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CONSTRUCTION AND REGULATION OF "DANGEROUS CONSUMPTIONS": RE-REGULATING STATE CASINO CAPITALISM – AN AUSTRALIAN REGULATORY CASE STUDY

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הפורום הירושלמי
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Abstract: This paper explores insights into the regulatory state and state capitalism through the lens of how states construct and regulate markets in the area of 'dangerous consumptions', in particular, land-based casino gambling. It focuses on what is needed for public interest regulation; with a focus on consumer protection and harm prevention. Gambling constitutes a site of explicit state regulation as the state decides and negotiates license-to-operate conditions along with the degree of significance accorded to impact/harm, regulatory monitoring and enforcement, harm prevention and state/operator duty of care.

Responsive regulation (RR) (Ayres and Braithwaite 1992) has been influential in Australia and elsewhere. In areas such as licensing of alcohol and gambling, RR offers resource-limited regulators a means of managing large numbers of venues via co-operation, persuasion, Codes of Conduct and self-regulation; for identified public interest outcomes. Previous analyses of gambling has deemed RR as of mixed utility, but have lacked a detailed empirical basis for testing how RR works in practice; especially in terms of operation and enforcement of voluntary industry Codes and have not linked these questions to the particular public interest needs of land-based casino regulation.

This paper outlines conceptualization of gambling as a 'dangerous consumption'. Secondly, it examines the dominant regulatory paradigm responsive regulation (RR) and adequacy of RR as a

conceptual framework for the challenges posed by gambling as a 'dangerous consumption'. Thirdly, it draws on a regulatory case study of RR in practice, drawing on a multi method approach to regulation of an Australian land-based casino [Victoria's monopoly Crown Casino]. It concludes that current use of RR is inadequate to the task and argues for alternatives principles and public health approach as in the OECD hazard avoidance model applied to chemical accidents. This prioritizes prevention, preparedness [for risk/harm eventualities] and response [enforcement] and points to the need for a more nuanced response to the regulation of dangerous consumptions that directly addresses public interest.

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Keywords: Responsive regulation, re-regulation, dangerous consumptions, codes of conduct, gambling, casinos, alcohol.

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Construction and Regulation of 'Dangerous Consumptions'- Re-Regulating State Casino Capitalism – an Australian regulatory case study

I. Introduction

This paper investigates insights into the regulatory state and state capitalism through the lens of how states construct and regulate markets in the area of "dangerous consumptions" (DCs), in particular, gambling. It focuses on what is needed for pubic interest regulation, with a focus on consumer protection and the avoidance of preventable gambling-related harms.

Gambling constitutes a site of explicit state regulation as the state sets the conditions of license-to-operate for various forms of gambling. Laws, regulations and the routine practices of statutory regulators determine the degree of significance accorded to impact/harm prevention (frequently through operator codes of conduct), regulatory monitoring and enforcement. What lies at the heart of these interlocking processes is the extent of state/licensee operator duty of care (Hancock et al, 2008) and the effective operation of state regulators. The state has power to press for enforcement, which is often a weak point in the regulatory chain (Covlovsky et al. 2010; Gunningham, 2011; Hancock, 2011; Neilson, 2006).

The focus of this paper is the interrogation of land-based casino regulation, that draws on a case study in an Australian jurisdiction, where gambling is regulated primarily at State rather than national level, with 'strict' but 'soft' license-to-operate conditions based on 'responsible gambling (itself ambiguous)'. In the broader regulatory context, the chosen regulatory regime [Victoria, Australia] is deemed to be high on autonomy (self-regulation) for business and low on corporate responsibility for harms generated by the business. This is consistent with government/industry perceptions of gambling as an individual choice.

The paper outlines:

1. The case for designating gambling a "dangerous consumption". Here it is argued, the challenge of regulating dangerous consumptions is to secure public interest outcomes, principally social protection from avoidable harms via consumer protection and harm prevention strategies. Jurisdictions have recognized this through policies of "harm minimization" and "responsible gambling" that have been widely embraced in countries such as Australia, Canada, New Zealand, Norway and the UK; that have led to a range of expectations on licensees.
2. Examination of the dominant regulatory paradigm, Responsive Regulation (RR) and its adequacy as a conceptual framework for the challenges posed by gambling as a 'dangerous consumption'.
3. RR of casino gambling in practice? Does it meet public interest objectives? The case study, drawing on a study of casino regulation in Victoria, Australia, examines the challenges of RR, based on multi-source/method analysis including interviews with employees tasked with obeying Codes of Conduct on responsible gambling and responsible service of alcohol.
4. Exploration of alternative regulatory models more appropriate to regulating DCs, and casinos in particular, that will better achieve public interest outcomes, draws on OECD regulatory approaches to hazardous chemicals as a vehicle for re-conceptualizing DC regulation and risk avoidance.

1. Regulatory Challenges of Conceptualizing Gambling as a 'Dangerous Consumption' (DC)

Approaches to casino licensing recognize they are potentially harmful. Governments regulate gambling for a range of well-accepted reasons:

- to ensure financial probity
- to prevent crime and money laundering
- to prevent participation of minors
- to protect consumers from gambling harms, for example, "responsible gambling" (frequently framed in terms of individual responsibility)

- To minimize the negative impact of gambling on communities for 'public good'or 'public interest' outcomes.

With mounting evidence on the harms caused by gambling, many jurisdictions have responded by emphasizing "harm minimization" and "responsible gambling"; but frequently frame this in terms of individual responsibility ("take control of your gambling"); rather than industry/government/regulatory responsibility for prevention of avoidable harms. As Bacchi argues (t)he term "responsible" has become a keyword in contemporary liberal an neoliberal modes of governance' focused on '*individualised* risk-management' (2007, p. 83) that is contrasted in this paper with the broader public health systems approach adopted by public health advocates[1]. The Australian Productivity Commission (2010) inquiry into gambling was clear in its advocacy for a broader public health approach.

> From a public health perspective, it is increasingly acknowledged that the term 'problem' gambler is problematic in several ways, and needs to be interpreted with care. One major drawback is that it can lead to an excessive focus on the individual traits — such as prior mental health conditions — that may precipitate gambling problems. It is important also to consider how gambling technologies, venue behaviours and other aspects of the gambling environment can lead to harmful outcomes for gamblers.
> (Productivity Commission, 2010: 17)

Casinos, which provide gambling alongside the sale of alcohol in dual-licensed venues, have known risks of harm that need to be managed and hopefully prevented. Larger casinos characteristic of Australia, New Zealand, Las Vegas and Macau are eager to present themselves as "entertainment complexes", offering recreation and leisure opportunities and designer shopping complexes, alongside conference centers and luxury hotels. In the Australian context, all 13 Australian casinos combine gambling with dining, liquor and other forms of entertainment, with some large-scale city CBD-based gambling complexes such as Crown Casino (Melbourne) combining entertainment, luxury shopping and conference and hotel facilities with a wide range of gambling products.

Canadian researchers Smith and Rubenstein (2009, pp. 18-19; 35) argue that gambling is both 'non-essential and hazardous' and is 'distinguishable from other risk activities in that the games are organized specifically to induce wagering; produce winners and losers; and involve large amounts of rapidly circulating currency". Others draw attention to their core business and the links to potential "social harms", "dangerous" or "risky" consumptions (Cosgrave, 2006, 2009; Orford, 2009).

Clearly, the harms associated with table game and machine gambling in liquor-licensed gambling-intensive environments, differentiate casinos from many other regulated services/products and bolster the argument that they are venues in need of strict public interest regulation.

Gambling and alcohol sit alongside other DCs such as tobacco (although gambling is the main focus in this instance). DCs have in common a number of key characteristics that impact on regulation.

- They are 'legal but potentially harmful' (Hancock, 2011, p.22)[2]
- Licensing is conditional. Similar to tobacco and alcohol, jurisdictions seek to design gambling regulatory systems to protect vulnerable groups; for example prohibiting sales of alcohol, tobacco and gambling to minors. Some jurisdictions seek to minimize impact of gambling related harms on local residents for example, government imposition of casino entry fees for locals designed to deter visitation at Singapore casinos.
- Harm is likely under certain conditions, but governments seek to reduce it to varying extents. For example, the known risks of gambling in land-based gambling venues have led to regulatory emphasis on:
    - "responsible gambling" (RG) and "responsible service of alcohol" (RSA) via Codes of Conduct; and
    - The broader responsibilities of licensees, for example, host responsibility and duty of care to customers, employees and the community.
- DCs have powerful peak bodies that manage and shape relations with government and the media, and shape the focus of research and public

discourse through their influence; for example, industry lobbies such as the Australian Gaming Council and Drinkaware.

Researching DCs is not always straightforward which means that there are many barriers to regulatory researchers wishing to conduct objective studies of regulatory culture, compliance and enforcement. They are not always easy to research for a number of reasons.

- Powerful corporate entities prioritize shareholder rather than public host community interests.
- Casino corporations frequently have complex transnational interests with elaborate chains of supply and lack transparency of public reporting.
- Asymmetries of information between industry knowledge (internal research) and public knowledge, are barriers to public interest research, transparency and accountability.
- Interlocking commercial and political interests result in special tax and other concessions to the casino industry, which help tag them as exempt or extreme environments, expected to diverge from standards applied to non-casino gambling licensees. (An example is casinos being permitted 24 hour opening and the offer of casino table games not permitted elsewhere and exemptions from gaming machine standards applied to other venues such as clubs and hotels[3]).
- Governments are not necessarily helpful in facilitating research when they gain considerably from gambling taxes and in this respect, have a conflict of interest. This detracts from their role as public interest protectors and renders them joint beneficiaries involved in co-production of likely harms.
- The gambling industry seeks to normalize consumption and even encourages 'risky' consumption, for example, allowing patrons to spend long periods of time gambling, giving free alcohol to customers that violates laws stipulating the offence of allowing an intoxicated person to gamble, and providing incentives such as lines of credit, to VIP customer to gamble excessively.
- Negative impacts are difficult to measure and may be experienced beyond individual consumers. For example, family and community impact of

> gambling-related suicide, depression, job loss, fraud and extortion are often not monitored or measured. Casinos create their own demand and so do not act like an ordinary consumption commodity and their consumption and distribution has adverse effects on others who do not consume or produce them.

Casino gambling is increasingly dominated by transnational corporations, which have operations in multiple jurisdictions. Globalization and "corporate capitalism," to use Braithwaite's (2008) term, raise broader questions about the level of corporate responsibility practiced by transnational corporations irrespective of the jurisdictional regulatory regime in which their specific operations are located. Braithwaite identified a major irony in the institutionalization of new self-regulatory mechanisms that still need central state control of revenue (Braithwaite, 2000, p. 234). When applied to gambling, governments have a conflict of interest in balancing short-term economic gains (gambling taxes) against amorphous, largely un-measured and diffused community impacts.

2. Examination of RR as the Dominant Regulatory Paradigm and the Extent to which RR is Adequate to Deal with the Challenges Posed by Gambling as a DC

Neilson and Parker (2009, p. 376) describe Ayres and Braithwaite's (1992) book on Responsive Regulation as 'the most sustained and influential account', which 'has been explicitly adopted by a wide range of regulators'. Freiberg (2010) observes their interest has been 'profound'. 'Regulatory pyramids have proliferated to the extent that most regulators have developed some variant upon this venerable structure' (Freiberg, 2010, 4).

Braithwaite and Ayres' original formulation of RR has had wide-reaching influence and governments in Australia have embraced this model in their approach to regulating both gambling and liquor licensing. The Productivity Commission Final Report on Gambling, acknowledges the application of this model to gambling regulation.

> Gambling regulators in Australia apply a mix of criminal, civil, administrative and educative interventions to encourage venue compliance with regulation. The application of these interventions mirrors an "enforcement pyramid", whereby interventions of increasing intensity, severity and cost are imposed on a hierarchy of regulatory breaches (Productivity Commission, 2010, p. 12.15).

As originally conceived by Ayres and Braithwaite, the model combines compliance and deterrence, with the major regulatory emphasis (and resource intensity) on compliance via persuasion. They argued: 'Punishment is expensive; persuasion is cheap. A strategy based mostly on punishment wastes resources on litigation that would be better spent on monitoring and persuasion' (Ayres and Braithwaite, 1992 p. 19-20). Regulators or inspectors are therefore seen as necessarily working *with* licensees in a cooperative relationship, to develop a culture of compliance across an industry. This approach emphasizes education, codes of conduct and "light touch" sanctions such as compliance letters – reserving stiff penalties to be used sparingly at the top of the pyramid for persistent non-compliance and aimed at general deterrence.

What is interesting about this model is that it is not a strict tariff penalty model in that seriousness of infraction does not necessarily trigger the weight or seriousness of penalty and hence involves considerable discretion on the part of regulators and regulatory inspection and reporting. The model is seen as being well suited to situations where the number of licensees exceeds the resources of regulators to regularly inspect and so has an attraction to cash-strapped regulators in politically sensitive areas where volume of sales is directly related to state revenue. But because of the social harms and community protection needs of DC industry regulation, whether or not this model as practiced is suited to areas like gambling, is open to debate.

In one of the few applications of RR to gambling regulation in Australia (applied to gambling in club and hotel community settings rather than casinos), Wright and Head (2009) assessed the utility of three perspectives within regulatory theory - normative (RR), descriptive (smart regulation) and poststructuralist (network nodal governance) – applied to gambling regulation in the states of Victoria and NSW. They concluded

that no one theory is adequate and argued for a 'flexible approach' based on a 'learning perspective on regulation and governance theory linked to pragmatism' (2009, p. 193). Their finding that RR in NSW was undermined by industry power and control, has been borne out by recent events where the powerful clubs lobby contributed to the failure of national gambling reforms, but they were optimistic in concluding that RR was working in practice in Victoria, (that 'the community sector is sufficiently resourced and represented to play a role in the regulatory system and the industry is strictly licensed and controlled' (Wright and Head, 2009, p. 199, 200). Even if there was evidence of multi stakeholder participation in policy dialogues from time to time, this does not necessarily result in improved public interest protection from harms and there was no evidence of how effectively regulation was enforced in practice.

Wright and Head however raise the salient point that 'strength and size of the gambling industry', 'weakness of the community sector' and 'incoherence of the regulatory regime' are impediments to being able to open up a 'discursive space in which regulators, the regulated, and the wider community can negotiate "responsiveness" in a public interest frame' (Wright and Head, 2009, p. 201).

Neilson and Parker (2009, p. 382) get to the central question confronting use of RR, arguing it all depends on how the regulatory system works in practice. '(T)his positive approach by individual regulatory staff must occur in the context of an investigation and enforcement system that will escalate up the pyramid to the coercion of litigation and punitive enforcement'. They add '(t)he potential for responsive regulation is therefore bounded by the capacity for institutional integrity of the regulatory agency (Neilson and Parker, 2009, p. 395).

As argued above, DCs bring their own challenges in regard to licensing conditions and regulatory sanctions. If a pyramid model of industry self-regulation of DCs is to work with integrity and in the public interest, there needs to be a demonstration of regulatory muscle for infractions at the more serious top end of the pyramid when these are found to occur. Where sanctions for serious or top end infringements are watered down (such as low fines or a tick-off letter for what constitutes a serious

infraction) or where sanctions are discretionary, intermittent or inconsistent for clear breaches of "top-end" license conditions, the system of responsive (self) regulation breaks down.

Ideally, successful regulation depends upon the regulator articulating a clear set of desired measured and reported outcomes and framing policies and enforcement accordingly, with monitoring and enforcement applied in a consistent and proportionate manner. This would include transparent governance and reporting systems, the collection of monitoring data adequate to the task and independent audit and review of overall system monitoring and effectiveness.

Codes of Conduct, whether voluntary or mandatory, have been central to RR and constitute a means of industry self-enforcement of agreed standards. In Australia, Codes of Conduct play an important role in formalizing government regulatory and public expectations of policy and practice on social responsibility (Delfabbro & Panozzo, 2004).

Common characteristics of codes typically include: a commitment to principles; the agreement or compliance of one or more individuals or organizations; design aimed at controlling or influencing behaviour; and consistent administration by participants to reach a consistent outcome (Webb, 2004). As Delfabbro notes, gambling codes of practice may be mandatory, co-regulatory and self-regulatory (Delfabbro et al., 2007, p. 43) and vary across jurisdictions but share some common elements. These include:

> Staff training in responsible gambling (e.g., how to recognise signs of distress in gamblers and how to provide assistance); The provision of information about safe gambling, gambling odds, or help seeking; Payment of large wins only by cheque or bank transfers; Refusals to provide credit or cash cheques at venues; Appropriate and non-misleading advertising of gambling products; Provision of venue specific or general exclusion programs for problem gamblers; Limitations on the provision of alcohol in gaming areas.
> (Delfabbro, 2008, p. 190)

By setting out and approving Codes of Conduct, the regulator seeks to ensure that the

operator only produces outputs that are consistent with desired (or in this case mandated) policy outcomes. Codes applying to potentially dangerous consumptions embody the way in which the license to operate is conditional. In many jurisdictions, including the state of Victoria, such Codes have become the main tool whereby regulators seek to influence output in the required directions. Much therefore hinges on how codes are constructed, implemented, monitored, audited and regulated.

3. RR in Practice? Does it Meet Public Interest Objectives? Australian Case Study Examining the Challenges of RR

To contextualize the case study, gambling is mainly regulated by state/territory governments in Australia, within a federation where the national government has been slow to exert its potential national powers over club, hotel and casino state-licensed gambling[4]. High per capita gambling losses and high state government dependency on gambling tax revenue (about 10 per cent nationally and 13 per cent in Victoria) show the confluence of state and industry interests in gambling revenue. State governments are dependent on gambling taxes to cross-subsidize community services[5].

There is growing evidence of the harms caused by gambling[6], especially electronic gaming machines (EGMs)[7] and the regressive impact of gambling venues with such machines on particular groups[8]. In Australia as in many other jurisdictions, gambling is controversial. These factors reinforce the imperative of preventing avoidable harms and assessing the effectiveness of the regulatory enforcement system.

Australia's thirteen casinos account for a significant and growing proportion of gambling revenue – 18% of the $19 billion player losses nationally in 2008-09 – which is a bit less than what households spent during that period on footwear and clothing and more than the amount spent on alcohol (Productivity Commission, 2010, p. 2.2). In 2008-09, approximately equal amounts of casino revenue were spent on EGMs ($1.37 billion) and table games ($1.44 billion) with an additional $649 million from international VIP program (Productivity Commission, 2010, p. 2.31-2).

Victoria has granted a monopoly license to Crown Casino in Melbourne, which has been operating since 1993[9] and is the largest casino in the Southern Hemisphere

(Clifton, 2013). Crown has been chosen strategically for this case study for a range of reasons:

- Crown claims international best practice in responsible gambling and is subject to regulatory international benchmarking on its operational practices. Crown expresses its commitment to being a 'world leader in responsible gambling practices' (Crown Melbourne Limited, 2010, *Crown Code*, p. 2).
- Special conditions relate to its license to operate (Crown is subject to state laws and casino-specific legislation (the *Casino Control Act 1991* and the *Casino (Management Agreement) Act 1993*) and to regulatory reviews by the combined gambling and liquor regulator, the Victorian Commission for Gambling and Liquor Regulation (VCGLR).
- There are regulatory and compliance challenges posed by the size and complexity of operation as an "entertainment complex" (closer to Las Vegas and Macau casino models than smaller UK or European casinos), with three hotels, convention facilities, restaurants and clubs, shopping and cinema complex and with 2500 EGMs and 500 tables;
- Crown Melbourne Limited is part of a larger transnational corporation (Crown Limited) with two casinos in Macau, casino interests in Canada, the US and the UK; and Asian expansion plans. Crown Limited Management and Board are therefore cognizant of international differences in regulatory environments and presumably, best practice.
- Location of Crown Casino complex on the Southbank entertainment precinct in close proximity to the CBD, raises expectations that ease of public access to such a large venue necessitates vigilant regulatory oversight and high standards of both regulatory and internal operations on responsible gambling, responsible service of alcohol and security.
- Crown claims to be a 'world leader on responsible gambling initiatives (Crown Resorts, 2013).

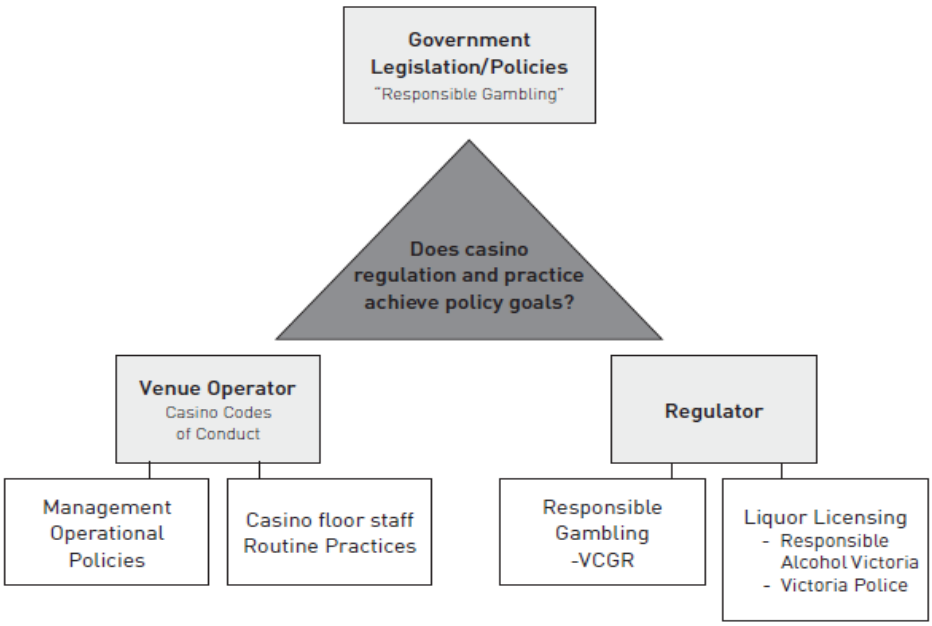
Research into gambling codes of practice has been relatively recent in Australia, including: an early 2002 study (Hing and Dickerson 2002); studies in South Australia (Delfabbro & Panozzo, 2004); a study of NSW clubs (Hing, 2004); and Queensland

research – some of which included aggregated data on casinos (Breen, Bultjens & Hing, 2003; Hing, 2001, 2008, 2009; Queensland Treasury, 2001; McMillen and Doherty, 2001; McMillen, Doherty & Laker, 2001). Most have been conducted on community-sited venues. In the one study that included Crown Casino, the casino withdrew just prior to data collection. Without going into detail, a common finding across these studies was problems with the content and enforcement of codes in terms of venues lack of will to identify and detect "signs" of harmful behaviour, let alone to intervene and prevent them. In some, the depth of study was compromised by conditions that came with access to staff at venues for which permission was needed.

In the case study drawn on below, this was not a problem as interviews circumvented the censorship of casino management (which has a policy of not allowing research) and workers were interviewed privately in their own time, via contact lists held by the union. Nonetheless, many staff were at pains to be reassured that the findings would be completely anonymous and not traceable back to source. Following the study and reading between the lines, Crown's chastisement of the union suggests a repeat of such research is unlikely. Whist the researcher acknowledged potential bias in that respondents were contacted via union lists, the sample is substantial (225 interviewees) and the results indicative of respondents' perceptions of routine practice in a research design that included a triangulated approach (Hancock, 2011).

The method of triangulation used in the case study (Figure 2) entails analyzing the role of each of the three major players involved in this regulatory case study.

Figure 2. Triangulation approach to researching casino codes and regulation



Source: Hancock (2011, p. 8)

Methods and data sources were multi-method and focused on the three major players – government, regulators and the casino Venue Operator environment as follows:

- Government legislation/policy involving the analysis of shifts in legislation and the articulation of responsible gambling, Codes of Conduct and Responsible Service of Alcohol in Victoria.

- Regulators' practices on both responsible gambling and liquor licensing. (This includes periodic reviews of the casino by the Victorian Commission for Gambling Regulation (VCGR); enforcement outcomes; gaps in regulatory oversight; liquor licensing enforcement (by Responsible Alcohol Victoria[10] and Victoria Police) and liquor licensing enforcement under the dual track Victorian system by Responsible Alcohol Victoria and Victoria Police.

- Venue/operator (Crown Casino) management and operational policies and floor staff routine practices and outcomes (based on interviews with 225 casino employees and focus groups).

Under triangulation, multiple data sources contribute to enhanced understanding of operator and Regulator practices and how 'responsible gambling' is articulated and regulated.

Briefly, regulatory reports of gambling and alcohol breaches are few, given the size of the operation. In terms of gambling breaches, analysis of regulatory (by the then Victorian Commission for Gambling Regulation) hearings on breaches of the Casino Act 2004-2010 found only 38 cases [two thirds -76%] related to minors and game rules). There were no hearings related to RG codes, RSA or self-exclusion compliance ie compliance with Codes of Conduct. Separate analysis of 15 years (1994/5-2008/9) of regulated public order offences in Victoria Police statistics found small numbers (3-11 per year and 21 in 1997/8 for excluded persons entering/remaining in a casino[11]).

In regard to State Government policy on regulatory enforcement of liquor licensing, the primary policy goal is a precautionary approach, with the primary objectives of reducing risky drinking behavior and 'building a culture of responsible consumption of alcohol'. A risk-sensitive licensing approach adopted by the State Government includes attention to operating hours; patron intoxication, overcrowding, staff and management practices, venue type (presence of gambling) (Allen Consulting Group, 2009). The Liquor Licensing Act gives venue workers discretion to identify intoxication 'on reasonable grounds', based on 'observable physical signs and symptoms' and talking to patrons and their friends. In 2007 protection of gamblers from loss of control due to alcohol (intoxication) was recognized, making it an offence for a licensee to allow an intoxicated person to gamble.

A lack of transparency pervades public access to venue-related police and liquor license infringement matters and it is difficult to obtain regulatory enforcement data for all but the most serious infringements. Analysis of state-wide Responsible Alcohol Victoria enforcements (2009-2010) found that of 26,500 enforcements, over 15,200 minor breaches were not related to service of alcohol or intoxication. Outcomes of enforcements (N=6,772) included small numbers of prosecutions at the more serious

end of the spectrum and a clustering of responses at the least serious sanction end of the continuum:

- 22 (0.32%) criminal prosecutions, criminal charge, or enforceable undertaking)
- 300 infringement notices
- 1,700 warning notices
- 4,700 voluntary compliance letters issued (Hancock, 2011, p. 177).

Enforcements related to the Crown Casino Liquor license (a late night general license that covers Crown Entertainment Complex and over 30 liquor outlets within the premises) found lack of transparency on detail and only 3 Victorian Civil and Administrative Tribunal decisions and one enforceable undertaking (relating to a high profile intoxicated football player which resulted in two $1,402 fines) (Hancock, 2011, p. 181).

The picture emerging from such analysis of gambling and alcohol regulatory data is that Crown was largely compliant and in fact very compliant, with only a few fines that are small and a few regulatory undertakings related to restrictions on designated holidays on type of liquor served; with the implication that RR is working.

Interviews with 225 Crown Casino employees via a joint research project between the author and the union, United Voice, gave rare insight into the way the Code of Conduct works in practice (Hancock, 2011). The Crown Casino Code of Conduct is one of four codes in the state of Victoria[12] and comes under state provisions making codes mandatory (but free-form) and subject to approval by the Regulator under general Ministerial Direction (Victorian Commission for Gambling Regulation [VCGR], 2009).

Under this quasi self-regulatory system, Crown Casino is reliant on its workers to know its Code of Conduct and to act as the first link in the chain to effectively identify problem gamblers and initiate interventions, albeit in an "upward report to supervisor" model. Hence, interviewing casino employees has potential to give valuable insight into what actually happens "on the floor" and how the Codes of Conduct "work". From another angle, comparing these findings with the analysis of

gambling and liquor licensing regulators (reported briefly above), gives insight into regulatory priorities and outcomes and into how self-regulation works in practice.

The Crown Code of Conduct which has only 9 signs of problem gambling (shown below), compared with 32 signs in New Zealand and 20 in Switzerland, could be regards as minimal in terms of best practice on the range of signs. When asked whether various behaviours were signs of problem gambling, staff indicated inadequate knowledge of the codes they are meant to be enforcing. Questions to staff about awareness of code items showed:

Low awareness levels of problem gambling signs by staff

- 55.6 % 'communicating very little with anyone else'
- 59.3 % 'continuing to gamble with the proceeds of large wins'
- 61.2% 'avoiding contact with others while gambling'

Mid-level awareness

- 72.9% 'barely reacting to events going on around them'
- 76.2% 'gambling every day'
- 80.8% 'gambling for extended periods without a break'

Higher level awareness

- 89.3% 'displaying aggressive, antisocial or emotional behaviour while gambling'
- 92.5% 'finding it difficult to stop gambling' and
- 92.5% 'making requests to borrow money from staff or other customers'. (Hancock, 2011, p. 79)

Consistent with the research literature on the ability of gaming venue staff to identify problem gambling behaviours (Delfabbro et al., 2007), almost 70 percent (69.1%) of casino staff in this study said they 'find it easy to identify who the problem gamblers are' (and an additional 13.5% were unsure) (Hancock, 2011 p. 67).

Staff is trained to report patrons exhibiting signs of problem gambling to supervisors. Apart from the fact that knowledge of some of these signs is deficient, the "upward

report-to-supervisor" process is ambiguous and results in low rates of floor staff interventions in problem gambling. Many staff do not follow the Code of Conduct; some do not see the point as little comes from their notifications and many floor staff doubted supervisor's follow up of their notifications. In interviews with staff:

- 65.3 percent of casino employee interviewees say they do not advise customers to take regular breaks in play.
- 55.3 percent say they would not intervene when customers are in a distressed state while they are playing; and
- 81.2 percent say they do not approach people they think are having problems with their gambling.
- 17.6% -answered YES to the statement: " I sometimes feel under pressured by management to keep people gambling" (Hancock, 2011, p. 83)

Answers pointed to a conflict between revenue-generation and responsibility to patrons and the broader community and a gap between how the system is purported to work and every-day practices within the venue.

In terms of liquor licensing enforcement, Crown Casino has more than 30 bars and liquor sales points. Crown voluntary code is committed to responsible service of alcohol (RSA); which is also a legal obligation under liquor licensing laws.

Under Crown Code:

> Crown is committed to the responsible service of alcohol and will not knowingly allow a person who is in a state of intoxication to gamble or bet in the Casino. Under relevant legislation, a person is intoxicated if his or her speech, balance, co-ordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of alcohol (Crown Melbourne Limited Responsible Gambling Code of Conduct: Responsible Service of Alcohol). (cited in Hancock, 2011 p. 90)

Staff are also bound by RSA laws under liquor licensing and the 2007 provision that a licensee must not permit an intoxicated person to gamble[13]: 48 per cent said they do not 'approach people to stop gambling when they appear to be intoxicated'; and 80

per cent want 'clearer guidance on responsibility to cut off (stop from drinking) patrons who are gambling whilst intoxicated' (Hancock, 2011, p. 184.) Key RSA issues from interviews with casino employees included: staff identification of regular patron intoxication; lack of staff training in identification of intoxication; the problem of RSA in VIP gaming areas with free alcohol and overall, a conflict between financial imperatives (for example, bar revenue targets) and management pressure to keep people gambling and drinking.

Police Statistics on alcohol-related crime in the Southbank postcode precinct in which Crown Casino is a dominating presence, showed high and rising crime rates of assaults typically associated with alcohol (Hancock, 2011, p. 194).

- Key findings on Crown codes in practice drawn from Hancock's (2011) research include:
- low awareness amongst staff of the "signs" of problem gambling in the Crown Code on which they are ostensibly trained;
- half of those interviewed say they would not intervene even if a gambler was in a distressed state;
- staff concerns about safety in the workplace - 20% of staff expressed 'not feeling safe at work at all times'
- staff concerns about high levels of intoxication in the Casino precinct .
- Staff concerns about the impact of the casino on the surrounding community:
    - 74.5% said 'customers who have been evicted from the venue could be a hazard to people outside the venue'
    - 66.2% agreed 'I sometimes worry intoxicated patrons evicted from my venue may be a danger to people outside the venue' (Hancock 2011, p. 110).

Commenting on these findings, Canadian researcher from the Alberta Gambling Research Institute Smith (2012, p. 320) stated: 'The "regulatory failure" verdict stems from the wilful blindness exhibited by both Crown Casino senior management and Victoria regulators. Management, for fostering a corporate culture where profit maximization trumps other considerations, including following the *Responsible*

Gambling Code of Conduct; and regulators, whose 'light touch' oversight allows the *Code's* tenets to be violated without serious consequence, are the enablers.... This case study illustrates why gambling is such a confounding activity to administer in the public interest....'.

The casino regulatory system can be conceptualized as a 'Gambling Regulatory Feedback System,' which ideally functions with efficient links between policy objectives and outcomes, regulatory activities and enforcements and gambling operator practices and Code implementation. In the context of these findings the links within this system can be seen as ruptured by poorly defined outcomes, deficient information gathering, deficient regulatory monitoring, assessment and enforcement procedures, characterized by superficial 'light touch' government regulation. These results on the deficiencies of compliance and enforcement urge a re-thinking of the need for a different regulatory approach that will fulfill public interest objectives.

4. Alternative Regulatory Models and the Hazard Prevention Approach – Out with Industry Self-Regulation via Codes and in with New Tough Regulation for DCS

Triangulated research on the gambling regulatory system in Victoria points to dysfunction and a rupturing of good practice on the application and enforcement of the casino Code of Conduct'; both in relation to responsible gambling and responsible service of alcohol. Codes of Conduct have been central to the self-regulation model of RR in many regulatory areas. But it is noteworthy that very few gambling Codes of Conduct in Australia mention monitoring, enforcement, auditing and information collection and dissemination. As Delfabbro observed, compliance with responsible gambling codes is variable and may break down in terms of content, enforcement and penalties (2008, p. 190).

This raises concerns for consumer protection, operator duty of care, product safety and safety of venues and effective regulatory enforcement and prompts consideration of alternatives to RR and the way it is practiced.

The symbiosis between state regulation and self-regulation central to Ayres and Braithwaite's (1992, p.3) RR were intended to guard against weak enforcement and regulatory capture. A key question is how successful RR has been in eliciting cooperation and compliance, especially in relation to DCs. Australian governments and regulators espouse "responsible gambling" but the research cited above raises questions about both industry implementation and regulatory enforcement of Codes of Conduct and other responsible gambling practices intended to deliver public interest outcomes, via self regulation, under what is basically an RR-informed approach.

Much of the RR literature concentrates on how to deter non-compliance (Parker, 2013) whilst engaging industry to comply and how this may be done with minimal regulatory resourcing, on the expectation that industry will be self-regulating. Parker (2013 p. 3) notes the historical context of RR as a response to 'how to make the idea of "regulation" politically palatable in a neo liberal age'. This partly explains why neo liberal governments embraced it. What the casino regulatory case study points to (and consistent with other research on venue code compliance) is that codes are frequently not adhered to, host responsibility is deficient and reticent regulatory cultures are light on enforcement. This has support from others like Abbott and Snidal (2013, p. 102) who argue that 'self interest regulation lacks credibility', and that expecting industry associations to regulate in the public interest is 'suspect'. This may not matter as much with other industries where risk and hazard have more benign impact. But in the case of DCs it is argued that compliance regulation and enforcement need to be diligent because of the imperatives of public safety and protection from potentially harmful products and poorly managed environments.

It is for these reasons that the argument is now put that DCs demand a different response to self-regulation via industry self-constructed and poorly enforced codes of conduct.

We argue that DCs need vigorous independent, rigorous regulation and enforcement, because potential harms are high-cost high-impact and regulatory capture is a material risk. Ayres (2013) in the special edition of *Regulation and Governance* dedicated to 20 years of RR theory, revisits the idea of 'partial industry regulation' as a means of

urging industry to move towards a desired standard. Ayres explores policy rationales for 'treating like people differently' and the '(u)sefulness of intentional regulatory discrimination' (2013, p. 149). Whilst not necessarily intended for use it this applied context, the idea may be useful for arguing that casinos are different and need particular regulatory focus for rigorous enforcement of licensing obligations and use of methods such as randomized testing of compliance, mystery shopping and regulatory effort aimed at seeing "what works" in terms of triggering escalation up the pyramid.

What could this look like?

Central to a new approach is to settle on underlying principles that will prioritize operator and regulator practices that prioritize prevention of avoidable harms. Exploration of alternative models points to the utility a Hazard Prevention Approach (HAA), modeled on the OECD Guidelines on the Prevention of Chemical Accidents (2003; 2012) and the Framing of Gambling as a Hazardous Industry. In terms of similarities, both gambling and hazardous chemicals are licensed for public use but subject to strict controls to prevent risk. In both cases, many instances may take place without risk/harm but procedures must be in place to identify the precursors to risk/harm and to prevent their eventuality.

Application of the OECD Guideline Principles to gambling thus involves seeing similarities between chemical accidents and gambling in terms of licensing for beneficial use, identification of potential serious risk/harm, guidelines that address risk, harm and benefit, high standards of corporate governance to manage high risk industries (enforcing the broader pubic interest responsibilities of corporate CEOs, Directors and staff of major hazard companies.

Broader application of this model is recognized by the OECD.

> Whilst primarily targeted at the chemical, petrochemical and petroleum industries, this guidance will also be useful for any industry or organization which, due to the nature of their processes or hazardous substances, could

> cause serious danger to multiple people or the environment, either on or off site. (OECD, 2012b, p. 5)

The guidelines emphasize hazard identification and risk assessment; emergency preparedness, response and follow-up; and a stakeholder approach differentiating the responsibilities of industry, public authorities, public and other stakeholders (community, unions, researchers, international organizations and NGOs). The OECD 'Golden Rules (OECD, 2003) highlight best practice roles and responsibilities of the major stakeholders. The three main foci with respect to chemical accidents are:

- Prevention (or risk/harm)
- preparedness (for risk/harm eventualities) and
- Response (timely, definite and following the rules of good governance).

The Guidelines detail the responsibilities for general stakeholders, industry management and labour, the role of public authorities, and community members. Importantly, public authorities play a central role in establishing policies, regulations and practices, and 'have mechanisms in place to ensure their enforcement'. This is no longer about voluntary industry self-regulation but a strict, mandatory, harm prevention model. This may also urge a re-thinking of the role of public authorities. Under the Guidelines, public authorities should also regularly review and update, appraise levels of risks in their communities, provide leadership 'to minimise the risks of accidents, monitor hazardous installations, monitor the industry to help ensure that risks are properly addressed and to mitigate the effects of any accidents that occur….' the authorities should establish and enforce appropriate regulatory regimes, promote voluntary initiatives, and establish mechanisms to facilitate education and information exchange. The guidelines pay attention to broader environmental planning to prevent hazard. 'Know the risks within your sphere of responsibility, and plan appropriately' (OECD Golden Rules, 2003, 2012).

In addition, attention needs to be placed on governance arrangements and management of political compromise of public interest with a focus on consumer protection and avoidance of preventable harms. Authors critical of codes and the sorts of issues raised by the Crown Casino case study point to the importance of

independence, good governance (transparency and accountability), effective monitoring and enforcement and independent third-party oversight (Bartle and Vass, 2007; Gunningham, 2007) as necessary conditions. Regulators need in turn to be independently audited for the probity and integrity of their enforcement activities; all with full public reporting and transparency of operations.

II. Conclusions

In the context of the global financial crisis, politically precarious and cash-strapped governments, committed to 'free markets' and soft regulation, have become beholden (some say addicted) to the interests of big business, to the state revenues generated from gambling (and alcohol) and the political support provided by gambling industry interests. These relationships set up an interesting dynamic around conflicting structural interests -consumers/public interest advocates v. state/industry co-production. The conceptualization of gambling as a DC in need of a hazard avoidance approach in turn raises questions for how it is regulated and whether this is adequate for public interest protection from avoidable harms.

This paper has argued four main points.

1. The argument for conceptualizing gambling as a "dangerous consumption" is based on national and international evidence linking harms to particular forms of gambling [EGMs, poker machines], land-based venues such as casinos, clubs and hotels licensed to provide it and to machine design, accessibility/availability of gambling and the risks posed by regular participation/exposure and limits to industry self-regulation as a harm minimization strategy. The challenge of regulating dangerous consumptions is to secure public interest outcomes, principally social protection from avoidable harms via consumer protection and harm prevention, and not just taxation income and generalized benefit via tax sourced expenditures, for governments.
2. Responsive Regulation (RR) has been influential in Australia and elsewhere. In areas such as licensing of alcohol and gambling, it offers resource-limited regulators a means of managing large numbers of venues via co-operation, persuasion, Codes of Conduct and self-regulation for stated public interest

outcomes. Examination of the dominant regulatory paradigm RR finds that RR is inadequate as a conceptual and applied framework for the challenges posed by gambling as a DC and in particular land based casino gambling as "intensive" gambling environments. Recent research points to problems with Responsible Regulation Theory as a driver of State regulatory enforcement of DCs; and the dynamics of venues as sites of low compliance, 'light touch regulation' and the production of gambling, alcohol and smoking-related harms (Productivity Commission, 2010; Cosgrave, 2009; Hancock, 2011).

3. RR in practice? Does it meet public interest objectives? The case study drawn upon enabled examination of the challenges of RR (the dominant state regulatory approach) in an applied casino study based on multi-source/method triangulated analysis including interviews with employees tasked with obeying Codes of Conduct. The analysis points to a failure of Codes of Conduct both in terms of venue practices and regulatory enforcements in terms of securing public interest outcomes.
4. Exploration of alternative regulatory models emphasizing prevention of harms draws out the similarities between gambling harms and those posed by dangerous chemicals. Both are licensed for public use but with a view to preventing avoidable harms, which may eventuate if codes of practice and regulatory enforcement are inadequate. Rather than RR, Re-Regulation involves a strict compliance regime focused on a **Hazard Prevention Approach,** modeled on the OECD Guidelines on the Prevention of Chemical Accidents, the Framing of Gambling as a Hazardous Industry and a new governance system that demands rigor and integrity from independent regulators who in turn, need to be subject to rigorous audit on enforcement, reporting and transparency of operations. It is only with such re-framing that the risks of harm can be addressed by Re-Regulation.

The final comment and taking up Levi-Faur's analysis of the relationship between regulation and capitalism for a 'new global order of regulatory capitalism' (2005, p. 12), is to emphasize the contradictions raised by state-supported gambling as a form of state-approved 'casino capitalism', resting on a regulatory model that overlooks

structural approaches to risk and harm avoidance; that prevail as argued above, in the parallels drawn between regulation of high hazard industries and the prevention of chemical accidents; based on principles of prevention, preparedness and response and process safety governance and management (OECD Guidance for High Hazard Industries, 2012). Globalisation and the "Asian Phenomenon" of insatiable nouveau riche markets for gambling may bring the rush for exploiting light touch regulatory settings in new casinos in poorly regulated countries in terms of consumer protection, product safety and responsible public interest regulations and refusals to address consumer interest issues in developed countries on grounds of the need to maintain competitive edge over enterprises based in less restrictive/protective regulatory regimes. But this also brings the challenge of global transnational corporations with multiple jurisdiction operations to demonstrate best practice across their operations - of which they are aware but choose to avoid unless compelled.

Alternative paradigms point to a regulatory model that embraces venues (operators), safety of gambling products and harm avoidance; with state monitoring and enforcement of duty of care under operator's license to operate and independent third-party audit (for example, New Zealand). Re-regulation of gambling as a 'dangerous consumption' can draw on consumer protection and public health models to fulfill harm avoidance, duty of care (by state and business), technology-based product re-design and player protections and restrictions on exposure to gambling (drawing on practices, in for example, Singapore [in limited respects], New Zealand, Switzerland and Norway). The entrepreneurial and opportunistic expansion of the gambling industry by globally networked transnational corporations also raises questions for global CSR reporting and compliance standards; including those linked to international standards on anti corruption and anti money laundering as well as transparency, good governance, consumer safety and decent work conditions for employees.

The idea behind using a Hazard Precaution Approach annexed to re-regulating gambling regulation, is encapsulated in the saying 'If you think safety is expensive, try an accident'… 'a familiar adage in the process industries' (OECD, 2012b p. 6).

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Notes

[1] The Australian National Framework on Problem Gambling frames problems in terms of the focus on the "problem gambler" (demand for gambling) which precludes examination of supply factors related to production, packaging and promotion of gambling, the management of gambling environments and the complex reasons why people gamble. The preoccupation with the problem gambler precludes examination of inequitable power relations that underpin gambling-related transactions (Bacchi, 2007 p. 91, 89). The focus on individual self-control reinforces an addictions medicalized model rather than a harm prevention public health focus (See Hancock, 2011 for elaboration).

[2] Except perhaps for tobacco where even minimal exposure can result in harm **'There is no risk-free level of exposure to tobacco smoke, and there is no safe tobacco product' (CDC, 2013).**

[3] In the case of Crown Casino Melbourne, for example, at any one time 1000 of its 2500 EGMs is exempt from state restrictions on spin rate, note acceptor limits and pay out by check restrictions that apply to club and hotel licensees.

[4] Two national inquiries have concluded there are serious deficiencies in State and Territory regulation of gambling which is fragmented, inconsistent and incoherent; that regulators lacked independence; and that development of policy was dominated by government's dependence on gambling revenue (Productivity Commission, 1999; 2010).

[5] In Victoria, the majority of funding (83%) goes into the Community Support Fund, Hospitals and Chartities Fund and the Mental Health Fund (Auditor General of Victoria, 2010, p. 1).

[6] Research has established the negative impact of gambling is widely confirmed in studies of gambling-related suicide, depression, crime, embezzlement (Productivity Commission, 2010); community interests oppose expansion of industry and identify broad social costs (Productivity Commission, 2010); at least 40 per cent of revenue is estimated to come from problem gamblers (Productivity Commission 2010); research points to the risk of regular exposure to gambling machines local accessibility and hours of opening are strongly identified with risk of harm (Breen et al, 2003; Livingston and Wooley, 2007).

[7] Variously called VLTs, slots, pokies in different jurisdictions.

[8] In the Australian context (and consistent with international research), there are strong associations between high net gaming revenue, low income [and socio-economic disadvantage] and number of EGMs (Doughney, 2007; FaHCSIA, 2010; Livingstone and Wooley; 2007; Marshall & Baker, 2001; Productivity Commission, 2010). For this reason gambling taxes are found to be highly regressive.

[9] Crown Casino license was granted to Crown Limited on 19 November 1993 when it entered into a 99-year lease for the Crown Entertainment Complex site. It moved to its current Southbank site in 1997. With the completion of its third hotel adding a further 658 rooms, Crown Melbourne now has Australia's largest hotel with a total of 1,600 rooms (Allen Consulting Group, 2009, p. 7).

[10] This study was conducted prior to the merging of a combined gambling and liquor regulator (VCGLR) on 6 February 2012.

[11] See Hancock (2011, p. 194) based on data extracted from LEAP (Law Enforcement Assistance Program), Corporate Statistics, Victoria Police.

[12] There are other separate codes for clubs, hotels and the Retired Services League.

[13]All gambling venues are liquor licensed. Liquor licensed venues are under obligations of responsible service of alcohol and the 2007 Gambling Legislation Amendment (Problem Gambling and Other Measures Bill) provision that it is 'an offence for a gaming venue operator or casino operator … to knowingly allow a person to gamble while intoxicated' (now incorporated into gambling legislation, Government of Victoria, 2010; 2010b).