company X.

### **7(a) 3 Cannibalisation within the club sector**

A country town may currently have 2 viable clubs – a golf club with 50 EGMs which is more successful than the other bowls club with 30 EGMs. The 50 EGM club outbids the smaller club and successfully bids for all 80 entitlements.

The economies of scale are then applied, and where before there were 100 people employed across both clubs, now there will be 75 people employed, one baker where there was two, one fishmonger, one butcher. The bowlers are disadvantaged in favour of the golfers.

An even more undesirable outcome is that well-funded elite sports clubs, or well-managed pseudo-clubs buy up all the club entitlements in areas at the expense of local community clubs. In this event, the local grass-roots community from where the gaming revenue is raised is disadvantaged as the vast majority of the revenue is diverted away from the local sports club which was outbid in favour of a “foreign” elite club.<sup>1</sup>

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<sup>1</sup> The current phenomenon of requiring “foreign” clubs to contribute some of their revenue to local clubs goes only a very small way to address this situation. For instance, one club is required to donate \$140,000 to local sports clubs. The reality is that the community is contributing many times more than \$140,000 to a foreign well-funded elite sports club.



As well, it is highly likely that clubs will attempt to “take-out” the competition by buying up as many entitlements as possible. The buying club may not intend to utilise the entitlements, but simply render the competition uncompetitive by taking all or most of its entitlements. The club can then sell the entitlements (maybe after the moratorium) on the condition that they are utilised in some other area – leaving the club with a virtual monopoly in its area, and disadvantaging other community clubs.

**7(a) 4 Maintaining a club footprint in capped areas**

Clearly, it is likely that, without manipulation of the market, clubs will be totally outbid in more lucrative capped areas. The entire postcode allocation could conceivably be taken up by the hotels in the area, leaving no allocation for club entitlements in these areas. It is speculative at best to rely on clubs in other areas taking up the unmet club entitlements from these capped postcodes – at worst it is encouraging the activity described above.

**7(a) 5 Councils disallowing utilisation of entitlements**

In view of the anti-gaming machine policy adopted by most municipal councils, it is possible that local councils will thwart the utilisation of entitlements by successful bidders. If current regulations remain, new entrants will face long and expensive legal battles to have premises approved. Entitlements will remain unutilised while VCAT applications are determined. This will result in loss of revenue (for government and for the local clubs), unexpected costs for the clubs at the expense of the local purposes to which this money would otherwise be put, and it will also encourage an “aftermarket” in entitlements. As the legal process soaks up available finance, clubs will be forced to sell the entitlements rather than utilise them – a phenomenon that will encourage the opportunist behaviour explained above.

**7(a) 6 Valuing entitlements**

There is much uncertainty surrounding the auction process, including the cost of the entitlements, the tax structure, the process for funding the entitlements, the means of distributing machines amongst the “lesser” bidders etc. Although hotel owners are able to react quickly to changed circumstances and knowledge, this is not how clubs work. Club decisions are made by committees and members. The limits on the powers of committees restrict their ability to respond quickly, especially when the situation involves a long term financial commitment by the club.

Many clubs may need to get the approval of an annual general meeting in order to commit to entering into long term financial arrangements for the purchase of entitlements and EGMs. Changed circumstances, e.g. a higher price than anticipated for entitlements, or a lesser number, may require the club to go back to the members. There is a very real potential for inertia as volunteer committee people refuse to make on-the-spot decisions that may expose them to criticism at best and legal liability at worst.



True, community clubs are not made for independent, quick action. It is acknowledged that education in the bidding process will be available, however, that does not address the issue of valuing the entitlements and reacting to changed circumstances during the lead up to the auction and the actual auction.

#### 7(a) 7 Financial uncertainty between now and the auction, and post 2012

This issue is explored at length in the following sections. Suffice to say here that there are many more people affected adversely if clubs go under, than were affected by a downgrading of the operators' share price. Local people employed by the clubs, local businesses which supply the clubs, local sports teams supported by the clubs, local contractors that service the clubs, local financiers who finance the clubs – all these people are currently in jeopardy of disadvantage and disaffection by the uncertainty and will be adversely affected by a sudden dislocation.

The Ansett workers have probably now all recovered from the disruption of the airline's failure. However, it is expected that the government would want to avoid a similar violent dislocation, especially in the community not-for-profit sector, when a smooth transition is achievable.

#### 7(b) THE SOLUTIONS

In order to address the challenges that are presented by the proposed bidding process and new venue-based system it is necessary to acknowledge that the system will not be completely competitive. To a very large extent, gross limitations on competition are already a fact. The government has already accepted anti-competitive measures such as: limiting the number of entitlements to 27,500 and allocating 50% of them to the NFP club sector; introducing caps and restrictions on concentration of ownership; imposing harm minimisation measures; even requiring a VOL is strictly anti-competitive.

ClubsVIC contends that if the government's objective of allowing full participation by grassroots clubs is to be realised, then it must accept that the competitive bidding process will require manipulation.

In the sections that follow we have expounded on matters such as pre-requisites for registration to bid for club entitlements <sup>2</sup>. In this section we present the **minimum entitlement for pre-commitment proposal** as the most effective means to ensure participation by grassroots clubs, avoiding the challenges identified in 7(a) above and avoiding general dislocation.

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<sup>2</sup> In the answer to question 1(b) at p 17 ff



**7(b) 1 GUARANTEED MINIMUM ENTITLEMENTS FOR PRE-COMMITMENT EGMS IN EXISTING CLUBS – THE OVERALL SOLUTION**

In 2010 all new EGMs will be required to accommodate pre-commitment by the player. Details of the pre-commitment are yet to be finalised, and it is not known if the current stock of EGMs will be able to be retro-fitted with the necessary mechanisms to allow for pre-commitment as envisaged by the Premier in his announcement. We do know that neither current operator will replace existing EGMs between now and 2012. hence there will be no pre-commitment EGMs at the end of the current operators' licences<sup>3</sup>.

It is to be expected that clubs will be reluctant to proceed to the pre-commitment facility. Firstly, new EGMs will be expensive and any upgrade will incur the provision of pre-commitment. It does not bode well for the future to have a club sector with out-dated EGMs that do not meet harm minimisation standards.

ClubsVIC proposes that the government can address the reluctance of clubs to upgrade, and can address all the challenges of the transition to the new regime, by adopting the ***minimum entitlement for pre-commitment proposal***.

In essence the proposal is that a proportion of 13,750 club entitlements be set aside prior to the auction date – the sooner the better. The number that is set aside should be such that allows for the balance left in the auction pool to meet the anticipated unmet demand for club entitlements at the auction.

The number of entitlements that is set aside should be allocated fairly amongst the incumbent clubs (there are 269 club venues and 2 hybrids<sup>4</sup>). Each incumbent club should then be at liberty to purchase its pre-auction entitlements at a set price prior to the auction. If the allocation is more than the club's current quota of machines, then the club's pre-auction entitlements should be the current number.

If a club does not take up its pre-auction allocation, then those entitlements will be placed in the auction allocation.

Clubs will be at liberty to bid for more entitlements than their pre-auction allocation during the auction.

It should be a condition of taking up a pre-auction allocation that the club agrees to have the pre-auction allocation meet the pre-commitment requirements by 2015 – ie clubs must commit to up-grading at least the number of pre-auction EGMs within 3 years to accommodate pre-commitment.

The ***minimum entitlement for pre-commitment proposal*** meets the government's harm minimisation objectives and allows a smooth transition to the

<sup>3</sup> Tattersalls has indicated that it would consider a deal with venues whereby a pre-2012 update of EGMs is effected on the arrangement that the venue meet the cost for post 2012 utilisation

<sup>4</sup> These are hotels that have EGMs under the club quota. They are: Zagamies Ballarat Hotel and Fortunes at Bendigo



new competitive regime. It provides for a guaranteed club footprint in the capped areas, it provides some protection from opportunists and cannibalising clubs, it allows certainty between now and the auction process and it ensures that there is a sufficient pool of club entitlements to meet unmet demand.

The ***minimum entitlement for pre-commitment proposal*** received unanimous support at three separate ClubsVIC general meeting of clubs with EGMs attended by more than 360 club representatives and discussed broadly with other organisations of clubs. ClubsVIC members are very happy to meet the pre-commitment requirement in return for the minimum entitlements and would be very happy to take up the entitlements of any clubs that do not wish to participate in the pre-auction allocation.



## QUESTION 1

### 1.(a) **CLUBSVIC'S VIEWS ON HOW TO BEST FACILITATE COMPETITION IN THE BIDDING PROCESS IN PARTICULAR OPPORTUNITIES FOR CLUBS CURRENTLY OUTSIDE THE GAMING MACHINE INDUSTRY TO PARTICIPATE IN THE COMPETITIVE BIDDING PROCESS**

We assume that the question relates to how clubs that currently do not have EGMs learn about the opportunity to bid for EGMs; and how to equip these clubs with the knowledge of how to bid and how much to bid.

#### 1(a). 1 **Clubs are different**

The nature of clubs makes them a particular business unit that responds differently to the for-profit sector. Making meaningful contact with clubs is problematic for countless reasons. Instilling corporate knowledge within clubs is even more challenging.

Club boards are custodians of significant community assets, and charged with the very weighty responsibility of applying those assets to the best advantage of their current and future communities. Board members are elected for short terms, they are honorary and not full-time. Succession planning within club boards is almost non-existent and corporate memory within clubs is, on the whole, very short.

Club assets are owned jointly and NOT severally by club members who have no real proprietary interest. Club assets and revenue cannot be distributed to club members, but are available for use during the relevant period of the members' lives. For example, teenagers and parents of teenagers are very active in sports clubs. Even though they move on their input is vital to maintaining these fundamentally important social institutions for the next wave of teenagers and parents.

The transient, part-time, honorary and non-proprietary nature of participation in clubs and boards presents peculiar difficulties when devising campaigns to educate or involve the NFP grass-roots community club sector.

#### 1(a). 2 **ClubsVIC as a conduit to the clubs**

ClubsVIC is a repository of understanding of clubs and how clubs operate, especially in the licensed hospitality sector. We have more than nine decades of experience with delivering training and information to the club sector. We understand the importance of the sector, and to a large extent provide the corporate knowledge-base for this sector. ClubsVIC is happy to work with the department to devise the best methods to meet the government's objectives in regard to the delivery of training and information.



More than half ClubsVIC member-clubs do not have EGMs. ClubsVIC's database contains a list of all clubs with liquor licences, members and non-members. As well as assisting to develop any materials, ClubsVIC is happy to be a conduit for any education/information campaign to be delivered to member and non-member clubs with and without EGMs. ClubsVIC is not aligned to any particular provider.

However, the issue is how to reach those clubs that are not on the ClubsVIC database – ie those without a liquor licence or employees.

### **1(a) 1 General media campaign**

It is submitted that a general media campaign to alert club personnel of the opportunity to participate would be appropriate and preferable to approaching individual clubs. This campaign could take the form of media advertisements that advise clubs that there will be an opportunity to bid at an auction for EGM entitlements and set out the general criteria for bidding. If a club is interested the club should be directed to attend at information sessions or request written information material either hard copy or from a website. ClubsVIC is well placed and willing to conduct sessions and disseminate information and materials for clubs.

The training/information sessions will need to involve more than "how to bid". It should inform clubs of the processes required to become a VOL, to have premises approved, to properly assess the economics involved in applying for premises approval and conducting a gaming venue, compliance and harm minimisation issues. Both incumbent and non-incumbent clubs will need to be equipped with knowledge of a myriad of issues in order to adequately assess the value of entitlements and the viability of a club venue post 2012 - including the costs of purchasing EGMs, the emerging new technology, and how the RSG measures will impact on the financial viability of the club.<sup>5</sup>

Preparing and delivering the required materials and information will be a considerable task and will require significant funding allocations.

### **1(a) 2. Approaches to individual clubs**

The issue for the department is that there is no global registry of clubs that is a data base of all clubs and which would facilitate an individual approach to the clubs. Clubs are ubiquitous, disparate, and often amorphous and temporary in nature. Clearly not all clubs are suitable bidders for club entitlements. In the event that all clubs are individually contacted, the unintended consequence is that the letter from the government is easily misconstrued as a guarantee of success in a bidding process. This would result in an unmanageably large number of non-starters taking interest and using up resources. It is submitted that if the process is to be manageable, then any individual approach to clubs needs to use a data base that allows a targeted market to be approached. Also the approach to the clubs needs to clearly set out the criteria for bidding.

<sup>5</sup> See discussion below in question 2 at p 23 ff



### 1(a) , 3      **What club data bases exist?**

**ClubsVIC database** contains information about most clubs that have liquor licences. ClubsVIC is primarily an employer group, hence the vast majority of our members and past-members are large enough to employ staff. There is a category of membership that provides for non-employer clubs to be members, and the details of those smaller clubs are also on our database.

The current ClubsVIC database contains details of 896 clubs – about 50% of which employ staff.

**The register of Victorian liquor licences** contains a data base of clubs that hold a liquor licence. The register contains clubs that have a full club licence, and those that have restricted or limited licences.

**The register of incorporated associations** is a data base of incorporated organisations. However, not all clubs are incorporated and the information in the register cannot be relied upon to be current. Further, incorporated associations include a diverse array of organisations from public hospitals to card groups. Use of this data base for direct mailing of information would be an untargeted “shot gun approach”.

Most sporting clubs, whether incorporated or not, are affiliated with the **peak sporting bodies**, and usually the peak sporting bodies have current data on the clubs that are affiliated with the particular body.

Social or special interest clubs that are unincorporated do not have a central data base.

If individual approaches are considered appropriate in addition to the general media campaign discussed below, ClubsVIC submits that the most appropriate data base is its own or the register of Victorian liquor licences<sup>6</sup>.

### 1(a) 4      **Pre-auction entitlement for incumbents – the *minimum entitlements for pre-commitment proposal***

ClubsVIC submits that the ***minimum entitlement for pre-commitment proposal*** facilitates participation by non-incumbent clubs.

ClubsVIC recommends that research be conducted to establish the level of unmet demand in the club sector and that an allocation be set aside out of the 13,750 club entitlements to satisfy that demand.

ClubsVIC has conducted cursory investigations amongst its members – both with and without EGMs, and concluded that there is little demand amongst non-

<sup>6</sup> See discussion about liquor licence as a pre-requisite at p 18



incumbent clubs. Only 4 non-incumbent member clubs indicated that they would be interested in participating in the bidding process, and 2 incumbent clubs indicated that they will not be participating.

It is submitted that demand for club entitlements will be affected by the activity of opportunists who seek to corrupt the club sector and cannibalising clubs that seek to gain an unduly high percentage of the club entitlements. The pre-auction allocation will protect against such distortions and allow for a fair distribution amongst bona fide clubs. It will also address many transitional issues.

**1.(b) CLUBS VIC'S VIEWS ON HOW TO BEST FACILITATE COMPETITION IN THE BIDDING PROCESS IN PARTICULAR ASPECTS OF ENSURING A FAIR, TRANSPARENT AND COMPETITIVE PROCESS**

In order to facilitate participation by the maximum number of grassroots clubs and a fair distribution of club entitlements amongst bona fide community clubs<sup>7</sup> it is submitted that bidders for club entitlements should be required to register prior to bidding and be required to establish their community-club bona fides. Properly developed criteria for participation in the bidding for club entitlements will assist to avoid the exploitation of the process by for-profit opportunists and deep-pocketed elite sports clubs and facilitate wide participation by grassroots clubs.

ClubsVIC submits that clubs should be required to register to bid for club entitlements and that the following criteria should be prerequisites for registration of a bidder for club entitlements:

**1(b) 1 Criteria for registration as a club eligible to participate in the bidding process**

**(i) VCGR approval of premises**

Apparently, it will be necessary to have a VOL in order to bid for gaming entitlements, but not necessary to have approved premises in order to bid nor to have a full club liquor licence at the time of bidding. The GRA does not require an applicant for a VOL to have approved premises. However, section 3.4.11(1) (c) requires the VCGR to consider the approved premises when considering a grant of a VOL in so far as the regional caps are affected by the grant of a VOL.

S3.4.11

(1) The Commission must not grant an application for a venue operator's licence unless satisfied that—

- (c) in respect of each premises approved under Part 3 that the applicant seeks to manage and operate under the licence, the regional limit or municipal limit will not be exceeded by the grant of the application; and

<sup>7</sup> See discussion in question 7 at pp 8 ff regarding how the club sector is vulnerable to exploitation by opportunists



Hence it is arguable that an application for a VOL is not able to be considered unless the applicant provides information about the approved premises. This would mean that in order to be granted a VOL the applicant at least must identify the approved premises.

ClubsVIC considers that it should be necessary to have tenure over VCGR-approved premises in order to register to bid for club entitlements. Further, it should also be necessary to have approval for the premises to house a certain number of EGMs, which number is to be the maximum number for which the club may bid for use at those premises.

If clubs are required to have approved premises for specific numbers of EGMs many of the challenges contingent on the bidding process will be addressed.

Aspiring clubs will be required to submit to the processes of applying for premises approval and will be better informed of the imposts of establishing a gaming venue prior to bidding. This will discourage unrealistically ambitious bidders who are unaware of the effort and cost of obtaining premises approval. It will discourage the establishment of an aftermarket for unutilised entitlements bought by clubs which cannot obtain premises approval due to lack of funds or hostile councils etc.

There may be a requirement to better resource the VCGR in order to ensure timely processing of applications. It will also be necessary to allow for premises approval to be provided on the condition that the approval is to operate post 2012, and that the number of EGMs in the area does not exceed the cap or 10 per 1000 adults (whichever applies). Further, councils should not be at liberty to object to the approval of premises if the number of EGMs in the area does not exceed the cap or 10 per 1000 adults<sup>8</sup>.

**(ii) Full club liquor licence**

ClubsVIC does not resile from the proposition that bidders for club entitlements should be required to have tenure over VCGR approved premises. However, in the event that this is considered inappropriate, then ClubsVIC contends that it should be a criterion for registration to bid for club entitlements that bidders have a full club liquor licence.

This criterion will go some way to avoiding speculative and opportunist bidding in the club sector. It is less likely (although still to be expected) that a club will bid speculatively for entitlements if it is necessary to have tenure over premises that have a liquor licence. It is still possible for the local publican to encourage a club to bid for club entitlements on the basis that the general licence (ie pub licence) will be converted to a club licence if the club succeeds in acquiring club entitlements thus facilitating the scenario described in 7(a) above.

<sup>8</sup> See discussion at section 2(a)2 p24 ff



This phenomenon could be averted by requiring the club to have tenure at the time of bidding, and not allow conditional tenure arrangements.

Many sporting clubs have club premises that are already licensed by LLV, as do many ethnic and social clubs that provide hospitality facilities. It is submitted that bidders for club entitlements should bid for EGMs to be placed in the premises already occupied by the bidding clubs.

This pre-requisite may require some clubs to get their current premises licensed by LLV prior to the bidding. This is a desirable consequence, as it will require the club to properly assess the adequacy of its current accommodation, and avoid speculative bidders who later discover that their premises are not appropriate to accommodate EGMs.

### **(iii) Proof of local/community bona fides**

Registrants to bid for club entitlements should be required to prove that they are local clubs or be an incumbent. This should require more than a token payment to local community organisations, which allows for the vast majority of the gaming revenue to be diverted to “foreign” causes. There should be a real relationship between the bidding club and the local community.

ClubsVIC considers that it is appropriate to require that registrants prove that the club was in existence in the area prior to the announcement on 10 April 2008. This will discourage opportunist behaviour and encourage true grassroots clubs to compete for club entitlements.

### **(iv) Financial viability**

Registrants who bid for club entitlements should be required to produce documentation that evidences a realistic assessment of the financial viability of the club’s prospects to operate EGMs.

Bidders for **club** entitlements will not be bidding for their personal future wealth, but to increase/maintain the value of a community asset. The current committees are the custodians of public assets. The risk they take in bidding impacts on the community, not on their own financial situation. By winning a bid, the successful club denies another community organisation the right to the revenue of those EGMs. Hence, clubs should be required to attest that they have considered the financial viability of the operation.

It is to be expected that many “hopefuls” will bid without any real understanding of the cost of establishing an approved gaming venue. The complexities of dealing with local council, LLV and VCGR requirements, residents’ objections, conditional tenure, IT and communication necessities etc involved in setting up a gaming venue are countless. Further, the complexity of compliance with gaming regulation is expensive and difficult. Bidders for club entitlements should be required to provide evidence of their ability to meet these criteria.



This criterion should require clubs to provide information about their financial backers and also any management contracts that are proposed. In this way any inappropriate arrangements that allow for manipulation of the club sector will be made transparent.

**(v) Corporate Governance**

Operating EGMs is a privilege, and clubs that are afforded that privilege should be required to attest to their understanding of and commitment to proper corporate governance and the gaming regulations. Bidders for club entitlements should be required to subscribe to a recognised corporate governance regime which includes education of all committee people in the principles of good corporate governance, regulatory compliance and their duty to the community that they serve.

**(vi) Limiting concentration of control of club entitlements**

It has long been a concern within the club sector that the tendency towards concentration of control of club EGMs will mimic the experience in the hotel sector. In order to facilitate true competition and participation by the broadest spread of grass-roots clubs, ClubsVIC submits that one organisation or management group should not be entitled to control more than 300 club entitlements and no more than 4 approved club premises, and that this criterion should be enforced through the bidding process and resultant distribution of entitlements.

The concentration of control over club entitlements can occur either by direct ownership or via management agreements in a number of ways.

Deep-pocketed, incumbent, elite sports clubs could out-bid grassroots, community clubs. It is foreseeable that the wealthy clubs could successfully bid for **all** club entitlements in, for example, the metropolitan areas, or at least for the vast majority.

Another means by which ownership of club entitlements can be amassed is by the creation of a new club ("association") controlled by a commercial operator that has a relationship with current club-venue licensees.<sup>9</sup> It is highly feasible that this association could enter into contractual arrangements with the clubs whereby the clubs agree not to bid for entitlements and the organisation bids and pays for all the relevant entitlements with funding provided by a financial backer<sup>10</sup>. The new association owns the entitlements and then places its EGMs at the premises of the clubs under a contract that is reminiscent of the current contract between

<sup>9</sup> Clearly Tabcorp could position itself in this way through its relationship with the new CCAV.

<sup>10</sup> Eg a current operator



the clubs and the operators<sup>11</sup>. This would simply recreate the operator model under the guise of the new association.

A company (either a current operator or someone else) can enter into management contracts with the venue operators to provide all the services that are currently provided by the operators, ie purchasing EGMs, monitoring<sup>12</sup>, marketing and also venue management and financing of entitlement costs.

With the current uncertainty about continued tenure of EGMs, and the cost of participating in the sector post 2012, and also the threat of ill-treatment by the operators in the lead-time to 2012, these arrangements are very appealing to some clubs. It is especially appealing because Victorian club managers are not experienced in operating their own EGMs; and many club managers misunderstand and fear the change. Opportunities to exploit these uncertainties abound.

ClubsVIC submits that it is not desirable to facilitate a “back-door” reintroduction of an operator system, or the concentration of control of club entitlements. Further, the activity described in this section would retard competition and restrict participation by grassroots, incumbent and non-incumbent clubs. ClubsVIC highly recommends that the government place restrictions on the numbers of club entitlements that one organisation can own or control. This restriction needs to be applied prior to concentration becoming a reality in the NFP sector. Prevention is better than cure. It is preferable to limit numbers at the bidding stage, rather than require divestment later.

In NSW clubs are currently limited to 4 licensed venues, although an increase in this number to 10 is imminent, and club managers are restricted to managing only one club venue at a time.

**(vii) The identity of the bidders and financial backers**

It is assumed that the government’s intention is to provide continued revenue for grassroots clubs and not simply to extract the maximum return to the government for club entitlements. Hence it is assumed that the government will want to be aware of, and to discourage, any arrangements that have the effect of diverting the funds from the NFP club sector to the for-profit sector by way of management or financing arrangements.

Consequently it should be a prerequisite for bidding for club entitlements that bidders disclose information regarding financial backers, management agreements etc. This information is currently required by VCGR when seeking premises approval and a VOL. It should be within the power of the VCGR to deny

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<sup>11</sup> The venues are already approved premises – in this scenario the association places EGMs at the approved premises under bailment or rental of space and pays the club a percentage of NGR or rent.

<sup>12</sup> Depending on the new model. ClubsVIC’s submission on monitoring is in Question 4 p 33 ff



registration to potential bidders for club entitlements that are simply a “front” for for-profit operators.

**1(b) 2 Exemption from collusion**

In order to provide a fair and competitive process, ClubsVIC and clubs will need to work together if they are to collate and disseminate the information required to prepare for, and to bid at, the auction. It is imperative that clubs are not subject to the usual prohibition on collusion during this first transitional period towards the new system.

ClubsVIC submits that all clubs should be exempt from any potential liability under the Trades Practices Act and the Collusive Practices Act for the 2010 auction in order to ensure that the auction can be fair and transparent. ClubsVIC is happy to work with the government to establish guidelines for determining how much and what work can be done collectively by ClubsVIC on behalf of the clubs.

**1(b) 3 Bidding period**

Clubs are concerned that the bidding period will be too short. One day does not allow for the nature of club decision making. Neither does it allow for a computer hitch, a sickness or accident on the day, or the myriad of things that can go wrong.

ClubsVIC submits that the bidding period should be longer – perhaps a week, and that there be a secondary bidding process in the event that not all club entitlements are distributed in the first round.



## QUESTION 2

### 2(a) CLUBSVIC'S COMMENTS ON PREPARING FOR THE BIDDING PROCESS AND TRANSITIONING TO THE NEW VENUE OPERATOR STRUCTURE, IN PARTICULAR THE INFORMATION REQUIRED BY VENUES TO ASSIST THEM IN MAKING AN INFORMED DECISION WHETHER TO PARTICIPATE IN THE VENUE OPERATOR MODEL AND THE BIDDING PROCESS.

In order to make an informed decision on whether to bid, clubs will obviously need to have all the information required to calculate what returns can be expected from the operation of the EGMs at the venue. It will be impossible to provide clubs with all the information that will be required to make a proper assessment of what club entitlements will be worth, and whether or not the club would benefit by providing gaming post 2012. There are simply too many variables that cannot be evaluated in the current climate. It has to be accepted that clubs will be required to make a leap of faith on many of these issues in about 18 months time – ie the auction in early 2010.

Consequently, at least for the NFP club sector, ClubsVIC strongly recommends that the government treat the next licence period (ie 2012 to 2022) as the transition period towards a competitive environment in 2022, rather than seeing 2008 to 2012 as the transition period. After the first entitlement period many of the variables will be worked out. The ***minimum entitlement for pre-commitment proposal*** allows for 2012-2022 to be a transition period.

The ***minimum entitlement for pre-commitment proposal*** provides for incumbents to purchase the pre-auction entitlements at a set fee that will return to the government an overall revenue from the sale of those entitlements that is broadly similar to the anticipated value of them under the current operators licences, had those licences been renewed<sup>13</sup>. If clubs are aware that they can purchase a certain number of entitlements at a certain price, they will be better able to determine whether or not it is viable for them to continue to provide gaming post 2012. Trade through the first entitlement period will inform future club bidders and the government of the viability of the investment and the return for the community sector going forward post 2022.

As we have said, the factors involved in making an informed decision are many and varied, and to some extent currently unknown. However, listed below are some significant variables that will need clarification prior to the auction.

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<sup>13</sup> This can be done in a number of ways, and ClubsVIC is happy to consult with the panel to arrive at an acceptable pre-auction price for club entitlements.



## 2(a) 1 Tax structure

Clubs will need to know what the gaming tax regime will be. It is accepted that the structure will be progressive. It will be necessary to know well in advance of bidding what the rates will be, how they will be imposed – eg on the previous year's revenue or in arrears on current revenue. ClubsVIC recommends that the government consider a payment regime similar to that which operates for payroll tax. This would require clubs to return monthly in arrears on actual income with an annual reconciliation.

Clubs will also need to know how the tax structure will affect traded entitlements eg will there be a tax benefit in purchasing an under performing entitlement?

It is also imperative that there be a guarantee that the tax structure will be stable for the full entitlement period. Clubs need certainty if they are to make a proper assessment of the investment. It will be expected that the government will use legislative and contractual mechanisms such as the *Casino Management Agreement Act* to provide some protection against the devaluation of entitlements by future changes to the tax structure.

## 2(a) 2 Bundling and local council involvement in premises approval

Clubs will need to know how the entitlements will be bundled well in advance of any decision to participate in the bidding process, and whether clubs will bid for entitlements for their particular geographical area or on some other basis.

ClubsVIC contends the process of approving premises needs to be changed so that local governments have no power to object or hinder the approval of premises if the total number of EGMs to be distributed in the relevant area or LGA does not exceed the cap or the 10@1,000 adults, whichever is relevant. The bidding process should be designed in such a way as to preclude any distribution beyond relevant limits. The social and economic impact studies required should not be concerned with numbers of EGMs if the numbers are within the set limits. The social and economic impact studies should be limited to matters such as amenity of the immediate vicinity (ie shopping centre etc), appropriateness of the venue itself (ie standard of accommodation), and economic impact of a new venue without reference to numbers of EGMs.

This restriction on the influence of the local council and the operation of the social and economic impact studies should be applied whether or not tenure of approved premises is a pre-requisite for bidding as is recommended by ClubsVIC.

Current experience is that premises approval takes at least 12 months when there are not objections, and in the event that a council objects, approval could take in excess of 3 years<sup>14</sup>. In the event that premises approval is a pre-requisite

<sup>14</sup> For example, the Club Ringwood application for approved premises took approx 3 years – from application, not including securing lease of the premises.



for bidding, new entrants will be excluded if present conditions for obtaining premises approval are not changed, because they won't get approval in time. In the event that premises approval is not a pre-requisite, and the process for premises approval remains the same, new entrants will have unutilised entitlements for long periods of time while they seek approval of their premises. Given that the entitlements will be for a 10 year period only, delays in premises approval could result in more than 30% non-utilisation period. This will result in club-entitlement holders not achieving the required return on investment and maybe becoming insolvent, especially if entitlement fees are payable upon purchase or in 2012. Further, the government will not receive the tax on the unutilised entitlements.

## **2(a) 3 Harm minimisation measures**

There will need to be financial modeling on the effects of the harm minimisation measures announced but not yet introduced eg prohibition on ATMs, facilitation of pre-commitment, and the affect and costs of regulated codes and self-exclusion programs. This information is needed if clubs are to make a considered decision about participation in the post 2012 gaming regime.

Further, clubs will need to be assured that there will be no future measures that will impact on the revenue that they can expect from the entitlements. It will be expected that the government will use legislative and contractual mechanisms such as the *Casino Management Agreement Act 1993* to provide some protection against the devaluation of entitlements by future regulatory provisions.

## **2(a) 4 Funding of entitlements and EGMs**

Clubs need to know when and how entitlement fees are payable. Will entitlement fees be able to be paid off over the 10 year period, and if so will interest be charged? In the event that entitlement fees are payable over time, will a transfer of the entitlements crystallise that debt? Will entitlement fees be paid immediately upon purchase in 2010 or in 2012 or upon utilisation of the entitlements?

Further, clubs will need to be aware of any limitations on their ability to fund the purchase of entitlements from borrowings, and whether or not there will be restrictions on EGM suppliers funding the purchase of EGMs as is the case in other states<sup>15</sup>.

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<sup>15</sup> In NSW EGM manufacturers are prohibited from financing the purchase of EGMs, and bank style financing arrangements require authority approval.



**2(a) 5 Cost of doing business, mutuality and the nature of the entitlements**

Clubs will need information on the cost of purchasing and maintaining EGMs, and of the new monitoring arrangements. In particular clubs will need to be aware of the cost impost for the pre-commitment requirements.

The income tax position will need to be clarified for clubs that return on a mutual basis. In particular the nature of any jackpots and any inter-venue marketing arrangements will need to be clarified for the purposes of income tax and assessing net revenue.<sup>16</sup>

Further, in order to make an informed decision, clubs will need to know the nature of their tenure of the entitlements, and whether the rights to conduct a gaming venue rest with the landlord of the approved premises or the entitlement-holder tenant.

Clubs will need to know if rents will be based on the fact that the premises are approved, or will ownership of entitlements be a tenant's privilege that will not affect the land.

Will entitlements be fully transferable without reference to the landlord, so that clubs that are not returning anticipated revenue can easily assign the entitlements and not be required to vacate the premises at the instigation of the freeholder if they attempt to transfer the entitlements<sup>17</sup>? Will there be protection against landlords attempting to tie entitlements to the freehold?

**2(a) 6 Cost & nature of monitoring**

Details regarding the new arrangements for monitoring will need to be factored into any calculation of entitlement price and whether or not to participate in the post 2012 regime.<sup>18</sup>

**2(a) 7 Assignability and mobility of entitlements**

To fully assess the value of entitlements, clubs will need to know if entitlements can be assigned across LGAs, whether it is anticipated that they will be assigned for market value or a set fee, or whether it is anticipated that the assignment process will be used as a mechanism to decrease the numbers of EGMs as is the case in NSW and SA<sup>19</sup>.

ClubsVIC strongly opposes any reduction in numbers of EGMs in the club sector.

<sup>16</sup> See the discussion of mutual income in *North Ryde RSL Community Club Limited v Federal Commissioner of Taxation* [2002] FCA 313 (25 March 2002)

<sup>17</sup> Currently the VOL is a personal right. Usual provisions in existing leases provide that the tenant cannot remove the EGMs from the premises or do anything to alter the premises approval

<sup>18</sup> ClubsVIC submission on monitoring is set out below in answer to questions 4

<sup>19</sup> ClubsVIC submission on transfer rights is set out below in answer to questions 3



**2(a) 8 Financial modeling**

Clubs will require assistance with the general financial modeling required to make this type of long-term investment. Non-incumbent clubs, in particular, will not be practised in making these decisions, and not aware of the factors which need to be considered, including costs of getting approvals, time delays in starting operations, the cost of regulatory compliance etc.

**2(b) WHAT SKILLS/TRAINING WILL CLUBS REQUIRE TO ASSIST THEM TO TRANSITION TO AND OPERATE IN THE VENUE OPERATOR MODEL**

Club managers and board members will need financial analysis skills to assess whether to participate post 2012. They will need all the normal business skills that a modern professional manager of a licensed hospitality facility requires, including exposure to and training in the processes of purchasing, maintaining, and marketing EGMs.

The overwhelming sentiment in the NFP sector towards the new system is fear. This is due to inexperience in purchasing, maintaining and marketing EGMs and the multitude of other unknowns This sentiment is not discouraged by persons/organisations seeking to capitalise on the uncertainties and fear.<sup>20</sup> To counteract the impact of those seeking to exploit the current uncertainties, club personnel need to be educated in the way that venue-based systems work in other states, and the opportunities that such systems present.

As well, club board members will require some corporate governance training as the clubs will now be responsible for making long-term financial decisions about EGMs, marketing, monitoring etc, all of which are made currently by the gaming operators. Also club boards will be directly responsible for more of the turnover revenue and will need to understand their duties in relation to the larger sums of money and higher accountabilities.

**2(c) WHAT ARE THE MOST EFFECTIVE TOOLS FOR COMMUTATION OF THE TRAINING.**

Face to face training is the most (perhaps only) effective training for small business. On-line, hardcopy manuals etc are effective follow-ups after the information has been delivered face to face, but these tools are rarely effective without any face to face delivery in the small business space.

At the very least, clubs will need a help-desk style operation to reinforce or clarify the training that has been delivered either in person or via written materials.

Interactive worksheets that allow club personnel to work through scenarios to calculate probabilities and likely outcomes/costs may be effective tools to assist clubs.

<sup>20</sup> See discussion at 5(c) on p 39 about this type of behaviour



## QUESTION 3

### 3(a) CLUBSVIC'S VIEWS ON THE MECHANICS OF A TRANSFER SCHEME, IN PARTICULAR THE RELATIVE BENEFITS OF THE TRANSFER APPROACHES USED IN OTHER STATES OR OTHER ALTERNATIVE OPTIONS

ClubsVIC contends that in order to properly structure a scheme to transfer club entitlements it is necessary to categorise the entitlements and then to set rules for the transfer of each category of entitlements. In our proposal there would be 5 categories of club entitlements for transfer purposes:

1. Entitlements for which the club bid successfully at auction and which entitlements have been utilised by the club
2. Entitlements for which the club bid successfully at auction and which entitlements have NOT been utilised by the club
3. Entitlements that were taken up by the club in a pre-auction allocation pursuant to the ***minimum entitlements for pre-commitment proposal*** and are being transferred prior to 2015 (ie prior to the date for facilitation of pre-commitment); and
4. Entitlements that were taken up by the club in a pre-auction allocation pursuant to the ***minimum entitlements for pre-commitment proposal*** and are being transferred after 2015 (ie after the date for facilitation of pre-commitment)
5. Entitlements that are relinquished by entitlement holders who wish to relinquish them or who are deemed unsuitable to continue to conduct gaming and have their entitlements withdrawn by the VCGR

Of course, transfer of club entitlements would require the transferees to be approved by the VCGR, and in our submission have tenure over approved premises in which to utilise the entitlements. It is our submission that any transferee of club entitlements should require VCGR approval prior to transfer and be required to meet all the criteria set out in 1(b) at page 17 ff above in order to be approved as a transferee.

#### 3(a) 1. **Transfer of entitlements for which clubs have bid at auction and which entitlements have been utilised.**

Clubs should not be limited in their right to transfer entitlements for which the club has successfully bid at auction and which entitlements have been utilised after 2012.

This is a different scenario to a club that buys entitlements at auction and never utilises those entitlements, either because the club was unable to acquire tenure over approved premises, or because the club was merely speculating and never intended to utilise the entitlements to operate EGMs.



Unlike clubs in other states, these Victorian clubs will have paid market price for their entitlements<sup>21</sup>. In most cases the purchase price will need to be financed either by instalments to the government or by way of bank finance. Hence it will be necessary to offer some type of security over the entitlements and to provide for the sale of the entitlements in the event that the club is unable to sustain the necessary return from the entitlements to meet their borrowings. It is contrary to a competitive system of distribution to place unreasonable limits on the right of the clubs to assign and receive full value for entitlements which the clubs have purchased at market value with proper intent to utilise. Clubs should be at liberty to make a business decision regarding the returns that the entitlements are producing as to whether or not to sell.

In the event that the EGMs at the venue are not returning sufficient surplus the club should be at liberty to transfer the entitlements directly to transferee club/s for a market price which is paid in full to the transferor club. There should be no "government commission" on these entitlements nor a requirement to wait for an authorised sale as is the case in Queensland. Transfers should not be a mechanism to reduce numbers of EGMs as is the case in NSW and SA. Transferees should require the approval of the VCGR regarding probity and status of purchaser<sup>22</sup>, premises approval, and harm minimisation considerations.

The operation of caps will restrict the free transfer of entitlements. It is submitted that it should be incumbent on an applicant for approval as a transferee of entitlements that the applicant identifies the proposed premises in which the entitlements will operate<sup>23</sup>. The application for approval of the premises should be considered by the VCGR concurrently with the application for the VOL in respect of a new entitlement holder. On the basis that the transfer does not offend against the relevant area caps, the local council should not have standing to oppose a transfer other than on amenity or accommodation grounds that do not relate to numbers.<sup>24</sup>

**3(a) 2. Transfer of entitlements for which the club has bid at auction and which entitlements have never been utilised.**

It is submitted that there is a real potential for entitlements to be purchased in the auction and **never** utilised by the bidder, either because the bidder's intention was not to utilise the entitlement but to hold them as an appreciating asset, or because the bidder is unable to get tenure of premises that are approved.<sup>25</sup> In either case, the bidding club is speculating - either that the entitlements will increase in value, or that the club will be able to secure tenure over approved

<sup>21</sup> In the other states the original allocation of entitlements were free of charge, clubs & hotels now pay for increases in the original number.

<sup>22</sup> Transferees of club entitlements should be required to meet the criteria set out in 1(b) p17 ff

<sup>23</sup> Often the transferee will operate in the premises of the transferor which are already approved and no further approval is required. Or the transferee may be seeking an increase in the numbers at the transferee's approved premises which will require further approval.

<sup>24</sup> see discussion at section 7(a)5 at p 10 and 2(a)2 at p 24

<sup>25</sup> This is most likely in the event that tenure over approved premises is not a pre-requisite for bidding – see discussion in section 1(b)1(i) at p 17 ff



premises. In both cases the club will be denying other community organisations the opportunity to participate in gaming.

In the event that entitlements are not utilised post 2012, and the club wishes to relinquish the entitlements, ClubsVIC submits that the entitlement holder should be required to return the entitlements to a government regulated "pool" for sale by the government in an authorised sale similar to the Queensland model.

In our submission the government should repay the relinquishing club the amount paid by the club for the entitlements less one tenth of that amount for each expired year or part thereof since 2012. In other words, the relinquishing club receives the depreciated capital cost of the investment. The payment should be made to the club at the time of relinquishing, not on resale.

In this way the relinquishing club is compensated for unused time, the government can sell the depreciated entitlement<sup>26</sup>, pure speculation in entitlement price is discouraged, and clubs that are unaware of the risks involved in securing approval of premises are less likely to disenfranchise clubs that could be utilising the entitlements from 2012.

**3(a) 3 Transfer of entitlements taken up by the club in a pre-auction allocation pursuant to the *minimum entitlements for pre-commitment proposal* and which are transferred before 2015 (ie before the date for facilitation of pre-commitment)**

To avoid speculation in entitlements that are allocated pursuant to the *minimum entitlements for pre-commitment proposal*, clubs should be restricted in their right to transfer these entitlements prior to 2015. Prior to 2015, the scheme for transferring these entitlements should be the same as the scheme for transferring entitlements that have never been utilised, ie the scheme set out in 3(a)2 above.

**3(a) 4 Transfer of entitlements taken up by the club in a pre-auction allocation pursuant to the *minimum entitlements for pre-commitment proposal* and which are transferred after 2015 (ie after the date for facilitation of pre-commitment)**

ClubsVIC contends that after 2015 clubs should be at liberty to trade freely in entitlements that are allocated pursuant to the *minimum entitlements for pre-commitment proposal*. After 2015 the scheme for transferring these entitlements should be the same as the scheme for transferring entitlements that have been purchased at auction and which have been utilised, ie the scheme set out in 3(a)1 above.

<sup>26</sup> And get the benefit of any increased value



**3(a) 5 Transfer of entitlements that are relinquished by entitlement holders who wish to relinquish them or who are deemed unsuitable to continue to conduct gaming and have their entitlements withdrawn by the VCGR,**

There needs to be provision made for the event that a club entitlement holder is effectively “delicensed” by the VCGR because the club is insolvent or otherwise unsuitable, or the club simply wants to “hand-back” the entitlements. In these cases, the club’s entitlements are assets that are realisable in a wind-up or which should be applied to the club’s purposes.

Hence, it is our submission that in the event of a club being “delicensed” or handing-back, the entitlements should be relinquished into the pool in the same way as entitlements that have never been utilised, ie in accordance with the scheme set out in 3(a)2 above. The government repays the club the written down value and resells the entitlements in an authorised sale.

**3(b) CLUBSVIC’S VIEWS ON THE POSSIBILITY OF A NON-TRANSFER PERIOD FOLLOWING THE INITIAL ALLOCATION OF ENTITLEMENTS, INCLUDING ITS USE TO DISCOURAGE SPECULATIVE BIDDING.**

ClubsVIC contends that the potential for speculation in club entitlements is very high, even higher than the potential for speculation in hotel entitlements. If club entitlements are secured by organisations that do not, or cannot, utilise those entitlements, then other true community organisations are denied the opportunity to utilise the entitlements for their genuine community purposes and government is denied the gaming tax. ClubsVIC contends that the community will be grossly disadvantaged if organisations are allowed to hold unutilised club entitlements.

The result of speculation in club entitlements is the same whether the successful bidder is speculating on increased price for the entitlements, or speculating on getting approved premises - either naively or disingenuously. In both cases, other genuine clubs miss out and the government is denied gaming revenue during the non-utilisation period.

ClubsVIC submits that the best means to avoid speculation in entitlements is to adopt the process set out in 3(a) above and to require bidders and transferees for club entitlements to have tenure over approved premises prior to bidding or transfer. Further, requiring bidders and transferees for club entitlements to meet the criteria set out at section 1(b) at page 17 ff will also go a long way to discouraging exploitation of the club sector by speculators whose real interest is to trade in the entitlements.

In ClubsVIC’s opinion a non-transfer period will do little to discourage speculative bidding in club entitlements. While a moratorium on transferring club entitlements will affect the calculation by speculators of the value of the entitlements, it will do little to stop the speculation. Speculators will be required to take account of the “holding costs” when bidding for entitlements and when negotiating for the resale



price of entitlements, ie a moratorium may be counterproductive and *increase* the speculative price for entitlements.

### 3(c) OTHER CONDITIONS RELEVANT TO THE TRANSFER OF ENTITLEMENTS

Clearly, in order to provide a workable transfer system it will be necessary for the government to clarify the relationship between tenants with entitlements and landlords with approved premises. It will be necessary to establish the relative rights if, for example a tenant seeks to transfer entitlements and a landlord wishes to maintain premises approval for the full number of entitlements. Or, as is often the case for clubs, the land is owned by the local council, and the council seeks to reduce the number of EGMs for which the premises are approved to less than the entitlements held by the tenant club.

This is especially relevant given that caps will operate in all areas. It is necessary to know if regional caps are to be calculated on the number of entitlements (utilised or not) or the number of EGMs for which premises are approved.

In the event that a club transfers its entitlements, will the landlord be required to relinquish the premises approval for the number EGMs equivalent to the number of entitlements sold? If not how will the transferee operate those entitlements at the transferee's venue? Will the landlord be entitled to maintain its approval for the number of EGMs at the transferor's premises, at the same time as the new premises is approved for utilisation of the transferee's entitlements?.

While this issue may be resolved in time by contractual arrangements between landlords and tenants<sup>27</sup>, current lease arrangements will outlive the entitlement period (ie expire after 2022). Enduring contractual leasing arrangements do not contemplate the venue-based model. The effect of enduring contractual leasing arrangements may very well undermine any transfer system that the government implements. It is our submission that the government should consider legislative measures to ensure that any proposed transfer system is not frustrated by private leasing arrangements.

It is crucial that there be an early resolution of the conflict between the rights of the premises approval owners and entitlement holders. Will there be 13,750 club entitlements auctioned or will there be premises approved for 13,750 club EGMs?

Further, it is submitted that an applicant for approval as transferee of entitlements must identify the proposed premises in which the entitlements will operate. The application for approval of the premises should be considered by the VCGR concurrently with the application for the VOL in respect of a new entitlement holder. On the basis that the transfer does not offend against the relevant area caps, the local council should not have standing to oppose a transfer other than on amenity or accommodation grounds that do not relate to numbers.<sup>28</sup>

<sup>27</sup> And probably after much time and expense in legal action

<sup>28</sup> See discussion at section 7(a)5 at p 10 and 2(a)2 at p 24



## QUESTION 4

### 4(a) CLUBSVIC'S VIEWS ON THE OPERATION OF AN INDEPENDENT MONITORING FUNCTION, IN PARTICULAR THE RELEVANT BENEFITS OF THE DIFFERENT MONITORING APPROACHES OF NSW, QUEENSLAND AND SA.

ClubsVIC submits that the most appropriate monitoring arrangement is for one NFP monitor that operates on an open protocol and provides only the services required to comply with government reporting. Other approved products can then be available on a competitive basis from approved suppliers who utilise the monitor's facilities,

The Victorian CMSs conducted by the current operators are grossly out-dated and over-due for up-grading. Victoria will need a new, upgraded CMS by 2012.

It is submitted that the SA model is the most appropriate for application as the model for 2012 to 2022, ie an industry-controlled, NFP monitor that charges on a regulated, cost-recovery plus R&D basis. The second best alternative would be a government instrumentality as monitor. In the event that both these suggestions are rejected, and the monitoring function is licensed to commercial operator/s, then it is submitted that there should be at least 2 monitors that are not provided with a guaranteed proportion of the market. Further, ClubsVIC submits that it is inappropriate for a monitor to be a competitor of or supplier to venues. Hence it is submitted that monitor/s should be prohibited from owning or controlling venues or supplying games or EGMs.

Whether the monitor/s is NFP (which is preferred) government or commercial it is submitted that the monitor be limited to collection of compliance data required by government, and other approved services<sup>29</sup> should be freely available from an unlimited number of licensed providers.

In SA, the monitor is a not-for-profit organisation, controlled by the AHASA and ClubsSA. While that precise membership is not necessarily recommended, it is submitted that licensing an industry-controlled organisation to act as monitor will provide better outcomes than having a government monitor or a commercial monitor/s.

An industry-controlled monitor is more likely to be sensitive and responsive to industry needs than is a government instrumentality. It is more likely to be staffed with industry-focused personnel who will be best able to fulfill a leadership role and also to provide a service that is industry-friendly and non-discriminatory between venues.

Further, it is submitted that licensing a NFP organisation to act as monitor will provide better outcomes for the next licence period than licensing a for-profit commercial monitor. Given the 10 year time-frame, high monitoring fees will be

<sup>29</sup> Eg linked jackpots, downloadable games, pre-commitment facilities, marketing services etc



necessary if the required capital investment is to be justified by a commercial monitor, especially if harm minimisation measures require systems to be upgraded during the term. Removing the profit motive will avoid resistance from the monitor to innovation that does not result in a shareholder return. By removing the shareholder-return imperative, and regulating the price to allow for cost recovery and R&D, the government will achieve maximum flexibility to trial measures during the first phase of venue-based operations. (ie 2012 to 2022).

If, as ClubsVIC contends, the next period (2012 to 2022) is treated as a transition period, then licensing a NFP monitor will facilitate the gradual introduction of pre-commitment facilities, and also provide a trial period for how best to deliver to the market other products such as server based gaming, downloadable games, linked jackpots, integrated venue services etc.

Monopoly rents can be avoided by regulating the price to be paid by the venues for monitoring. Monitoring should be provided at cost-recovery plus R&D.

The capital, software and expertise required to provide an open-protocol monitoring service is widely available. A NFP monitor can avail itself of a technical partner or buy the expertise. The South Australian IGC Ltd was established from scratch using a combination of these, and has been hugely successful<sup>30</sup>. It is presently undergoing a complete upgrade to QCom protocols<sup>31</sup>, which upgrade will be completed in October 2008. ClubsVIC has investigated the requirements and logistics of establishing a SA-style open-protocol monitoring service for Victoria. It is manifestly achievable to set up a similar monitoring operation in Victoria with state-of-the-art technology in the time frame provided, and to facilitate the required change-over.

It is submitted that the monitor's licence for 2012 to 2022 should be awarded free of charge to a NFP organisation. In this way, the cost of monitoring can be kept to cost recovery and provided at a lesser cost to the venues. The government would then be able to recoup any opportunity-cost of the monitoring licence fee in increased entitlement fees as the lesser cost of monitoring will be factored into the price paid for entitlements.

#### **4(b) CLUBSVIC'S VIEWS ON THE RANGE OF SERVICES PROVIDED BY MONITORS.**

It is possible that the government could re-invent the operator system via the monitor/s, in a form that is even more controlling of clubs' destinies than the current operator system. While it is proposed to limit the NFP monitor to compliance-reporting services, the monitor/s could provide a myriad of other services and products, eg pre-commitment facilities, jackpots, ticket in ticket out, utilisation and preference reporting, and to go beyond the EGM operations into

<sup>30</sup> The President of ClubsSA is quoted as saying "the IGC is the one thing that the South Australians got right with gaming"

<sup>31</sup> ClubsVIC contends that Victorians should adopt an open protocol,



provision of integrated POS and stock systems, loyalty programs, membership databases, booking systems for sports & hospitality etc.<sup>32</sup>.

In our submission, the compulsory monitoring function should not provide for the reintroduction of the operator system. If our recommendation of an industry-controlled NFP open-protocol monitor is adopted, then the arrangements for the monitor can be flexible enough to allow for the services provided by the monitor to respond to industry and government needs and preferences from time to time.

Both the current operators are positioning themselves to be service providers post 2012. Clearly they see an opportunity to achieve by contractual arrangements or a monitor's licence the same advantages that they enjoyed via the operators' licences. Tabcorp has gone one step further by sponsoring an organisation that will be well placed to bid for club entitlements in 2010<sup>33</sup>, and to source all operator services from Tabcorp either on its own behalf or on behalf of its affiliated clubs. ClubsVIC is unaware of the contractual arrangements between this Tabcorp-sponsored organisation and Tabcorp, suffice to say there are obvious opportunities for Tabcorp to use this organisation to control club entitlements post 2012. ClubsVIC is aware that other approaches have been made regarding reintroduction of an operator-style system post 2012.

Obviously clubs are at liberty to refuse the offers from service providers, and clubs are also at liberty to enter into any deals for post 2012 that the clubs consider advantageous. However, present uncertainty of tenure of EGMs post 2012, the prospect of ill-treatment between now and 2012, the prospect of operator-funding for entitlements in 2010, lack of experience amongst Victorian club managers in buying and operating EGMs, non-proprietary interest of club managers and club boards – for all these reasons and more, clubs will be attracted to offers from the suppliers to provide operator-services post 2012.

In the event that the current operators become monitors, and monitors are licensed to provide any range of services, then it is even more likely that the post 2012 environment will simply reintroduce the operator system, and result in continuance of resistance to innovation and continued preferential treatment for better performing hotel venues compared to grassroots clubs.

While ClubsVIC contends that the monitor should be restricted to compliance reporting only, the range of services that this organisation provides can be dictated by the industry and regulated by the government on a trial-and-error basis. If it is considered appropriate for the monitor to provide jackpots, pre-commitment facilities, tracking systems, utilisation and preference reporting etc - then these could be achieved in consultation with the government and industry, and introduced in a non-discriminatory manner across all venues.

<sup>32</sup> It is NOT proposed that a NFP monitor would provide all or any of these services unless the industry required it.

<sup>33</sup> See discussion regarding CCAV at 1(b)1vi p 21 ff



By introducing one NFP monitor, it will be possible for the government to change the range of services that the monitor can deliver without accusations of post-dated change of licence conditions or share-price sabotage. For example, if in 2012 the monitor is charged with providing jackpot services and it transpires that jackpots are not appropriate services to be delivered by the monitor, this service could be easily removed from a NFP monitor which is not recouping licence fee or maintaining share-price. In the event that the monitoring licence is sold to a commercial provider, the government would not have the flexibility of altering the range of services covered by the licence.



## QUESTION 5

### 5 CLUBSVIC'S VIEWS ABOUT THE PREFERRED APPROACH TO THE ESTABLISHMENT OF SERVICES

#### (a) OTHER SERVICES THAT MAY BE REQUIRED

The gaming industry is entering into a whole new technological phase. The services and products that will be required/available in the next 14 year period (ie to 2022) may not even be contemplated now. ClubsVIC submits that it is impossible to regulate for the provision of these unknowns at this time, and to attempt to do so will be detrimental.

The operator model in Victoria has impeded the introduction of developments that have been implemented in other jurisdictions, both in harm minimisation and product delivery. It is submitted that regulating for a "streamlined approach" to the provision of all services will result in the reintroduction of an operator model by another name, and condemn the Victorian industry to moribundity and preferential treatment of certain venues over others (generally hotels over clubs).

Venues should be at liberty to choose the best, approved products and services as and when they become available from a multitude of licensed/approved providers.

ClubsVIC contends that the government should maintain the process whereby the VCGR approves games and machines, software and hardware enhancements<sup>34</sup>, the monitor and its systems, technicians, and associated individuals and employees. Except for the monitor<sup>35</sup> there should be no limit on the number of approved providers, the only criteria being probity of involved persons and suitability of product and services.

Business advisors who become associated individuals should require approval, but advisors who do not meet the criteria of associated individuals should not require approval.

In this way the market will decide where clubs source these services, and the industry is free to respond to any new developments. If the ClubsVIC proposal for a NFP monitor is accepted, then it will be possible for the monitor's offering to include a suite of services, and for that suite to be modified from time to time in response to industry demand and changing technical environments. This flexibility is lost if a limited number of commercial providers are licensed to provide "the full range of services", which range it is impossible to predict or to provide for in advance.

<sup>34</sup> Eg linked jackpots, loyalty programs, Ticket In Ticket Out, pre-commitment devices etc

<sup>35</sup> In ClubsVIC's submission there should be one NFP monitor



**5(b) ISSUES RELATING TO CONTRACTS BETWEEN SERVICE PROVIDERS AND VENUES INCLUDING PROFIT SHARING ARRANGEMENTS**

ClubsVIC is opposed to profit sharing arrangements with any service or product providers with the possible exception of providers of games and employee managers (ie not contract managers). It is contended that profit-sharing is an anathema to the concept of community clubs. It is an invitation to establish an operator system by another name, it opens the door to quasi clubs and exploitation of NFP clubs by for-profit landlords and commercial operators.

To allow for service providers to profit-share in the club sector is to undermine the NFP and community nature of the clubs. Clubs should be at liberty to operate their EGMs to meet the community purposes of the clubs, not the profit motives of quasi-operators (aka “full service providers”), landlords, business partners, monitors etc. The contractual terms of arrangements with “service providers” will inevitably require concentrated application of club resources and efforts to gaming facilities, without reference to the clubs’ purposes and the members’ preferences. The essential community nature of the clubs will be abandoned as the club transforms into a profit centre for the “profit-sharer”.<sup>36</sup>

Service and product suppliers should be allowed to charge a fee that includes a profit margin but not a share of the profit. The clubs are then in a position to assess the value of the service to their own operation.

Having said that, ClubsVIC contends that there are two exceptions to the rejection of profit-sharing, vis employee incentives and game providers.

Clubs should be in a position to provide performance incentives to employees, but NOT to contracted managers, and clubs should be allowed to enter into pay-for-use arrangements with game providers. In respect of the latter, this arrangement contemplates the introduction of downloadable and server based gaming, and will avoid the hindrance to these developments inherent in current arrangements for provision of games. Game providers should be able to charge fees based on the number of times that a particular game is played, but not the amount of money gambled on each game. Strictly speaking this is not a profit sharing arrangements.

It would be appropriate for the VCGR to approve any profit-sharing arrangements to ensure that they are appropriate from a probity aspect and that they do not undermine the community nature of clubs.

The current legislative sanction for participation by non-club entities in club gaming revenue is, in our submission, totally inappropriate. Clubs that share their gaming revenue with a commercial operator are penalised financially by having to pay 8% of their NGR into the community support fund. The commercial operator is not penalised at all, and continues to receive the full amount of its

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<sup>36</sup> To some extent this has happened under the operator system where clubs are seen as Tattersalls or Tabcorp outlets and not community clubs



contracted percentage of revenue or return. In most cases, the arrangements have been established by the commercial operator, and the club has naively accepted them. This legislative scheme effectively penalises the victim.

ClubsVIC submits that any new revenue sharing arrangements (eg the tax structure, or restrictions on profit-sharing) should address this anomaly.

### 5(c) OTHER COMMENT ON SERVICE PROVIDERS

ClubsVIC is aware that currently uncertainty abounds regarding long-term tenure of EGMs, affordability of entitlements, complexity of operating in a venue-based system etc. This uncertainty renders clubs vulnerable to exploitation by opportunist service providers. Clubs have been approached about entering into arrangements that could prematurely restrict their options post 2012.<sup>37</sup> The particular nature of clubs as custodians of community assets, as distinct from personal-profiteers, makes them vulnerable to exploitation by approaches by these service providers, especially those with whom the clubs have a long term relationship. Club personnel are open to approaches that provide a minimum return to the club and maximum return to the provider, because it is simple. Certainty provides comfort, especially as the serving club personnel probably will not be serving in 2010 or 2012, and entering into these deals may avoid ill-treatment between now and 2012. The future prosperity of the club is not always top-of-mind for volunteer committee people.

There is the added complication for those clubs whose contracts with the current operators expire before 2012. Presently, the operators are advising those clubs that the EGMs will be removed from their venues at the expiration of the contract<sup>38</sup>. Other clubs have been advised that they will lose the maximum number of EGMs that the operator is at liberty to remove in the intervening years<sup>39</sup>. The prospect of avoiding loss of all or some of the EGMs in the immediate future is high incentive to enter into contracts with current operators for provision of services post 2012. These contracts have the potential to advantage the commercial parties to the detriment of the club parties and the communities that are served by the clubs.

If the government is sincere about ensuring that a viable, grassroots club network continues post 2012, it is imperative that the government move quickly to address the current uncertainties. ClubsVIC contends that an early announcement regarding the **minimum entitlement for pre-commitment proposal** will go a long way to providing certainty and allow for incumbent club personnel to make good, long-term decisions. This will avoid premature knee-jerk

<sup>37</sup> Attached is a copy of "CCAV news #2/2008" where at paragraph 2 clubs are offered improved Tabcorp services and product in return for committing to the Tabcorp-sponsored CCAV. ClubsVIC is investigating possible breaches of the Trade Practice Act regarding this offer.

<sup>38</sup> The list of these clubs is available on request

<sup>39</sup> All clubs with Tattersalls EGMs have been advised that their "additional" EGMs will be removed in the next 12 months.



reactions that may jeopardise the clubs' ability to continue to provide community facilities in the future.



## QUESTION 6

### 6 CLUBSVIC'S COMMENTS ON THE TRANSITION PROCESS

It is ClubsVIC's contention that there are 3 periods of transition that will need to be managed. The first is between now and the auction in 2010, the second is the period between 2010 and 2012, and the third is the new licence period between 2012 and 2022 which, in our submission, should be treated as a transition period to a competitive market post 2022.

ClubsVIC has not had sufficient time to adequately investigate all the transition issues, nor to formulate the clubs' policy on solutions to the challenges that these issues pose. In an effort to be helpful, we have, in the sections that precede and follow, canvassed the issues of which we are aware, and where possible have suggested a solution. Much of the discussion that goes before is commentary on the transition process. It is ClubsVIC's strong recommendation that many of the transition issues can be addressed by the adoption of the ***minimum entitlement for pre-commitment proposal***.

#### The issues for the transition

##### Now to 2010

Clearly, the uncertainty regarding continued tenure of EGMs is a major concern for all clubs. The mere announcement of the new regime is sufficiently significant to put incumbent clubs' financial arrangements with the banks in jeopardy. Although it is unlikely to happen, banks would be at liberty to call in loans that outlive 2012 based on the announcement alone. It is more likely that these loans will become repayable if and when the club is unsuccessful in its bid, or the bidding process impacts adversely on the club's financial situation and/or results in lesser EGMs at the venue.

While it is acknowledged that there was no guaranteed tenure past 2012, clubs were forced to enter into long term financial arrangements if they were to continue to operate up to 2012. Smoking regulations required renovations; operators required expenditure in order to ensure renewal of contracts; long term financial arrangements and leases fell due and required renewal. Many clubs will be required to renew leases and financial arrangements between now and the auction.<sup>40</sup> It is simply ignoring the reality to dismiss the plight of clubs on the basis of "no guarantee post 2012". Even if that was an acceptable response, it still does not address the clubs' dilemma between now and 2010.

Some clubs are under threat of losing EGMs before 2012. Tattersalls has advised all venues that it will remove "additional" EGMs in the current year, and some clubs' contracts will expire pre-2012. Of course, these clubs will be at liberty to bid in 2010 to reinstate the number of EGMs in 2012. However, the

<sup>40</sup> ClubsVIC is currently assisting two clubs that are in this situation



clubs will be put to the cost and risk of getting premises approval (and doing a social and economic impact study) for the reinstated number. Their fear of the unknown is being exploited and clubs are being exhorted to prematurely enter into inappropriate arrangements in the hope of maintaining EGM tenure up to 2012.

The matter of removal of EGMs is currently under consideration by the VCGR in respect of the letters issued to clubs by Tattersalls. It is ClubsVIC's contention that the current legislation provides that in the event that the club does not consent to the altered conditions of the VOL, then the premises remain approved for the higher number of EGMs. Although the operators may remove EGMs under the contract, they cannot redeploy those EGMs until the club consents to the alteration of the conditions of the VOL relating to the number of EGMs at the approved premises.

The government needs to move immediately to provide certainty on this matter. ClubsVIC contends that the clubs' premises approval for the number of EGMs that existed at the date of the announcement (ie 10 April 2008) should be maintained until 2012. It needs to be clearly stated that in the event that the operators remove EGMs pursuant to the contracts, those EGMs should not be able to be redeployed prior to 2012 and/or the number of EGMs for which the clubs' premises are approved should not be affected<sup>41</sup>.

Further, the government needs to take action to ensure that the operators provide adequate and non-preferential service between now and 2012 to all venues. It is to be expected that the operators will "run down" their product and service in the lead-up to the 2012 change-over. This will create a problem for clubs which will receive diminishing service, and maybe non-functioning EGMs. Clubs will need protection against pressure to enter into service agreements with the operators or with affiliated organisations for post 2012 in order to receive preferential attention in the pre-2012 period.<sup>42</sup>

## **2010 to 2012**

The process of physically distributing EGMs to the new or changed entitlement holders will require management. Some clubs will have fewer entitlements than their current quota, others will have more. It is to be expected that some clubs will not have approved premises at the date of change-over, and some clubs may not have approval for the changed number of EGMs<sup>43</sup>. Will these entitlements remain unutilised until the requirements are met, or continue in operation at the approved premises until transferred?

<sup>41</sup> In the post 2012 model ClubsVIC contends that the entitlement holder should control the rights – see discussion at 2(a)5 p 26

<sup>42</sup> See paragraph 2(b) of the attached CCAV newsletter where Tabcorp envisages preferential treatment for clubs affiliated with its sponsored organisation.

<sup>43</sup> ClubsVIC contends that only clubs with tenure over approved premises should be able to bid – see discussion at section 1(b)1(i) p 17ff



The change over to new monitoring arrangements will require management, including installation of new communication and other equipment, trialing and education in the new systems. It may be required to have dual systems running for a period of time. These arrangements will require some negotiation with the current operators.

The actual purchase of EGMs will require management. Clubs will need direction on whether or not it will be acceptable to purchase the in situ EGMs, and regulation may be required to ensure that the prices charged by the out-going operators are not exploitative. Will new participants be at liberty to purchase second hand EGMs and equipment eg bases? If so who does the selling, the club or the operator? It has been general practice for the clubs and operators to share the cost of purchasing much of this equipment.

Also, it may be necessary to regulate for the removal of unwanted EGMs – who is responsible for the removal and making good any damage to the venues when old equipment is removed? The government may need to intervene in matters relating to ownership of the equipment and signage.

In the event that clubs purchase new EGMs, regulations will need to accommodate the early delivery of these EGMs ready for use on change-over day.

Regulations regarding signage and advertising will require attention, as it is probable that many clubs will want to rebrand their operations with logos that are not currently prescribed in the regulations to the GRA. Issues such as ownership of the current signage and who is responsible for the removal thereof will also need to be established.

It is to be expected that existing contractual arrangements will cover most of these issues and it is anticipated that there will be much legal wrangling. Careful consideration by the government will assist in a seamless transition to the new regime with minimum recourse to the courts.

## **Post 2012**

As is pointed out above, the period 2012-2022 will be one of major technological change for the gaming industry, just at the time when the Victorian industry will have to adjust to a completely new EGM distribution regime. ClubsVIC submits that the government should treat this first non-operator period as a lead-in to the new regime in 2022, rather than the start thereof. A delicate balance between certainty leading up to 2010/2012 and flexibility in the post 2012 is required. The ***minimum entitlement for pre-commitment proposal*** will provide clubs with the certainty that they need to move into the new regime with confidence. The regulations post 2012 should be flexible enough for clubs to respond to the challenges that the new regime and new technology present.

