

Submission to the Perth Casino Royal Commission
in relation to the
Discussion Paper on the Regulatory Framework

Associate Professor Charles Livingstone

Introduction

Charles Livingstone as an Associate Professor in the School of Public Health and Preventive Medicine, Monash University. He has studied the economic and social impacts of gambling for over 20 years, and has collaborated with multiple colleagues at a global level. He has research degrees in economics (M.Ec.) and social theory (Ph.D.). His current principal research interest is critical gambling studies, including in particular gambling policy reform and the politics, regulation and social impacts of electronic gambling machine (EGM) gambling.

Associate Professor Livingstone is a regular contributor to public debate via popular media, in particular around issues such as the social impact of EGMs, their structural characteristics, and appropriate policy responses to address gambling harms. He is a current member of the World Health Organisation's Expert Group on Gambling and Gambling Disorder, and the Lancet Public Health Commission on Gambling. He was a member of the Australian Government's Ministerial Expert Advisory Group on Gambling 2010-2012.

More information about Associate Professor Livingstone is available at:

<https://research.monash.edu/en/persons/charles-livingstone>

In this submission, I intend to address the specific questions raised in the Discussion Paper, following a brief discussion of the preferred regulatory model and some associated issues.

Regulatory model

As the Royal Commission will be well aware, the current operator of the Perth Casino has been the subject of adverse findings relating to money laundering, infiltration by criminal syndicates, tax evasion, abrogation of 'responsible gambling' responsibilities, breaches of law and regulation in Australia and elsewhere, non cooperation with relevant authorities. As the Royal Commission will also be well aware, this litany, along with other non-compliance, has been documented by two inquiries, in NSW (Bergin) and in Victoria (Finkelstein). Counsel Assisting in Finkelstein submitted in closing that it was open for the Commissioner to find that Crown could never again be trusted. Both Bergin and Finkelstein found, respectively, that Crown was not fit to operate a casino in NSW and Victoria. In NSW, the conditions necessary to demonstrate Crown's suitability have not yet been achieved at the time of writing. In Victoria, a Special Manager has been appointed with sweeping powers to direct and oversee the casino's operations for two years, at the end of which suitability is to be determined (Livingstone 2021a).

All of the Crown companies are implicated in these findings, and indeed the Perth Casino Royal Commission (PCRC) has already heard evidence of significant failings on the part of

Crown, in governance, and otherwise, that further substantiate the findings of Bergin and Finkelstein.

In these circumstances it is clear that the best model for regulation of the casino (and indeed, other forms of gambling) would avoid placing significant trust in the operator to self-regulate. Recent media reports (McKenzie & Tozer 2021) regarding allegations of widespread money laundering in NSW clubs and hotels further indicate the desirability of better regulation. Clearly, in the case of Crown, self-regulation failed, and the effective oversight of the regulator in Victoria was undermined by Crown's political access and influence, and its ability to browbeat and harass the regulator.

In these circumstances, and with the importance of establishing public confidence in both the regulatory system and government, the model for regulation of the casino (and indeed other gambling forms) should be independent, well resourced, adequately empowered including being empowered to compel evidence and the production of documents, etc. Its representatives (inspectors) should have the capacity to attend the casino without hindrance at any time and undertake observations and inspections as required.

It is of particular importance to give effect to these considerations in the event that Crown continues to operate the casino. However, public confidence in the regulation of casino operations, and gambling more generally, has been severely eroded. Accordingly, an effective, well resourced and independent regulator is highly desirable, regardless of the operator.

Of the proposed models offered in the Discussion Paper, Model 3 appears to be the best capable of meeting these requirements.

It is also important to add a further caveat to the following submissions. The influence of the gambling industry is all pervasive in Australia (and elsewhere). This extends to political actors, state officials, associated industries, unions, and in some cases researchers and experts, including academic researchers and experts (Livingstone 2018, Adams 2008). One of the key causes of the Crown debacle (now extending to Royal Commissions or similarly empowered inquiries across three states) has been the extent to which the companies, and the gambling industry more generally, have exercised influence (Johnson & Livingstone 2020).

Any attempt to bring the gambling industry to a state where it is properly and actively compliant must also be aware of the extent to which influence has, and may again be exercised by this powerful and well resourced corporate sector. Accordingly, where independent expertise is brought to bear on these matters, it must be truly independent. Legislation or regulation should specify that experts or researchers should declare any and all conflicts in relation to the gambling industry, and this should be a matter considered carefully by the regulator when appointing such expertise. The operator must not have any influence on the actions of the regulator, other than where permitted by law (as in the case of an exercise of power arguably beyond that available to the regulator, for example), and allow no political intervention other than by action of Parliament (to amend law or disallow regulation, for example).

It would also be appropriate to prohibit by statute the appointment or engagement (whether as a contractor, consultant, or otherwise) by the casino operator of any former politician, political staff member, or board member or staff of the regulator, for a period of

five years after they cease to be employed or engaged in their original role. The practice of engaging such personnel by gambling operators is widespread (Livingstone 2016), and in the case of Victoria may be seen to have allowed the exercise of inordinate power by the operator, to the significant detriment of the enforcement of legislation and regulation. Donations from gambling industry bodies to political actors should also be prohibited. The task of cleaning up the gambling industry requires that regulation look well beyond the immediate task of designing a feasible regulatory model. For similar reasons, consultative committees and processes need also be independent of any industry influence. It is reasonable to advise industry what course of action is intended in a regulatory or legislative sense. However this should not entail industry determining what regulation is acceptable or reasonable. That is the province of government.

Objects and Principles Clause

A. Should the regulatory legislation contain an objects clause?

Yes. Although the relevant Victorian legislation contains an objects clause, this has been effectively undermined by the lack of power (and perhaps political support) thus far bestowed on the regulator. An objects clause, supported by a principles clause, may however form the basis for assisting the regulator to determine its priorities and appropriate actions in pursuit of those, subject to it possessing adequate resources and powers. In particular, a key object must be the prevention and minimization of harm. This must be emphasized as of greater importance and priority than economic issues, subject to issues relating to state revenue and economic development being given proper importance. This might be achieved via an appropriate principles clause.

B. Should the regulatory legislation contain a principles clause?

Yes. As noted above, legislation that provides a clear basis for the exercise of adequate powers by an independent, properly resourced and well empowered regulator would be of great importance in guiding the regulator in establishing its priorities, exercising its duties, and resisting pressure from political and commercial interests. In my opinion, the principles should incorporate such concepts as integrity, a commitment to harm prevention and minimization, independence, curiosity, and resistance to political and commercial influence and vested interests. These principles should be identified as applying not just to the exercise of regulatory powers, but be applied to the day to day decision making and operations of the casino operator.

C. If so, what key objects should guide the regulation of casinos and, depending on the model adopted, other forms of gaming and wagering in Western Australia?

Firstly, a priority to ensure that harm prevention and minimisation are the foremost guiding objects of the legislation and regulatory approach.

Secondly, a commitment to ensuring that the integrity of gambling operations is of the highest possible standard, including ensuring to the greatest possible extent the absence of criminal influence, money-laundering activity, loan sharking, drug dealing and the exercise of vested interests via political donations, gifting, provision of inducements or gifts to politicians or state officials.

Thirdly, that benefits to the state must be maximised consistent with observance of other principles, including via correct record keeping and revenue collection, maximisation of other economic benefits, and by management and governance accepting that the interests of the state must guide decision making and operational practice by the operator.

Fourthly, that regulatory arrangements must not be undermined by the extent to which the casino contributes to state revenue or economic effects (including employment), and that the regulator must act as necessary when breaches of regulation or legislation are detected (see Livingstone 2021c).

Risks

- A. Should the regulatory framework prescriptively legislate for the regulator (or an external expert) to undertake risk assessments and devise risk management plans for the Perth Casino?

Yes. If so:

- a. At what intervals should that assessment take place?

Initially, at intervals of not more than two years from the date of the PCRC report being provided to government. Subsequently, depending on the regulator's assessment of the extent to which the operator is complying with legislation and regulation, this might be extended beyond two year intervals.

- b. How should those tasks be funded?

The casino operator should fund these tasks via a special levy. The casino operator, however, must not have any say in the terms of reference or the personnel involved in such assessments. These must be fully independent of the involvement of the operator, or political actors.

- B. Should the regulatory framework prescriptively legislate for the licensee of Perth Casino to undertake risk assessments and devise risk management plans for its own operation subject to approval by the Regulator?

This should be a general standard for operator practice. If this is legislated, it needs to be in respect of all areas covered by the objects of the legislation, and should be overseen by the regulator. It should have transparent, measurable goals and these should be assessed using publicly available evidence scrutinized by the regulator.

- C. If so, at what intervals should that assessment take place?

Initially annually, with a review subject to satisfactory implementation as assessed by the regulator allowing these plans to be incrementally upgraded annually rather than fully revised.

- D. In relation to B, to what extent should a regulator be involved in the process by which the licensee develops the risk

The regulator should provide guidelines to assist in developing these plans, should have oversight of the plan and the process of its implementation, and should be provided with all necessary data and evidence to assess the extent to which the plan has been implemented and observed by the operator.

Review of the Licensee

- A. Should the WA regulator have a legislated power to review the casino license holder?

Yes. If so:

- a. What matters ought to be reviewed?

Any aspect of casino operations the regulator thinks fit, subject to issues of harm prevention and minimization, integrity of casino operations, and protection of state revenue being required for any such review.

- b. Who should bear the cost of the review?

The casino operator should bear the cost of the review, via a special levy. The casino operator should not have any ability to determine the scope of the

review nor to recommend or determine the personnel who should undertake the review.

c. What powers should the regulator have?

The regulator should have the necessary powers to exercise its responsibilities. This includes:

- 1) Imposing significant fines where a breach has occurred (Finkelstein recommended that the maximum fine in Victoria be increased from \$1 million to \$10 million. The Victorian government increased this to \$100 million in legislation).
- 2) Suspension or cancellation of the license where warranted by gross breaches of legislative or regulatory requirements.
- 3) Power to compel evidence from any relevant person, and to require production of relevant documents.
- 4) Power for authorized officers (inspectors) to enter any casino premises at any time without notice, require production of records, to observe activity in gaming rooms, including 'private' gambling rooms, and to view any closed circuit or similar video records or live streams operated at the casino.
- 5) Power to investigate allegations of relevant criminal activity in conjunction with Police or other authorities (state or federal) and to support prosecutions by relevant authorities.

B. Should the regulator have the ability to suspend a casino license? If so, in what circumstances?

Yes. Where a gross breach of regulatory or legislative requirements has been reasonably demonstrated and substantiated by an investigation by the regulator and/or other relevant authorities (e.g., AUSTRAC, Federal or State police, state revenue authorities).

D. Should WA include a regime like the one found in sections 28, 28AA and 28A of the Victorian legislation for approval by the regulator where there is major change in circumstance to a licensee or a close associate?

Yes.

Delegation of powers of the GWC

A. Are there any specific current powers which the casino regulator ought not be able to delegate?

No.

B. Are there any potential future powers of the casino regulator which it ought not be able to delegate?

No, other than the imposition of a major fine (in excess of \$1 million), suspension or cancellation of license.

C. What oversight should the casino regulator retain over the exercise of delegated power?

Regular reporting by delegates of the exercise of any delegated power as soon as possible after its exercise.

D. How should delegations (their grant and exercise) be recorded? For example, should the delegation of powers be articulated with precision in a written instrument which addresses, as a minimum:

- a. the scope of the delegation, namely whether it be a full or partial delegation of power;

Yes.

- b. any conditions of the delegation (for example, can the delegate decide whether to exercise the power independently or must the delegate act in accordance with an in-principle decision of the delegator);

Delegated powers should be exercised independently. Where an in-principle decision of the regulator has been made, this should guide decision making. Further, the objects and principles of legislation and regulation must be observed and implemented in any decision making.

and

- c. the content and purpose of reports to the regulator concerning the exercise of delegated powers (for example, whether the report is simply for noting and recording or whether the exercise requires ratification before taking effect).

Reports should advise the regulator of the exercise of power for purposes of noting and recording.

Harm minimisation and the responsible service of gaming within the casino environment

- A. Should a prescriptive approach be taken in respect of harm minimization?

Yes. Finkelstein was at some pains to point out the gross failings of the casino operator in relation to harm prevention and minimization, regarding this as a highly egregious breach of responsibilities. Accordingly, legislation should provide for limits of time and money spent gambling (particularly on electronic gambling machines, EGMs, which are highly addictive, readily accessible in the casino environment, and very harmful)(see Yucel et al 2018); for cashless gambling requiring a registration or account system, and for regular breaks in gambling activity, with a maximum number of hours per week and a universally applied break in gambling activity on a daily and weekly basis (see also Livingstone et al 2019).

- B. Should a prescriptive approach be taken in respect of responsible service of gaming?

It is arguable that 'responsible service of gambling' is a concept that has much more been honored in the breach than in the observance (Livingstone 2021b, Livingstone & Rintoul 2020). Accordingly, any code of conduct or charter for responsible service of gambling must be enforceable and subject to regular review and revision by the regulator. Changes to the code or charter sought by the operator should be subject to review by the regulator prior to implementation.

- C. What degree of oversight ought the regulator have in respect of harm minimization? How might that oversight occur?

Consistent with the introduction of a clear object to prevent and minimize harm to the greatest extent possible, the regulator should be focused on ensuring that systems put in place to implement harm prevention and minimization goals are consistent with that purpose, that data are collected and made available in a manner that allows them to be regularly scrutinized by the regulator, and where appropriate shared in a de-identified manner with competent and appropriately qualified researchers and experts to ensure both compliance and fitness for purpose. Patrons and interested parties should be advised of a 'hotline' or similar service to enable breaches or concerns around harm prevention and minimization practices to be scrutinized by the regulator or an appropriate independent expert. Inspectors must regard enforcement of harm prevention and minimization practices as a key aspect of their role. Breaches of harm prevention and minimization practices must be regarded as seriously as any other breach of regulation or legislation and attract the same penalties.

D. Should the casino gaming regulator prepare and implement a gaming harm minimization plan or program or should the casino operator? If the former, who ought to bear the cost (or a portion of the costs) of its preparation and why?

In the first instance, regulation should provide a framework for expectations around harm prevention and minimisation practices. This may be enhanced by guidelines or standards prepared and provided by the regulator. These may be enhanced or revised from time to time. This aspect of the regulator's activity should be a core aspect of its responsibilities. The development or revision of harm prevention or minimisation activities or interventions by the casino operator should be encouraged but such revisions or developments must be subject to approval by the regulator, in consultation with independent researchers or experts where the regulator lacks experience or knowledge of the relevant issue.

E. Should there be an independent body which addresses gambling harm, similar to the Victorian Responsible Gambling Foundation?

The development of an independent and adequately resourced gambling harm prevention agency is of fundamental importance. It is clear that regulators have thus far been hamstrung to a significant degree by a lack of expertise in this area of casino and other gambling operations. Further, rapid developments in technology and business practice mean that regulators may struggle to maintain up to date knowledge of gambling products and services and their methods of delivery. An agency devoted to developing an up to date understanding of these issues, and able to commission independent research into relevant topics and areas of concern, would be invaluable. This agency might also act as a clearing house for de-identified data to be provided to bona fide researchers. This agency ought to be funded from general revenue, and be independent of any influence from the gambling industry.

Inspectors

A. What are the advantages and disadvantages of a physical inspectorial presence on the casino gaming floor?

Inspectors are able to scrutinize real time activity on the floor and act as a deterrent to breaches. This is particularly so where they have the power to enter and occupy any space in the casino. The deterioration in standards at Crown Melbourne may have been exacerbated by the absence of inspectors in relatively recent times.

B. What are the advantages and disadvantages of the current inspection and audit model and reliance on electronic surveillance?

Electronic surveillance is an adjunct to a physical presence. It has advantages that physical presence lacks (review of incidents or practices, plus capacity to search for evidence etc.) but should properly be augmented by a physical presence.

C. What should be the role and function of inspectors as to inspection, audit and compliance at Perth Casino?

Inspectors could and should play a key role in observing and scrutinizing the day to day practice of the casino. Where issues arise during a compliance or audit process, the experience of their observations and scrutiny may be invaluable in assisting to build a reliable understanding of the actual situation.

D. What legislative powers should inspectors have (if any) in respect of inspection, audit and compliance at Perth Casino?

Inspectors ought to be able to enter and occupy any part of the casino, peruse video or closed circuit records, or in real time, and inspect documents where necessary to exercise their function, which is to enforce compliance.

E. Should interference with inspector functions carry with it a strict liability offence?
Yes.

F. To what extent should the GWC be responsible for oversight of inspectors at the Perth Casino?

Inspectors should be employed and directed by the regulator.

G. Should the role of inspectors be dedicated to casino inspection or include other compliance functions such as liquor?

Inspectors ought be devoted to casino compliance. Note the comments of Bergin and Finkelstein in this respect.

Ministerial Powers

A. What are the advantages or disadvantages of expanding Ministerial powers to include delegation of the Minister's powers to the Director-General of the Department?

Any Ministerial power should be capable of delegation to the regulator. The Department should be at arms length from regulation and thus the Ministerial power in relation to regulatory matters.

B. Should the regulator's or Minister's powers include the ability to suspend or revoke a casino license? If so, under what circumstances should that power be enlivened?

Yes. As noted above, where breaches of regulation or regulation are judged as gross breaches.

C. What powers should the Minister have in respect of directing or overseeing the operations of a regulator?

The Minister ought be able to direct investigation of a specific matter to ascertain a breach or failure to comply with regulation or legislation. The Minister ought not be otherwise empowered to direct the regulator.

GWC financial systems and resources

A. To what extent should the casino operator fund its own regulation? Why?

The regulator should be funded by a combination of general revenue and a levy for specific purposes, to ensure that it is sufficiently resourced to undertake all necessary functions.

B. Should license fees payable by a casino licensee be accounted for and used solely for the regulation of casinos or should they be generally available, with other funds, to be utilized in the regulation of all forms of gaming and wagering?

It is desirable that funds for regulation not rely on the profitability or otherwise of gambling operators. Apart from special levies, it is desirable to fund regulation from general revenue.

C. Should there be a legislative power for the regulator to review the casino license fee on a regular basis?

Yes

D. How prescriptive should any power to increase or decrease the casino license fee be?

The license fee should be set by legislation, and thus be subject to Parliamentary approval.

E. Should the casino operator be consulted before any increase or decrease in the casino license fee?

No.

F. Who should recommend and/or approve any increase in the casino license fee?

The Minister should recommend a license fee increase; the Parliament should approve it.

G. In what circumstances should that increase or decrease be permitted?

Where it is approved by the Parliament.

- H. In the case of proposed models 1 and 2, should the regulator be assigned to regulate other industries, for example liquor? Why?

The regulator should be focused on the regulation of gambling, as noted by Bergin and Finkelstein.

Junkets

- A. Should there be an unconditional statutory prohibition on junket operations at Perth Casino?

Yes.

- B. If junkets are to be prohibited, should the present ban on Premium Player and Privileged Player activity be included in the prohibition? If not, what type of regulation is necessary or desirable in relation to the activities of individuals coming within those definitions?

Yes. Such individuals should be subject to all normal standards and regulation as other gamblers.

- C. If junkets are allowed to form part of the operations at Perth Casino, what role should the regulator have in approving junket operators and assessing probity?

N/a

- D. What other oversight should the regulator have in respect of junket operators at Perth Casino?

N/a

- E. Should there be a legislative prohibition on remote betting or betting by agent?

Yes.

References

- Adams P. 2008. Gambling Freedom and Democracy. Routledge, London.
- Johnson M, Livingstone C. (2020): Measuring influence: an analysis of Australian gambling industry political donations and policy decisions, Addiction Research & Theory, DOI: 10.1080/16066359.2020.1766449
- Livingstone & Rintoul 2020 Moving on from responsible gambling: a new discourse is needed to prevent and minimise harm from gambling Public Health 184: 107-112. Doi <https://doi.org/10.1016/j.puhe.2020.03.018>
- Livingstone C 2018. A case for clean conferences in gambling research. Drug and Alcohol Review. 37: 683-686.
- Livingstone C. 2016. Gambling industry finds plenty of political guns for hire to defend the status quo. The Conversation. 14 December. Available at: <https://theconversation.com/gambling-industry-finds-plenty-of-political-guns-for-hire-to-defend-the-status-quo-70124>
- Livingstone C. 2021a. 'Illegal, dishonest, unethical and exploitative' – but Crown Resorts keeps its Melbourne casino licence. The Conversation. 26 October. Available at: <https://theconversation.com/illegal-dishonest-unethical-and-exploitative-but-crown-resorts-keeps-its-melbourne-casino-licence-170625>
- Livingstone C. 2021b. Responsible gambling - a bright shining lie Crown resorts and others can no longer hide behind. The Conversation, 4 June. Available at: <https://theconversation.com/responsible-gambling-a-bright-shining-lie-crown-resorts-and-others-can-no-longer-hide-behind-162089>

- Livingstone C. 2021c. Crown Resorts is not too big to fail. It has failed already. The Conversation. 9 August. Available at: <https://theconversation.com/crown-resorts-is-not-too-big-to-fail-it-has-failed-already-165659>
- Livingstone, C, Rintoul, A, de Lacy-Vawdon, C, Borland, R, Dietze, P, Jenkinson, R, Livingston, M, Room, R, Smith, B, Stooze, M, Winter, R & Hill, P 2019. Identifying effective policy interventions to prevent gambling-related harm, Victorian Responsible Gambling Foundation, Melbourne. Available at: <https://responsiblegambling.vic.gov.au/resources/publications/identifying-effective-policy-interventions-to-prevent-gambling-related-harm-640/>
- McKenzie N, Tozer J. 2021. The money laundry: pubs and clubs the next frontier for crime. Sydney Morning Herald, 28 November. Available at: <https://www.smh.com.au/national/the-money-laundry-pubs-and-clubs-the-next-frontier-for-crime-20211125-p59c0b.html>
- Yucel M, Carter A, Harrigan K, van Holst R, Livingstone C. 2018 Hooked on gambling: a problem of human or machine design? The Lancet Psychiatry, 5: 20-21.