

United Workers Union Submission to Perth Casino Royal Commission

April 2021



Introduction and Summary

The recent Bergin Inquiry starkly highlights the insufficient independent regulatory oversight of Australian casino operators and their failing governance and risk management structures.

Given the heightened vulnerability of casino operators to criminal influence and exploitation, and the potential for community harm, more must be done to assure patrons, staff, investors and the community that operators are being held accountable to the highest integrity standards.

The United Workers' Union (UWU) represents almost 10,000 casino workers across Australia. It is critical to the job security of UWU members for governments and regulators to respond appropriately and holistically to governance and culture shortcomings.

This should be done by strengthening the existing regulatory, governance and compliance frameworks and enabling those who work in the industry to better participate in these processes.

The below recommendations are designed to minimise the risk of inappropriate or unlawful activities, facilitate regulatory compliance and improve corporate cultures and behaviours so that casino operations are safe, sustainable and better meet community standards.

Recommendation 1: Independent Regulator with Appropriate Oversight Powers

It should not require a special commission of inquiry for alleged misconduct in Australian casinos to come to light and for appropriate reforms to take place.

An independent casino regulator with appropriate powers should exist in each State or Territory to ensure casino operations are always being conducted lawfully and in accordance with the public interest.

Each relevant regulator must at a minimum:

- Be independent and stand-alone (ensuring freedom from political interference and clarity of responsibility);
- Be broad in its focus (ie. not be limited to enforcing only casino-specific or gaming-specific laws but be able to investigate other conduct relevant to the licence-holder's suitability or the public interest);
- Have sufficient powers to conduct necessary investigations into matters of interest at any time (provided that employees are appropriately protected in their employment if required to give evidence or take any other part in an inquiry);
- Be required to conduct regular inquiries (no less often than every three years) into the suitability of casino operators in its jurisdiction; and
- Have directly elected worker representatives on its board of management.

Where the above standards are currently not being met in any State or Territory jurisdiction, the relevant regulatory framework must be amended to ensure their introduction, with any cost borne by the relevant operator/s in that jurisdiction.

Recommendation 2: Worker Involvement in Regulation and Governance

Compliance and culture outcomes are vastly improved when workers are empowered to speak-up and when genuine workplace and industry structures allow for worker participation in decision-making.

Worker-centric initiatives that embed institutional forms of communication between worker representatives and management provide for substantially better outcomes¹ and generate lower operational risk profiles for businesses.² More specifically, worker participation on boards of management can improve board behaviour and credibility as well as making governance accessible and relevant to the broader workforce.³

To help ensure better governance and build better corporate cultures, each casino licence should require the holder to provide no less than two positions on its board of management for employees directly elected by its workforce.

This will ensure a direct line of communication between the workforce and senior management as well as facilitate true involvement by the workforce in matters of culture, governance and social and other licence risk (as well as operations).

¹ Here with reference to workplace health and safety outcomes: EU-OSHA, *Worker representation and consultation on health and safety - An analysis of the findings of the European Survey of Enterprises on New and Emerging Risks*, ESENER, 2012, <https://osha.europa.eu/en/tools-and-publications/publications/reports/esener_workers-involvement> [accessed 30 July 2019].

² As opposed to private compliance initiatives or other forms of voluntary self-regulation: ILO, *Workplace Compliance in Global Supply Chains*, Geneva, ILO, 2017, <<https://bit.ly/35taMpO>> [accessed 1 March 2019]; see also: Ethical Trading Initiative, *ETI Annual Report 2003/04: Putting Ethics to Work*, London, Ethical Trading Initiative, 2004, <<https://bit.ly/2SwGdua>> [accessed 1 May 2019]; World Bank, *Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains*, World Bank, 2003.

³ *How employee directors add value*, *Corporate Governance: Connect and Reflect*, Report, Institute of Chartered Accountants in England and Wales, 2018.

Each regulator should also be required to provide no less than one position on its board of management or relevant management body that is directly elected by casino employees working in the relevant jurisdiction.

A requirement for direct election at regular intervals would work to ensure that providing for a worker voice does not over time facilitate partiality or partisanship in the relationship between regulator and operator.

Recommendation 3: Strengthened Notion of Compliance

Casino regulations are centred mostly around notions of integrity, freedom from criminal influence or exploitation and controlling the potential for harm to the community or the public interest.

As the Bergin findings make clear, when a casino operator's corporate culture does not support compliance in all forms, relevant standards can be compromised.

To ensure a culture of compliance across all levels of regulation, casino licence holders should be required to demonstrate to the relevant regulator their compliance with all relevant workplace and industrial laws and that appropriate systems and processes are in place to ensure compliance within the operator's supply chain.

An operator could do this in several ways, including by:

- Submitting a workforce management plan prepared by a suitably qualified person or organisation that is independent of the operator and licence holder and who can attest to compliance;

- Providing detailed information to the regulator about its supply chain and related due diligence processes;
- Establishing mechanisms for employees to report relevant risks and/or non-compliance;
- Providing an annual compliance report to the regulator detailing:
 - The number of employees engaged by them;
 - The number of employees in their supply chain;
 - The industrial instruments that apply to these employees;
 - The number of employees from non-English speaking backgrounds;
 - The number of employees engaged through work-Visa arrangements;
 - Relevant information about the licensee's compliance with relevant laws, including any court, tribunal or other enforcement processes; any notifiable incidents under the relevant Workplace Health and Safety laws; and the number of applications for workplace injury compensation made by direct and indirect workers under the relevant compensation legislation.

Casino license holders should also be required to be committed to secure, direct employment.

The use of indirect labour arrangements such as labour hire or independent contractors negatively impacts a corporation's culture and will increase compliance risks.⁴

⁴ Hepworth, K., *Labour Hire & Contracting Across the ASX100*, Australasian Centre for Corporate Responsibility (ACCR), 2020, <<https://www.accr.org.au/research/labour-hire-contracting-across-the-asx100/labour-hire-business-operational-and-workforce-risks>>, [accessed April 2021].

Recommendation 4: Appropriate Minimum Gaming Supervisor and Security Staff Ratios

A robust culture of compliance also necessitates that casino operators have rigorous internal controls, ensuring appropriate levels of staffing in key areas. Private compliance initiatives, such as policies or internal risk assessments, may be insufficient to manage operational risks that arise in these areas.

Regulation should mandate formulas around a minimum staff-to-patron level of security and gaming supervisory and compliance staff.

These minimum standards can be specific to each jurisdiction and should be developed in collaboration with workplace representatives including UWU.

Recommendation 5: Better Independent Whistleblowing Processes

Findings and allegations relating to money laundering suggest existing whistleblowing laws, policies and practices are insufficient. As it stands, employees or patrons who might suspect criminal or inappropriate activity are not assured of an appropriate investigation into reported activities nor, in the case of employees, protection in employment if a report is made.

To establish better processes across the industry, a casino licence should require an approved whistleblower policy that provides for investigations by a sufficiently qualified and experienced independent party (eg. a legal practitioner who does not act for the licence holder in other matters) as well as protections for employees and other individuals who make a report under the policy.

Further, the Bergin Inquiry noted the negative effect of casino regulators not being advised by AUSTRAC of money laundering issues arising in the entities under their purview. As recommended by the Commissioner, consideration should be given when creating a new regulatory model to ensuring reciprocity of information-sharing and investigative responsibilities between AUSTRAC and the regulator on AML matters, in line with the framework in place in Singapore.

Recommendation 6: Increased Responsibilities to Minimise Gaming Harm

A better and safer casino industry is about more than just increased regulatory oversight. If we truly want better corporate cultures and upkeep of community standards, we must also take additional responsibility for the potential of gaming harm.

Workers at the frontline of gaming activities and gaming harm should have appropriate and safe mechanisms to raise concerns and enable positive change regarding problem gaming.

Regulation should provide for the establishment and recognition of workplace representative/s called Registered Gaming Officers (“RGOs”) who are elected by the relevant workforce and empowered to deal with issues and concerns related to problem gaming.

The number of RGOs in each workplace should be proportionate to the overall number of employees at the relevant casino.

The RGO must be empowered with:

- The right to communicate with workers, patrons and stakeholders including unions;
- The right to reasonable paid time to perform the duties of the role;

- Sufficient training to perform the role; and
- A role in appropriate consultative mechanisms the operator or licence holder maintains with employees and regulatory bodies.

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