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# **United Workers Union Submission to the Perth Casino Royal Commission in response to the Commission's 'Discussion Paper on the Regulatory Framework'**

November 2021



## **Introduction and Key Recommendations**

The United Workers Union (UWU) welcomes the opportunity to make a further submission to the Perth Casino Royal Commission.

We are a national union of 150,000 members, working across 45 industries and we stand together so every worker has dignity, respect, and justice.

As we have previously stated, it is critically important for our members and our communities that Crown Casino operates with integrity.

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.

1. The establishment of an independent, stand-alone casino regulator, à la the third model, committed to better governance and a better corporate culture that takes into consideration the rights, health, and safety of its workers along with those of the community.
2. The insertion of worker-centric objects and/or principles that require decision makers to consider the rights of and any impacts on workers when interpreting or applying the relevant Act.
3. Prescriptive legislation within the regulatory framework that requires the regulator to conduct regular risk assessments (no less than once every five years), and create risk management plans, both of which should consider the impact on workers of any risks identified.
4. A requirement for the regulator to conduct regular inquiries – at a minimum every three years – into the suitability of a licensee or an associate of a licensee. This enquiry should take into consideration any decisions made by the licensee with regards to worker rights and safety and should review the licensee's compliance with all relevant workplace and industrial laws.
5. Maximum oversight over any powers or duties delegated by the regulator by requiring it to keep a detailed and up-to-date, publicly accessible register of delegation.
6. The establishment and recognition of workplace representative/s called Responsible Gaming Officers ("RGOs") who are elected by the relevant workforce and are empowered to deal with issues and concerns related to problem gaming.
7. Maintain the independence of the regulatory body by granting it the authority to unilaterally (i.e., independently of the Minister) cancel a licence as a form of disciplinary action.

## **Recommendations**

### **1. The establishment of a stand-alone casino regulator**

In order to ensure casino operations are always being conducted lawfully and in accordance with the public interest – to have a social licence to operate – there must be an independent casino regulator established in Western Australia, as per the third model in the discussion paper.

This stand-alone statutory authority could model its organisation on WorkSafe, as well as several of its functions. Victoria also provides a useful example: the newly created independent Victorian Gambling and

Casino Control Commission (VGCCC) will include a dedicated casino regulation division focused solely on holding Melbourne's casino operator to account.<sup>1</sup>

This stand-alone regulator must:

- Be independent and stand-alone, ensuring freedom from political interference with enabling legislation to make the scope of responsibility clear.
- Be broad in its focus, not limited to enforcing only casino-specific or gaming-specific laws but able to investigate other conduct relevant to the licence-holder's suitability or the public interest with Memoranda of Understanding with relevant agencies to facilitate information sharing and possible prosecutions where unlawful conduct has occurred, including breaking workplace laws.
- Have an objects clause and/or principles clause that includes worker-centric directives that set the standard by which casinos must treat its workers.
- 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 part in an inquiry).
- Have an independent board with a Chief Executive Officer who would report to relevant Ministers and be responsible for providing written reports to be tabled in Parliament and made available to the public.
- Appoint board members according to legislated criteria to ensure that it is representative of the Western Australian community and must include at least one worker-representative.

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 outcomes<sup>2</sup> and generate lower operational risk profiles for businesses.<sup>3</sup> 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.<sup>4</sup>

## 2. Insertion of objects and/or principles clauses which include worker-centric directives

Objects and/or principles clauses can ensure that any interpretation and/or application of an Act is guided by broader justice-oriented principles. They also shift the focus onto what the regulator should promote or attain during the period of the regulation instead of what it should prevent. As such, objects and/or principles clauses, in requiring the decision makers to keep workers in mind when interpreting legislation, can be important legislative tools for safeguarding workers' rights or conditions at work.

<sup>1</sup> Victorian State Government 2021, 'New Regulator to Strengthen Casino Oversight', Media release, 3 August 2021, <https://tinyurl.com/2npxmx8>.

<sup>2</sup> Here with reference to workplace health and safety outcomes: EU-OSHA 2012, *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, <https://tinyurl.com/2p9h96hd>

<sup>3</sup> As opposed to private compliance initiatives or other forms of voluntary self-regulation: ILO 2017, *Workplace Compliance in Global Supply Chains*, Geneva, ILO, <https://tinyurl.com/mr37x2ry>; see also: Ethical Trading Initiative 2004, *ETI Annual Report 2003/04: Putting Ethics to Work*, London, Ethical Trading Initiative, <https://bit.ly/2SwGdua>; World Bank 2003, *Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains*, World Bank.

<sup>4</sup> Institute of Chartered Accountants in England and Wales 2018, *How employee directors add value, Corporate Governance: Connect and Reflect*, Report.

Therefore, UWU recommends the inclusion of objects and/or principles clauses within any new legislative framework created for the purpose of casino oversight, containing at a minimum one worker-centric principle that enshrines the protection of employment conditions and workplace rights, including the right to work in a safe and healthy environment.

### **3. Regulator to undertake regular risk assessments and create risk management plans**

Regular risk assessment and the creation of risk management plans are vital to ensuring a culture of compliance across all levels of regulations. Therefore, UWU recommends that any regulatory framework developed for casino oversight should prescriptively legislate for the regulator and/or the licensee of the Perth Casino to undertake risk assessment and devise risk management plans.

Under this regulation, the regulator and/or licensee must:

- Undertake risk assessments at regular intervals of at least every five years, considering the impact on workers of any risks identified.
- Devise risk management plans to address identified risks, ensuring that these plans also address worker health and safety.

Fundamental to risk assessment and risk management is ensuring that employees are protected when reporting relevant risks and/or non-compliance. 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.

Although the discussion paper does not address this, UWU urges the Perth Casino Royal Commission to consider these protections for employees. This may be done by requiring that a casino licence should require an approved whistleblower policy that provides for investigations by a sufficiently qualified and experienced independent party (for example, 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.

### **4. The periodic review of the licensee**

There is currently no provision in the WA legislation which requires periodic review of a casino gaming license and any associated entities. However, a period review of license is a fundamental to ensuring the continued suitability of a licensee or operator, and thereby to ensuring the Perth Crown operates with integrity and financial probity. The review of the licensee is already established in Victoria, where the VGLR must investigate the suitability of the casino operator at least every 5 years.<sup>5</sup>

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<sup>5</sup> *Casino Control Act 1991* (Vic) s 26, <https://www.legislation.vic.gov.au/in-force/acts/casino-control-act-1991/095>.

As such, UWU recommends that the regulator must

- Conduct regular inquiries (no less than 3 years) into the suitability of a licensee or an associate of a licensee.
- Have the authority to unilaterally (i.e., without Department intervention) cancel or suspend a casino licence in cases where it finds the licensee unsuitable.

For the purposes of conducting this review, the regulator must establish a definition of suitability to be a licensee or an associate of a licensee that includes the applicant's record on worker rights, health, and safety. In line with the amendments to gaming regulation recently passed in Tasmania,<sup>6</sup> the regulator must ensure that:

- Any new licensee must have a history of complying with the laws of any jurisdiction in Australia relating to industrial relations or workplace safety and must continue to demonstrate compliance to meet the requirements of regular inquiries thereafter.
- Any new licensee must have appropriate systems and processes in place to ensure that each person who is not engaged, or employed, by the applicant, is not subject to discrimination, harassment, or other adverse action by the applicant, or by a person engaged or employed by the applicant. The licensee must continue to demonstrate compliance to meet the requirements of regular inquiries thereafter.

An applicant could demonstrate their commitment to worker rights, health, and safety 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 non-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.
- Committing to secure direct employment with a mandatory minimum ratio of direct and permanent employees.
- Providing an annual compliance report to the regulator detailing:
  - The number of employees engaged.
  - The number of employees in the 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.

These minimum standards should be developed in collaboration with workplace representatives including UWU.

## **5. Established rules around the delegation powers of the regulatory body**

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<sup>6</sup> Tasmanian Government House of Assembly 2021, 'Votes and Proceedings', no. 27, Thursday 25 November 2021, <https://www.parliament.tas.gov.au/ha/pdf/havotes.pdf>.

The present regulatory body, the Gaming and Wagering Commission (GWC), has the power to delegate all or any of its powers or duties, save for the power of delegation itself. However, there is currently no formal requirement for the GWC to keep records of decision made or power exercised under delegation, and there is no formal, publicly accessible register maintained.

It is important for any regulatory body to be transparent about the powers and duties it chooses to delegate, as those decisions may impact casino workers as well as the community at large. Therefore, UWU recommends maximum oversight over power or duties delegated by the new regulatory body by requiring it to keep a detailed and up-to-date, publicly accessible register of delegation. This register must include the following information:

- The name and other relevant details of the delegate.
- The scope of the delegation (e.g., whether it is a full or partial delegation).
- Any conditions of the delegation (e.g., can the delegate act independently).
- The content and purposes of reports to the regulator concerning the exercise of delegated powers.
- And any other information that may be relevant with regards to the delegate (e.g., any existing relationship between the delegator and the delegate, whether individual or institutional).

## **6. The establishment of Responsible Gaming Officers to assist harm minimisation**

A better and safe casino industry is about more than increased regulatory oversight. If we truly want a better corporate culture 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.

To address this issue, regulation should provide for the establishment and recognition of workplace representative/s called Responsible 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 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.

## **7. Limits to Ministerial powers**

In WA at present, the Minister has the power to approve applications for casino gaming licences while the regulator cannot cancel a licence without the approval of the Minister.

To safeguard its integrity, UWU recommends that along with the Minister, any independent, stand-alone regulatory body established for the purposes of casino oversight also have the unilateral authority to cancel or suspend a licence as a form of disciplinary action.

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