

Review of the Approved Trading System – Discussion Paper

Gaming Machines Act 1992

*Proposals to modify the rules of the Approved Trading System
for the trading of gaming machine entitlements*

September 2023



Government of South Australia
Consumer and Business Services

Introduction

The [Gaming Machines Act 1992](#) (the **Act**) regulates the supply and operation of gaming machines in South Australian licensed hotel and club gaming venues. The [Casino Act 1997](#) and Approved Licensing Agreement (ALA) between SKYCITY Adelaide and the Government also regulates the supply and operation of gaming machines at the Adelaide Casino.

Sitting within the [Gaming Machines Regulations 2020](#) (the **regulations**) is the Approved Trading System containing the rules and processes under which gaming machine entitlements (**entitlements**) are able to be traded in South Australia between licensed hotels, clubs, Club One and the Adelaide Casino.

In accordance with section 27E of the Act, the Liquor and Gambling Commissioner (the **Commissioner**) undertook a review of the operation of the approved trading system with a view to determining how the system should be modified in order to meet the statutory objective of reducing the maximum number of gaming machines able to be operated in South Australia to a number not exceeding 13 081.

A copy of the Commissioner's report '[Statutory Review of Approved Trading System](#)' was tabled in the South Australian Parliament on 3 May 2022.

Having given careful consideration to the matters discussed in the Commissioner's report, the Government is now undertaking consultation on a number of proposals to gauge support for modifying the rules of the current approved trading system. The results of this consultation will subsequently inform any decision to introduce legislation or regulations to modify the current trading scheme.

Consumer and Business Services

For any further information or assistance in relation to the proposals discussed in this document, please contact CBS Regulatory Reform by email at CBSReforms@sa.gov.au.

Alternatively, written enquiries can be made by mail to:

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Part 1 Gaming Machine Market Summary

Gaming machine entitlements

It is the objective of the South Australian Parliament to reduce the number of gaming machines that are able to be operated in the State to **13 081**.

A maximum of **13 657** gaming machines are currently able to be lawfully operated in South Australia (this includes 1 080 gaming machines at the Adelaide Casino). This compares with a total of 12 669 gaming machines which are currently in operation across the State comprising of:

- 10 649 in hotels
- 1 045 in clubs, and
- 975 at the Adelaide Casino.

As a result, a further 576 entitlements need to be cancelled to meet the statutory objective.

Share of gaming machine entitlements held (by licence type)

To possess and operate a gaming machine, a licence holder is required to acquire an entitlement. An entitlement can only be acquired by a licence holder:

- through the [approved trading system](#)
- under a contractual agreement with Club One¹ that has been approved by the Commissioner, or
- in the case of a gaming machine licence held by a licensed club, under a contractual agreement with another licensed club that holds a gaming machine licence, with the approval of the Commissioner.

Furthermore, the total number of entitlements held by a licence holder cannot exceed the maximum number of gaming machines which have been approved for the licensed premises. Typically this is a number not exceeding 40 for hotels and club operators, and 1 500 at the Adelaide Casino.

Table 1 - Number of entitlements held (by licence type)

| Licence Type | Maximum Venue Capacity | Gaming Machine Entitlements | % of State Total |
|-------------------------|------------------------|-----------------------------|------------------|
| General & Hotel Licence | 40 | 11 435 | 83.7% |
| Club Licence | 40 | 1 039 | 7.7% |
| Club One | n/a | 103 | 0.7% |
| Casino Licence | 1 500 | 1 080 | 7.9% |
| TOTAL | | 13 657 | 100% |

It should be noted that Club One, does not operate a gaming machine venue in its own right. However, any entitlements that it does hold are able to be made available to hotels, clubs and the Adelaide Casino on a contract basis as an alternative to the venue operators purchasing entitlements through the approved trading system.

Currently, 48 entitlements are contracted to other gaming venues on this basis.

¹ Club One (SA) Pty Ltd holds the Special Club Licence under section 24A of the *Gaming Machines Act 1992*.

Distribution of gaming machine entitlements

In accordance with section 16 of the Act, the Commissioner issues a gaming machine licence which authorises the maximum number of gaming machines that are able to be operated on licensed premises, subject to the licensee holding the equivalent number of entitlements.

CBS records indicate that hotel and club gaming machine venues in South Australia hold 12 522 entitlements and are distributed as shown below.

Table 2 - Number of gaming venues (by number of entitlements located at premises)

| Number of entitlements held | General & Hotel Licence | Club Licence | Total |
|-----------------------------|-------------------------|--------------|------------|
| 10 or less | 114 | 8 | 122 |
| Between 11 and 20 | 94 | 10 | 104 |
| Between 21 and 30 | 26 | 5 | 31 |
| Between 31 and 35 | 103 | 4 | 107 |
| Between 36 and 39 | 25 | 2 | 27 |
| Maximum of 40 | 103 | 12 | 115 |
| TOTAL | 465 | 41 | 506 |

A further 1 080 entitlements are held by the Adelaide Casino, while 55 entitlements held by Club One remain unallocated.

Distribution of gaming machines

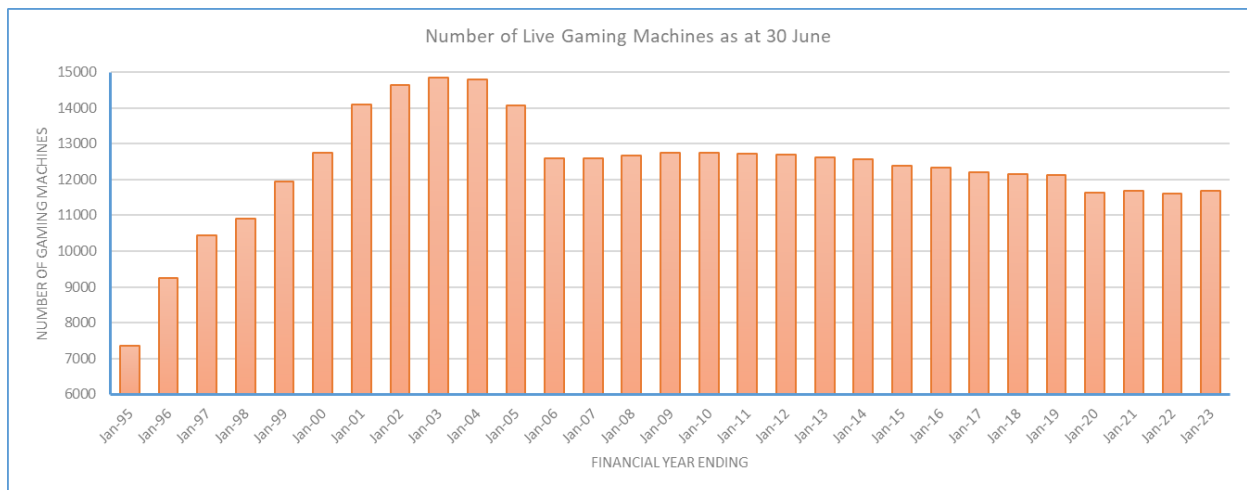
The number of gaming machines available to be played across the State fluctuates on a daily basis. The total number of gaming machines in actual operation has however consistently remained at less than the statutory objective.

“As at 31 August there were 12 669 gaming machines in operation across the State”

A significant number of gaming venues are currently operating between 31 and 35 gaming machines, reflecting the consequences of the legislated mandatory reduction in gaming machines which occurred in 2005. While a number of venue operators have since 2005 purchased entitlements through the approved trading system to return gaming operations to 40 machines, not all operators have chosen to do so.

The number of gaming machines available to be played in hotels and clubs, as at 30 June in each financial year, is shown in the following table.

Table 3 – Number of gaming machines at 30 June (hotels and clubs)



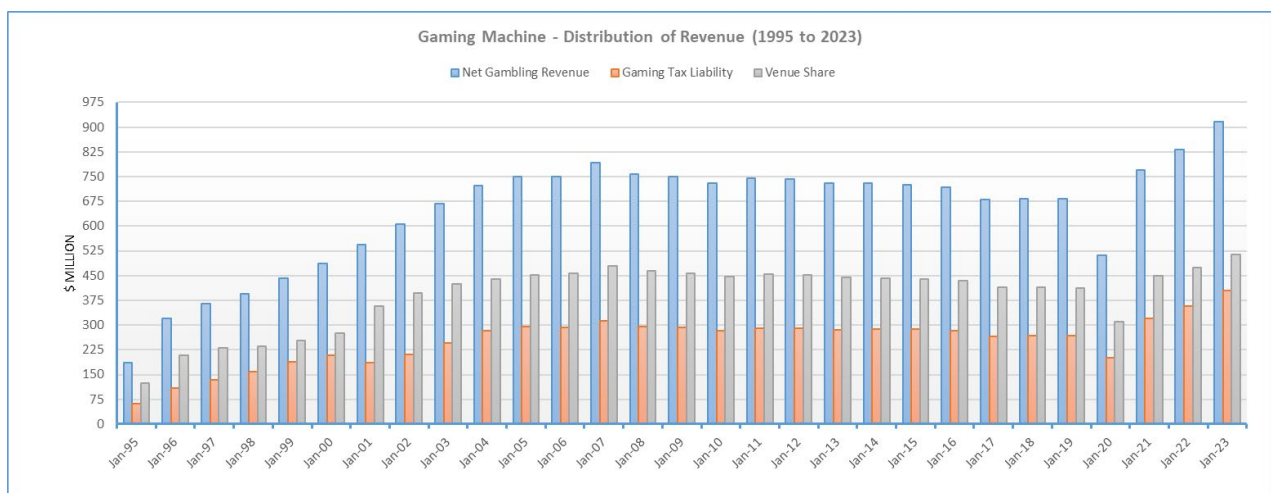
Gaming machine revenue

Gaming machine revenue from hotels and clubs has, since the easing of pandemic capacity restrictions, returned to levels not seen in South Australia since the mandatory reduction of gaming machines in 2005 and the subsequent introduction of smoking bans in 2007. This is despite the number of actual gaming machines in hotels and clubs over that time reducing from a high of 14 841 to the current 11 694.

Key Points

- Net Gambling Revenue (NGR) is the total amount of all bets made on gaming machines less the total amount of prizes won.
- Total Net Gambling Revenue (NGR) from South Australian hotels and clubs in 2022/23 was \$917.53 million.
- Total amount of gaming tax paid by South Australian hotels and clubs in 2022/23 was \$404.55 million

Table 4 – Revenue from gaming machines (hotels and clubs)



Part 2 Obstacles facing the current trading system

Current Position

An amendment to the Act on 3 December 2020, included the insertion of a regulatory statement indicating the intention of the South Australian Parliament to reduce the number of gaming machines that may be operated in South Australia to a number prescribed by regulation (the **statutory objective**).

The Gaming Machine Regulations 2020 (the **regulations**) prescribe the statutory objective of reducing the maximum number of gaming machines that may be lawfully operated in South Australia to a number not exceeding 13 081 gaming machines.

The regulations also establish the process to ultimately achieve the statutory objective using a regulated formula which requires **one in every four entitlements sold** by 'for-profit' venues (i.e. hotels) and by Club One in a trading round to be cancelled, effectively removing the operation of a gaming machine from the market.

This in-built forfeiture mechanism was introduced as a result of a shortfall in 2005 of achieving an overall reduction in the number of gaming machines in hotels and clubs in the state by approximately 3 000 gaming machines to 12 086. The statutory objective was subsequently revised to 13 081 in 2013 to include the 995 gaming machines that were able to be operated at the Adelaide Casino at that time to enable the casino operator to also participate in the approved trading system.

Trading rounds are currently conducted at the discretion of the Commissioner (usually at least twice a year) or at the direction of the Minister for Consumer and Business Affairs and when announced, allow an eligible person to submit an offer to purchase or sell an entitlement at their own valuation.

Further information about the rules of the approved trading system and the results of previous trading rounds is available from the CBS website at www.cbs.sa.gov.au//sections/LGL.

Discussion

It has generally been accepted that the current scheme which was introduced in 2012, establishes the true market price for gaming machine entitlements at any given point in time, a particular criticism of the initial trading system introduced in 2005 which fixed the price paid by purchasers at \$50 000 and by sellers at \$37 500 for each entitlement.

The current scheme is relatively low cost to administer, requires voluntary participation and ensures that entitlements are traded lawfully and ownership transferred appropriately.

It is worth noting that the Commissioner from his review in 2021, found that the current scheme does however attract criticism, in particular that:

- it requires that a demand to purchase and sell entitlements needs to be maintained over the long term
- it is perceived by many gaming machine operators to be extremely complex and administratively burdensome

- trading of entitlements can only occur when a trading round is announced by the Commissioner
- there is a lack of transparency over the number of entitlements available to be purchased or sold and relative price points at any given point in time
- it favours buyers (typically from the *'for-profit'* sector) who can generally offer high prices to ensure they get any entitlements offered for sale
- the operators of licensed clubs and small community hotels wishing to sell entitlements, have ultimately been forced to submit offers to sell entitlements at a significantly lower price to guarantee a sale, and
- the inbuilt forfeiture mechanism is opaque and is no longer delivering a sufficient reduction in entitlements as the current scheme relies on successful sales from the for-profit sector.

Inadvertently, the Commissioner also found that the introduction of the gaming machine entitlement concept in 2005 and associated trading system, has arbitrarily attached a monetary value to a 'right' to possess and operate a gaming machine in South Australia. In turn, this has created a tangible asset which has allowed its value to be included as part of collateral in business financing arrangements and is a tradeable commodity, as a result adding value to a gaming machine licence.

Furthermore, in the case of gaming premises which are subject to a lease, lessors are provided potentially with a monetary gain in the event of lessee default, due to the entitlements vesting in the landlord if authorisation to carry on the business under the licence is granted.

It has also meant that where a gaming machine licence would previously have been surrendered when a freehold licence holder wanted to exit the market, it has become practice, at least in part, for the gaming machine licence to be put into long-term suspension and potentially entitlements retained. The effect of this is that it allows a licence holder to reactivate the licence at any time in the future or to retain the licence as a form of investment or collateral for subsequent dealings.

Policy Impacts

Prior to August 2021, a lack of demand from purchasers led to a reduction in the entitlement sale price, becoming a significant barrier to operators giving consideration to participating in the approved trading system. Furthermore, with the majority of entitlement sales coming from the *'not-for-profit'* sector, cancellation of entitlements to enable reaching the statutory objective became significantly disrupted.

The demand for entitlements since 2012 is illustrated in Table 5.

The impact of the number of entitlements sold by the not-for-profit sector and being vested in Club One in comparison to entitlements being cancelled is illustrated in Table 6.

Table 5 – Demand for entitlements (2012 to 2022)

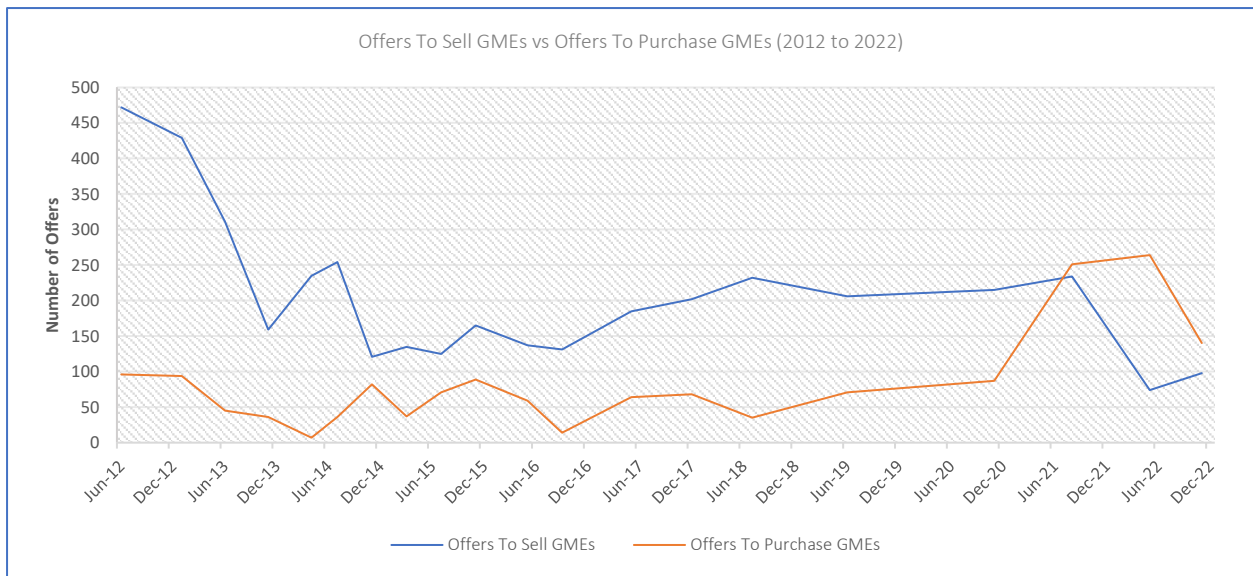
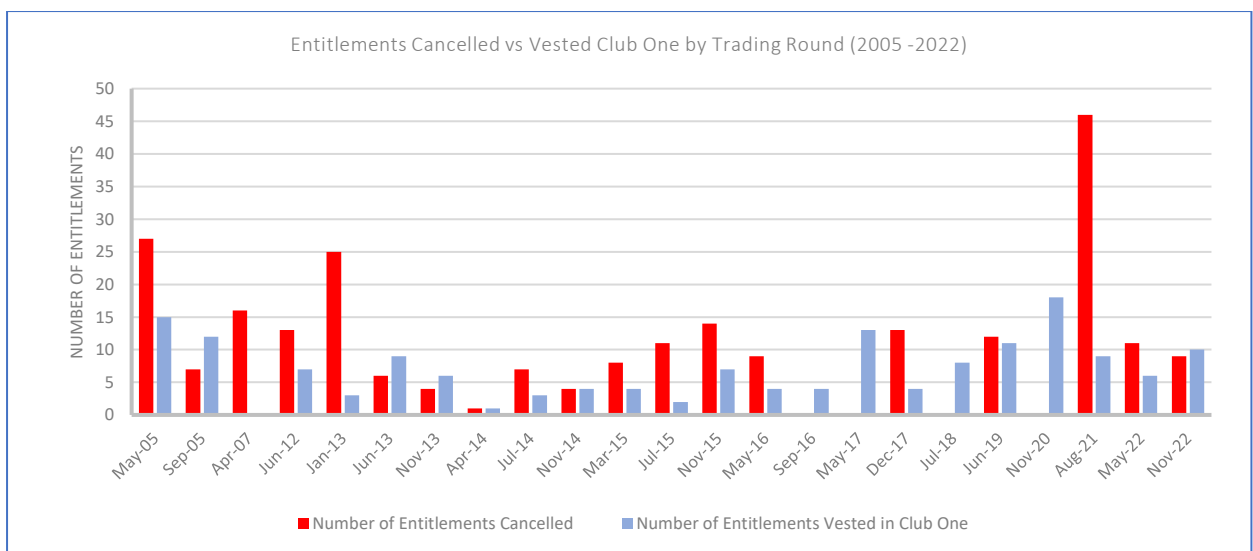


Table 6 – Entitlements cancelled vs entitlements vested in Club One (2005 to 2022)

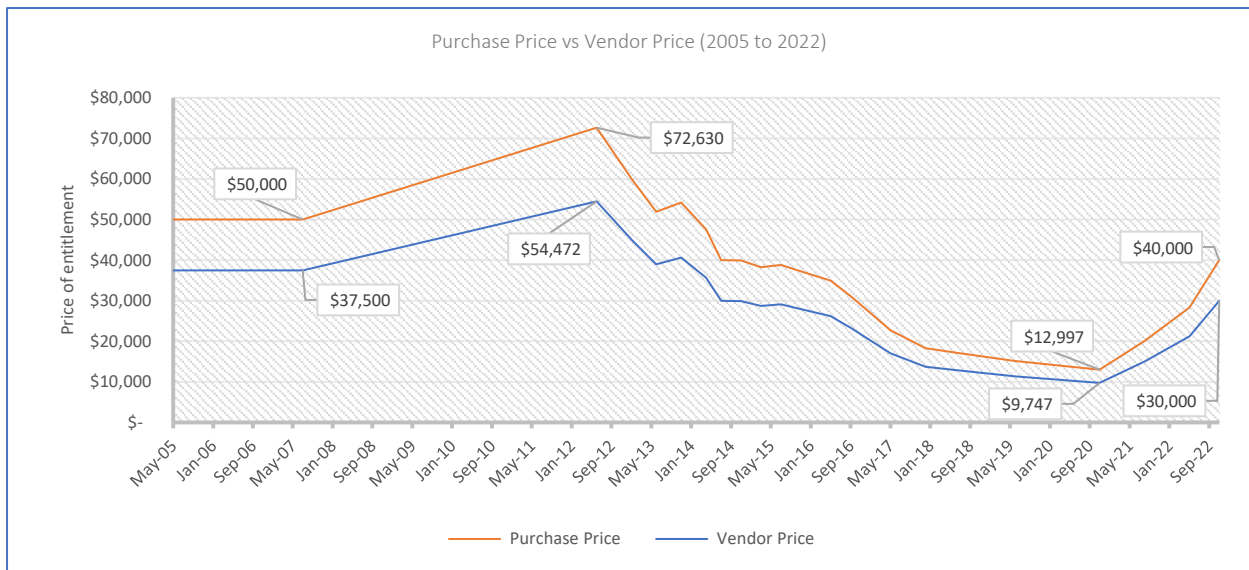


In an attempt to secure the sale of entitlements from what had become a limited market, the purchase price for entitlements reduced significantly from a high of \$72 630 per entitlement in 2012 to a low of \$12 997 in 2020.

Relevantly, the sale price for entitlements also reduced significantly from a high of \$54 472 in 2012 to a low of \$9 747 in 2020.

In comparison, there has been a recent reversal of this trend with both the purchase price and seller price increasing over the last three trading rounds to \$40 000 and \$30 000 per entitlement, respectively (Table 7).

Table 7 – Purchase Price vs Seller Price (2005 to 2022)



While it is not possible to accurately predict future demand for entitlements, the proposed changes to the rules of the approved trading system as outlined in the remainder of this paper could ameliorate the perceived transparency of the trading system and also attract additional interest from licence holders to purchase and/or sell entitlements into the future.

Part 3 Proposals to modify the trading system

Outline of proposals

The general oversupply of entitlements being offered for sale, a lack of consistent demand on an ongoing basis to purchase entitlements and a perception that the rules of the current approved trading system are complex and lack transparency, can reasonably be considered to be the key drivers limiting the ability to achieve the statutory objective through the current trading mechanism.

The Government notes in particular the Commissioner's findings that without some form of intervention in the market, any prospect of achieving the statutory objective in the short to medium term is unlikely.

With this in mind, the Government is seeking feedback on making the following changes to the approved trading system.

- **Proposal 1** — As an adjunct to a modified approved trading system, allow the direct transfer of entitlements between hotel gaming machine venues, subject to a requirement that the registered licensee of both venues must be the same licensee (as specified on the gaming machine licence) or the hotels being part of the same recognised hotel group.
- **Proposal 2** — Amend the rules of the approved trading system to allow entitlements to be traded between gaming machine licence holders on a negotiated commercial basis, at any point in time, using an online and transparent web based market-place platform managed by the Commissioner
- **Proposal 3** — Simplification and replacement of the current forfeiture rules (the number of entitlements to be cancelled) with a new fixed rate of forfeiture scale.

Any suggestions to further build upon these proposals are also welcome.

This feedback will inform the process of drafting regulations to amend the rules of the approved trading system.

Proposal 1 – Allow direct trading of entitlements (by hotel gaming operators)

Concept

A long-standing measure in the Act has permitted entitlements to be transferred between not-for-profit associations (i.e. licensed clubs and community hotels) that hold a gaming machine licence outside of the approved trading system with the approval of the Commissioner. This feature was extended in 2019 to also allow the transfer of entitlements between two or more incorporated associations in the event that the associations amalgamate where one or more of the incorporated bodies holds a gaming machine licence.

Under this proposal, entitlements would be able to be transferred directly between hotel gaming venues, subject to a requirement that the registered licensee must be the same licensee (as specified on the gaming machine licence) or the hotels being part of the same recognised hotel group.

It is expected that this would for example provide the operator of a group of hotels with gaming machines the flexibility to move entitlements between their venues, subject to the host site having sufficient capacity to be allocated those entitlements. Each transfer would however need to be approved by the Commissioner and require a fixed number of entitlements to be forfeited to the Commissioner and cancelled to support the statutory objective.

Comment

CBS records indicate that there are currently more than 30 hotel groups in South Australia, operating gaming machines across 229 individual venues.

These hotels currently hold approximately 7 200 entitlements or 57% of all entitlements held by hotels and clubs in the State.

While only major hotel group operators may take up this option, they may be prevented in doing so due to potential host venues already holding the maximum number of entitlements permitted under their licence. Despite this, the maximum number of gaming machines able to be authorised shall remain at 40 and existing arrangements to increase the number of gaming machines authorised under a licence will remain unchanged.

For Consideration

Your feedback is being sought in relation to:

- (1a) Changing the rules of the approved trading system to enable entitlements to be transferred between hotel gaming machine operators without submitting an offer through the approved trading system, subject to a requirement that the registered licensee of each hotel must be the same licensee (as specified on the gaming machine licence) or each hotel being part of the same recognised hotel group.
- (1b) The introduction of an alternative forfeiture mechanism that will be consistent with the model discussed at proposal 3, to support the overall statutory objective.

Proposal 2 – Establish a new Entitlement Trading Scheme (ETS)

Concept

The rules of the current trading system were developed and implemented in 2010 with the support of the gaming industry and uses a market equilibrium pricing concept which derives a sale price which can fluctuate on a round by round basis according to the prevailing market conditions. It was envisaged by industry at the time that this model would result in a price greater than the fixed price scheme that it replaced.

Under this proposal the current trading system will be replaced with a new open-market form of entitlement trading scheme (ETS).

Put simply, it is envisaged that the ETS will enable eligible persons to list entitlements for sale or lodge expressions of interest to purchase entitlements using a web-based platform managed by CBS (akin to a *'notice-board'* or *'market-place'*) thus allowing entitlements to be traded by licensees on a negotiated commercial basis at any point in time instead of having to await a trading round to be announced by the Commissioner.

While this will allow the parties to negotiate directly on price and the number of entitlements being purchased or sold, ultimate approval to transfer the entitlements and the issue of amended gaming machine licences will continue to be retained by the Commissioner to ensure regulatory oversight and that the transfer of entitlements remain lawful.

The ETS will also continue to feature a forfeiture mechanism prescribed by regulation to support the statutory objective as discussed further at proposal 3.

Comment

Unlike the rules of the current approved trading system, it is envisaged that the rules of the ETS will give eligible persons access at any point in time to:

- list and view the quantity and details of entitlements being advertised for sale
- list and view any registrations of interest to purchase entitlements
- notify CBS of the successful agreement by parties to trade entitlements
- view the details and price of entitlements transferred, and
- access a register of entitlement trading and pricing history.

In the interests of transparency and full disclosure, feedback is being sought on whether the results of successful trades (including the number of entitlements traded, price and venue details) should also be made available to the general public through a publicly accessible CBS webpage.

The ETS will also provide the gaming industry with significantly greater visibility and control over the trading of entitlements and responds to criticism that the current trading scheme is opaque and complex.

It is anticipated that the enhanced transparency of the ETS and its ability for parties to negotiate on a commercial basis, may lead to an increased level of trading.

For Consideration

A lack of transparency and perceived complexity is a significant criticism often levelled at the current approved trading system. Eligible persons participating in a trading round, currently have to make an offer to purchase or sell an entitlement based on their own valuation, without having any knowledge of the current level of demand in the market.

These offers are then submitted to the Commissioner who on a nominated day (known as the trading day) determines, in accordance with the rules specified in the regulations, which offers have been successful, determines the amount to be paid by each successful purchaser and the amount to be received by each seller for each entitlement.

The Commissioner also determines in accordance with the regulations, the number of entitlements to be forfeited and cancelled in support of the statutory objective.

The ETS will provide eligible persons with full visibility of the entitlement market at any point in time while allowing trades to occur on commercially negotiated terms.

Your feedback is being sought in relation to:

- (2a) Changing the rules of the approved trading system to allow the trading of entitlements by eligible persons at any time, using a form of online notice board managed by CBS.
- (2b) Any benefits or obstacles envisaged from allowing eligible persons greater visibility of the gaming machine market and demand to trade entitlements on commercially negotiated terms.
- (2c) Facilitating greater public transparency and disclosure by allowing the general public to have visibility over the results of successful trades (including the number of entitlements traded, price and venues party to each trade).

Proposal 3 – Modifying the rate of forfeiture

The number of entitlements to be forfeited to the Commissioner is currently determined in accordance with the regulations on a round-by-round basis. These forfeited entitlements are then either cancelled or transferred to Club One which holds the special club licence under the Act, depending on the type of business conducted by the seller.

The Government has noted the views of the Commissioner, in particular that the current forfeiture rules will likely continue to be ineffective in the short to medium term in achieving the statutory objective.

Taking this into consideration, it is proposed to replace the current forfeiture rules with a simple and transparent fixed forfeiture scale, as indicated below in **Table 7**.

This would mean that when negotiating a trade of entitlements under either of the above proposals, a fixed number of entitlements, **will always** have to be forfeited to the Commissioner and cancelled irrespective of their source matching the following pattern (read down):

Table 8 – Fixed Forfeiture Table

| | | | | | | | | |
|--|---|---|---|---|---|---|---|----|
| Number of entitlements sought by a purchaser: | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| Number of entitlements to be acquired by purchaser to allow trade to occur: | 2 | 3 | 4 | 5 | 7 | 8 | 9 | 10 |
| Number of entitlements forfeited to the Commissioner and cancelled as a result of the trade: | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 |

Example 1

“A licensee wishing to acquire two entitlements will need to purchase three entitlements so that when the transfer takes place, one entitlement is then forfeited to the Commissioner and cancelled.”

Using the open market trading system, users will have full visibility over the number of entitlements available for sale at any given point in time, meaning that purchasers will be able to source entitlements from one or more sellers if necessary to affect a trade.

Example 2

“In example 1, the licensee would not have to purchase all three entitlements from the one seller but could choose to purchase one entitlement from one seller and the remaining two from another so that when the transfer of entitlements takes place, one entitlement from the total package of three is then forfeited to the Commissioner and cancelled.”

It will also mean that the current rules which require the Commissioner to transfer forfeited entitlements to Club One if entitlements are being traded by a licensed club or community hotel will as a result be discontinued.

Comment

When considering this proposal, it is important to note that the number of entitlements forfeited under the current rules has to be based on the total number of entitlements sold collectively by each sector whenever a trading round is announced.

In support of the statutory objective, the proposed forfeiture rules specified in table 8 will be applied to all trades irrespective of entitlements being sourced from the *'for-profit'* sector (i.e. hotels and casino), *'not-for-profit'* sector (community hotels and clubs) or Club One, meaning that a fixed number of entitlements will always need to be forfeited to the Commissioner and cancelled following a successful trade.

For Consideration

Your feedback is being sought in relation to:

- (3a) Whether the application of the proposed forfeiture rules in table 8 to the direct trading of entitlements (see proposal 1), will provide licence holders with sufficient transparency to successfully affect a trade of entitlements.
- (3b) The identification of any obstacles that may be encountered or envisaged from having to purchase an additional entitlement to result in a successful trade.

Part 4 Further information and consultation

Extra Resources

A copy of the relevant gambling Acts and Regulations are available from the South Australian legislation website at www.legislation.sa.gov.au/legislation.

[*Gaming Machines Act 1992*](#)

[*Gaming Machines Regulations 2020*](#)

[*Casino Act 1997*](#)

Further information about the current approved trading system and recent trading round results is available from the CBS website at cbs.sa.gov.au/sections/LGL

[Trading round for gaming entitlements](#)

[Trading round results](#)

A copy of the report by the Liquor and Gambling Commissioner which was tabled in the South Australian Parliament on 3 May 2022 is available from the [Tabled Papers and Petitions](#) page on the South Australian Parliament website at parliament.sa.gov.au or from the CBS website at cbs.sa.gov.au/GMEtradingreview.

Submissions

If you have any comments on these proposals or wish to provide any suggestions to further build upon these proposals, you are invited to provide your written comments to the Commissioner by email at CBSReforms@sa.gov.au.

Any comments about these proposals will be accepted until **Friday 3 November 2023**.