

## SECOND SUBMISSION TO THE PERTH CASINO ROYAL COMMISSION

1. The Commission has sought comments on issues explored in its “Regulatory Framework Discussion Paper” (made available on the Commission’s website in mid-November, seeking responses to 42 questions) and any further matters, initially by November 29. I am grateful for some extension of this timeframe, which is perhaps less of a challenge to major corporations with ample access to legal and other advice than to other respondents.
2. As the Commission will be aware, I provided a submission on May 31<sup>st</sup> seeking to address some matters relevant to Terms of Reference 8 – 11, setting out concerns relevant to the advertising and promotion of gambling, public education on gambling, the Problem Gambling Support Services Committee and related governmental processes, with some concluding recommendations. This submission and the recommendations should be read alongside my previous submission and recommendations: I attach the earlier submission for ease of access.
3. Given the timeframes and other commitments, I will limit this submission to some further observations and recommendations which I believe are relevant to Term of Reference 11, and take account of some matters raised in the Commission and elsewhere since then.
4. As noted in my earlier submission, I write in a personal capacity. I have no conflicting interests. I would not wish to represent myself as a gambling-specific expert. I am, however, involved in some research on gambling issues, primarily in relation to gambling and young people with colleagues at Deakin University. Work with which I am involved includes research grants relating to gambling from the Australian Research Council Discovery Grant Scheme and the Victorian Responsible Gambling Foundation.
5. I also have substantial expertise at state, national and international levels in public health, public policy and administration, and addressing and regulating the role and activities of harmful industries in relation to health and related concerns.
6. I am not intrinsically opposed to gambling per se (and I am indeed an occasional purchaser of Lotto tickets). I am, however, concerned to ensure the best possible approaches to protecting public health and well-being for both the community at large and vulnerable groups such as young people, including appropriate regulations properly implemented and enforced on the basis of the best available evidence.
7. The overall context for this discussion is that the Commission is dealing with one of Australia’s largest companies in a predatory industry. The evidence from the Bergen commission, the Melbourne Commission, and this Commission shows clearly that even with reputable figures on its Board (some of whom in fairness may not have been aware of matters brought to light by the Commissions), Crown has behaved appallingly, and cannot

be trusted to act any differently in the future. Any conclusions based on the premise that this will change would be naïve in the extreme.

8. As the Melbourne Royal Commission reported:

“Within a very short time, the Commission discovered that for many years Crown Melbourne had engaged in conduct that is, in a word, disgraceful. This is a convenient shorthand for describing conduct that was variously illegal, dishonest, unethical and exploitative.

The catalogue of wrongdoing is alarming, all the more so because it was engaged in by a regulated entity whose privilege to hold a casino licence is dependent upon it being, at all times, a person of good character, honesty and integrity.

It is difficult to grade the seriousness of the misconduct. Some was so callous that it is hard to imagine it could be engaged in by such a well-known corporation whose Melbourne Casino Complex is visited by millions annually.”

Further, Crown repeatedly showed “a ....disregard for the law”, there was much “evidence of its indifference to acceptable conduct” – and so it continues.

The Melbourne Commission also noted that “Perhaps the most damning discovery by the Commission is the manner in which Crown Melbourne deals with the many vulnerable people who have a gambling problem.”

These comments speak for themselves.

9. While the Perth Commission appears to have focused less on the extent of gambling harms, perhaps because some of these have been outlined in the Melbourne Commission report and elsewhere, and might also usefully have heard from those with lived experience, the Melbourne Commission’s summary similarly needs little further elaboration - “the cost to the community of problem gambling is enormous. It is not only the gambler who suffers. It also affects many other people, and institutions”.

10. The wider context is that this is not new. We have known over decades that the commercial gambling industry in Australia and overseas is predatory. The primary focus of this industry, and of the Crown company is to make as much money as possible from gamblers, knowing with absolute certainty that the odds are stacked against the gambler, and that gamblers and others will suffer harm as a consequence.

11. There is vast global evidence of cynical and disreputable behaviour by the commercial gambling industry. Similarly, this industry has a stellar record of lobbying, public relations, political donations, funding research and supporting research agendas that will suit its interests, and other forms of exercising direct and indirect influence to ensure minimal effective controls (see as just one example a recent ABC report - <https://www.abc.net.au/news/2021-10-14/how-the-gambling-industry-cashed-in-on-political-donations/100509026>). That will not change.

12. The responsibility for the Commission is therefore to ensure the strongest possible framework to minimise the scope for predatory and inappropriate behaviour, and to ensure that governments, the community at large and indeed the company's Board members can feel some confidence that appropriate standards will be maintained.

13. As so often with predatory industries criticised for knowingly selling and promoting harmful products, Crown appear to have adopted a "that was then, this is now" approach – a) conceding that reprehensible activities may have occurred, b) noting that some of the people involved have moved on, and c) offering reassurances that they will behave more appropriately in the future.

14. There is overwhelming evidence from both the commercial gambling industry and other areas to justify regarding this approach with scepticism, unless accompanied by strong externally imposed safeguards, including independent regulation, monitoring, and transparency. Further, even if Crown itself makes any changes, the reality as I understand it is that this company could be sold at any time – leading to a situation where new owners, boards and senior executives could revert to previous approaches or worse.

15. For further context, I would note that the concern raised in the submission from the Cancer Council WA, the Australian Council on Smoking and Health, and the Public Health Association of Australia WA Branch has now been addressed, as the WA Government has recently announced that the exemption permitting smoking in the Casino's International Room will end as of December 31.

This is very welcome, but serves as a reminder that Crown lobbied heavily over time for this long-standing exemption, and has for many years knowingly put the health of both staff and customers at risk from the harms of passive smoking. This was not the behaviour of a responsible organisation.

16. As noted above, the Commission's discussion paper raises a range of complex issues, seeking responses to 42 questions. In terms of theoretical approaches to regulation, I would willingly defer to the legal expertise of the Commissioners. My comments will therefore relate to specific considerations I believe to be appropriate.

17. From some fifty years of experience of dealing with harmful industries in Australia and internationally, I can assure the Commission that their normal practise entails:

- \* promise good behaviour in future
- \* vigorously oppose and lobby against effective regulatory processes
- \* seek minimal possible regulation and oversight
- \* seek to be engaged in regulatory processes
- \* offer voluntary agreements, codes and processes in place of regulation
- \* where in their interests, seek to circumvent such regulatory processes as are in place

- \* override or fail to act on concerns expressed by internal participants (whether on Boards or elsewhere within the organisation)
- \* propose distractions, including engagement in ineffective activities such as low-key (or even counter-productive) education, research that will suit their interests and other so-called Corporate Social Responsibility activities

18. The Melbourne Royal Commission reported in relation to Crown Melbourne alone that, “In the five financial years from 2016 to 2020, Crown spent some \$2.46 billion on marketing, rewards and other benefits and enticements to attract customers”, adding that “These measures have been very successful”.

As noted in my earlier submission, there is a pressing need for effective curbs and controls on advertising and promotion for all forms of gambling.

19. Experience shows that the only effective approaches to curbing the harmful practises of harmful industries in this and other areas entail:

- \* comprehensive strategy
- \* strong, prescriptive regulation
- \* a strong, independent, regulator
- \* building in clear measures to preclude any industry involvement in policy development or regulatory processes

20. A model approach to the industry (as indeed to a comprehensive approach) is provided by the WHO Framework Convention on Tobacco Control (FCTC), a global treaty which is legally binding in 181 countries, including Australia.

Article 5.3 of the FCTC states that, “In setting public health policies with respect to tobacco control, Parties shall act to protect these policies from the commercial and vested interests of the tobacco industry”.

Guiding Principle 1 states that “There is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests” and that “..... Parties should protect the formulation and implementation of public health policies for tobacco control from the tobacco industry to the greatest extent possible”.

21. Given the direct and indirect harms attributable to gambling, and the appalling record of the commercial gambling industry, a similar approach would be appropriate in this area.

22. My earlier submission addresses some aspects of governmental processes. Beyond these and strong regulation, I would recommend:

- \* Establishment of a strong, independent and adequately resourced regulator to oversee the Casino and other gambling activities, with adequate resources. This should be through a discrete government agency (i.e. not part of or linked to any other government department), overseen by an independent Board. This could, as

proposed in the Commission's discussion paper include a retired judge or senior legal figure, who should be complemented by independent external figures with an understanding of the activities of harmful industries and measures required to address these, senior health representation, and at least one member with lived experience of gambling and its harms.

- \* The regulator should be funded by a levy on the Casino (and possibly other components of the gambling industry).
- \* Regulations should be determined independently of the regulator, whose role should relate to oversight and implementation.
- \* The regulator should have comprehensive powers, including in relation to disciplinary action, access without hindrance to any information the regulator might seek from the Casino or other components of the gambling industry, and scope to address new forms of gambling
- \* The regulator should also specifically be charged with development and oversight of effective marketing controls, with a special focus on preventing exposure of children and young people to promotion of commercial gambling products.

23. In relation to any special conditions imposed, I note that the Melbourne Royal Commission recommends that some aspects of oversight for the Melbourne Crown Casino should run for two years. This is no doubt well-intentioned, but unrealistic. Much of the change needed will take much longer, and indeed the Perth Royal Commission heard expert evidence to the effect that for "Material sustained change, I think you are talking about three to five years".

I would recommend that any special conditions imposed be for a minimum of five years, followed by a further review, and that the regulatory processes be continuing.

24. It may be that educational and other prevention and support services could be overseen by the regulator. My advice would be that the expertise and skills required to oversee these activities are very different from those required by a regulator.

I would therefore recommend the establishment of a discrete organisation within government, reporting to an independent Board, to oversee education, prevention and support services and research, with the following caveats:

- \* No direct or indirect gambling industry involvement in development, activities or oversight
- \* No involvement of researchers funded by the commercial gambling industry
- \* Adequate resources – as for the regulator, to be provided through a levy on the Casino and other gambling concerns active in the state (over which they should also have no controls)
- \* A clear and mandated focus on both prevention and appropriate services

- \* Genuine expertise in relevant educational approaches
- \* In relation to provision of services and any Board membership, input from people with lived experience
- \* This new body could learn from some of the lessons noted in the Victorian Auditor General's recent report on the Victorian Responsible Gambling Foundation to ensure a more focused, evidence-based and effective approach.

25. As so often, language is important. I would be happy to discuss this issue further. My very strong advice to the Commission in relation to their report would be to avoid industry-favoured framing, including in particular:

i) recommendations promoting the concept of “responsible gambling” (a term universally favoured by the industry as part of both ineffective education activity and gambling promotion - See also my comments on this framing in my earlier submission, and for example - <https://dro.deakin.edu.au/eserv/DU:30041093/hancock-howresponsible-2010.pdf> and <https://link.springer.com/article/10.1007/s11469-017-9746-y>

Use of this terminology is also open to misinterpretation – for example through phraseology asserting that the role of government agencies in this area is “to foster responsible gambling”, “encourage responsible gambling” or “promote responsible gambling”.

ii) an overarching focus solely on “problem gambling” and “problem gamblers” – terminology which seeks to minimise concerns about gambling, can wrongly imply that gambling risks and harms apply only to very small numbers, and further minimises concerns about indirect as well as direct harms.

iii) concerns about and curbs on advertising or marketing “to” children and young people. There is substantial and well-justified concern about the impacts on children and young people of marketing for gambling products and behaviours. The issue to be addressed, however, is not (as implied in many advertising industry codes) marketing “to” them – but their exposure to marketing for these products and behaviours.

26. This submission does not address issues related to the sale of the TAB and possible extension of electronic gaming in WA. I would, however, note that any extension of electronic gaming will inevitably bring with it substantial further harms, and targeting of vulnerable sectors in the community. I hope that the Commission will feel able to note the importance of caution in this area, particularly given WA's outstanding bipartisan history of supporting restrictions on poker machines.

27. I hope that this will be of some assistance. I would be happy to provide any further information and comment if required.

Emeritus Professor Mike Daube AO HonDSci FPHAA FFPH  
 Faculty of Health Sciences, Curtin University  
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