



Inspections @ Harm
Legislation Policy Probiity Licensing minimisation

Temporary transfer of entitlements between clubs

Background

Once licensed to operate gaming machines in Queensland, clubs must acquire gaming machine entitlements prior to purchasing and installing machines.

One entitlement is required for each machine that the club is approved to operate. Entitlements may be obtained from other clubs on a temporary or permanent basis, or via the Government tender process.

Temporary transfer of entitlements

In a temporary transfer, one club (the transferor) provides some or all of its entitlements to another club (the transferee) on a temporary basis. The clubs must be in the same entitlement region.

The entitlements remain the property of the transferor, but are used by the transferee at the transferee's premises.

The transferee receives all gaming revenue generated by the machines operated on the entitlements, and must pay all taxes associated with this revenue. The transferor receives a periodic fee from the transferee for the privilege of using the entitlements.

Clubs are free to approach other clubs within their entitlement region to negotiate transfers. Once the clubs have reached an agreement as to the term of the transfer and the price to be paid for each entitlement, the transferor club must apply to the Queensland Gaming Commission for approval of the transfer. If the application is approved, the transfer takes effect at a date nominated in the application form.

Who can be a temporary transferee?

Any club can be a temporary transferee and receive entitlements, on a temporary basis, from eligible temporary transferors, provided that:

- the club holds a gaming machine licence; and
- the club is not a temporary transferor.

A transferee may accept temporary transfers from any number of transferors, provided that the total number of entitlements for the transferee do not exceed its approved number of gaming machines.

Who can be a temporary transferor?

A club can be a temporary transferor if all of the following apply:

- The club is a gaming machine licensee.
- The approved number of gaming machines fixed on the club's licence is less than 30.
- The premises from which the entitlements will be transferred was originally granted its gaming machine licence prior to 16 April 2008.
- The approved number of gaming machines for the premises from which the entitlements will be transferred has not been increased as the result of an application made after 15 April 2008.
- The club has no surplus entitlements that must be permanently transferred as the result of a decrease, surrender or cessation of gaming at an additional premises.
- The club doesn't already have a temporary transfer in place in which the club is *either* a temporary transferee or temporary transferor.

Clubs whose premises are approved a licence, or an increase in the approved number of gaming machines, as the result of an application made after 15 April 2008 cannot be temporary transferors until 3 years from the date of approval.

Important: Unlike a permanent transfer, the transferor does not make a prerequisite reduction.

Transferors limited to one transfer and cannot be transferees.

The preceding sections explained that:

- temporary transferors cannot be temporary transferees and vice versa, and
- temporary transferors can be party to only one temporary transfer.

Allowable temporary transfers are depicted below.





How many entitlements can be transferred?

Assuming that the transferor has the entitlements to transfer, the maximum number of entitlements that can be transferred is calculated as follows:

$$AGM - EP = ME$$

Where:

- AGM = the approved number of gaming machines for the transferee premises
- EP = the total number of entitlements used to operate gaming machines at the transferee premises, including entitlements transferred to the club by other transferors.
- ME = maximum entitlements that may be transferred.

A transferor may temporarily transfer *all* of its entitlements (but only to the one transferee), to the effect that the transferor premises operates zero gaming machines. However, the transferor must remain a gaming machine licensee, with sufficient approved gaming machines to account for the return of the entitlements at the end of the term. If the transferor loses its gaming or liquor licence, the transfer will become invalid.

Term and consideration for temporary transfer

The term of a temporary transfer cannot exceed eight years. The minimum term is one year.

Consideration (payment to the transferor) for the transfer must be monetary. Consideration must be a flat fee payable at a frequency determined by the parties.

It is illegal for payment or consideration to represent a direct or indirect interest in, or a share or percentage of:

- the amount bet for the purpose of gaming, or
- any moneys, revenue, profits or earnings from the conduct of gaming.

Effecting the transfer

Once the transfer is approved, the transferee club may arrange for the installation of gaming machines. However, these may not be operated until the transfer takes effect on the date nominated in the approved transfer application.

OLGR will ensure, via the monitoring system, that the transferor club disables an appropriate number of gaming machines at close of business on the day before the transfer is to take effect.

At the expiration of the temporary transfer, the entitlements return to the transferor club, who may use them to operate gaming machines or may negotiate a new transfer.

Changing the terms of the transfer

If, at any time during the term of the transfer, the parties wish to amend the consideration and/or term of the transfer, the transferor must apply to the commission for a variation of the temporary transfer.

Register of entitlements

The *Gaming Machine Act 1991* requires parties to a temporary transfer to retain a register of entitlements. A form for this purpose can be obtained from OLGR.

Gaming machines

The transferee is under no obligation to obtain its actual gaming machines from the transferor club. Whilst an entitlement is required to operate a gaming machine, entitlements and specific gaming machines are not linked.

While the transfer is in effect

While the transfer is in effect, the transferee club may not apply for a decrease of its approved number of gaming machines, and consequently cannot permanently transfer any of its own entitlements.

The transferor may apply for a decrease, but not to the extent that the decrease would require the permanent transfer of entitlements that are subject to the temporary transfer (the transferor must retain sufficient approvals to account for the return of the entitlements).

The transferor can not apply for an increase in the number of approved gaming machines while the transfer is in effect.

Clubs should seek legal and financial advice

Clubs are advised that certain actions of a party to a transfer may result in the cancellation of the transfer prior to the end of term.

These actions, and their effect on the transfer, are described in the *Notice for Section 109T(4)* which is separately available from OLGR's website at www.olgr.qld.gov.au.

It is expected that clubs will make appropriate arrangements for the possibility of these circumstances when negotiating a temporary transfer. It is recommended that clubs seek legal advice as to the validity of these arrangements.

For further information, see the *Notice for Section 109T(4)* and the *Guidelines – Transfer of Gaming Machine Entitlements between Clubs*, both of which are available from OLGR's webpage.

For further information, please contact the Office of Liquor and Gaming Regulation on 13 13 04 or visit www.olgr.qld.gov.au

