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SENATE STANDING COMMITTEE ON ENVIRONMENT AND COMMUNICATIONS

INQUIRY INTO THE PARTICIPATION OF AUSTRALIANS IN ONLINE POKER

Joint submission of the Australian Taxpayers' Alliance (ATA) and MyChoice (MC)

Introduction

1. The Australian Taxpayers' Alliance (ATA) and MyChoice (MC) thank the committee for the opportunity to submit the following comments on the participation of Australians in online poker.
2. The ATA is a grassroots public advocacy group which advocates on behalf of Australia's taxpayers. The ATA stands for the principles of consumer choice, limited government, personal responsibility and rolling back ineffective, unnecessary or counterproductive regulations affecting Australian businesses and individuals. MC is an autonomous affiliate of the ATA dedicated to promoting individual freedom, consumer choice, harm minimisation and personal responsibility in the community.
3. The ATA and MC strongly oppose the current ban on online poker as it contravenes the basic principle of individual autonomy and agency which underpins our liberal democratic society. Moreover, it is impractical to enforce given the ease of getting around Internet Service Provider-administered filters through the use of VPNs (Virtual Private Networks).
4. The law endorses a paternalistic approach that punishes and patronises Australians while denying our businesses economic and employment-generating opportunities. Moreover, it The ATA and MC believe that government and regulatory policy should focus on creating informed consumers capable of exercising their own consumer choice and should target problem gambling rather than favouring a prohibitionist approach towards games of skill and strategy such as poker which provide players with a number of benefits, such as social benefits, cognitive improvement and intellectual stimulation, and are significantly different to gambling games for these

reasons as well as the significantly lesser role of chance in poker compared to gambling games.

5. The ban has also resulted in an unfortunate legal paradigm whereby Australian individuals and businesses cannot legally offer or establish businesses offering online poker services to Australian consumers, yet the law has failed to adequately police foreign providers of the same services who continue to operate and freely provide to Australians. Even recent amendments to the Interactive Gaming Act are easily overcome through the use of VPNs.
6. The rationale of targeting problem gambling cannot justify a prohibitionist approach to poker – a game of skill and strategy with a monetary element rather than a game of pure chance as is the case with Electronic Gambling Machines (or EGM, colloquially known as “*pokies*” albeit having no actual connection to the game of poker) and other forms of gambling. Furthermore, the laws preventing Australians from operating online poker businesses have simply resulted in Australian consumers engaging in online poker services offered by foreign websites and providers.
7. These providers are subject to neither regulation nor oversight of the Australian government and any potential harms caused by online poker are actually exacerbated as they remain outside the Australian government’s control.
8. The current laws also facilitate the transfer of wealth from Australia to other countries as foreign providers of online poker services, unlike Australian businesses, do not pay tax to the Australian government, do not generate income that is likely to be spent in Australia, do not create Australian jobs and cannot be audited or effectively monitored by Australia’s federal and state governments or regulatory agencies.
9. Precluding Australians from operating online poker businesses domestically also prevents flow of wealth into Australia due to the foreign customers these businesses would attract.
10. The ATA and MC also submit that the current ban on Australian online poker businesses is misguided and undesirable as online poker offers consumers an engaging and intellectually stimulating game which is far less associated with problematic behaviour than gambling formats such as EGMs or sports betting. A poker game usually lasts over an hour, sometimes several hours. Consumers are able to derive the benefits of intellectual stimulation and challenge for sustained periods of time over the game’s duration, without substantial down-payment as the required “buy-in” for online poker can be as low as \$1-2 AUD. This is substantially lower than the \$60- \$100 buy-in required to engage a poker table at a casino or at most other casino games. In contrast to both online poker and casino poker, EGMs commonly found in hotels, bars, casinos and clubs provide a consumer experience entirely contingent on the extent of monetary investment and require continuous monetary input by the consumer as each ‘round’ lasts a matter of seconds.

11. Notably, the Gambling Commission of the United Kingdom (where domestic businesses can legally offer consumers online poker services), reviewed consumer data and found that *“the best correlation with problem gambling is with the number of activities an individual undertakes not with particular products. This suggests that banning or restricting particular products, as opposed to monitoring players’ use of such products and intervening appropriately, risks displacing problematic gambling either to other gambling products or to illegal providers of the particular product.”*¹ The ATA and MC therefore submit that allowing Australian businesses to offer online poker services is highly unlikely to exacerbate problem gambling and is in fact, likely to help ameliorate the problem as gamblers currently engage foreign providers not subject to government monitoring.
12. The ATA and MC also note that the proliferation of foreign competitors in the Australian online poker market due to the exclusion of domestic competitors who can be monitored, renders Australians vulnerable to consumer fraud and other dubious practices with little prospect of legal recourse. For example, some foreign online poker providers are known to implement “fake players” i.e. automated bots designed to create the impression of a multi-player game with equitable odds whereby these bots are actually programmed to ensure that the real player cannot win or is less likely to win. The Productivity Commission recognised this problem in 2010, finding that the Australian online poker ban had driven players to foreign websites engaging in unscrupulous business practices and/or poor or non-existent harm minimisation guidelines.²
13. The ATA and MC therefore urge the committee to recommend the legalisation of online poker in Australia with sensible regulations in place to monitor and address potential problems as well as sensible regulation of online poker marketing to achieve the same.

Participation of Australians in online poker

14. Despite its prohibition, the Productivity Commission appraised the size of Australia’s online poker industry at \$ 279 million AUD as of 2010,³ and it is likely to have grown since then. Legalising online poker would allow the industry to expand to accommodate evidently strong consumer demand as even its prohibition and practical constraints on its promotion have not prevented it from growing to a significant figure. This figure is equivalent to only 0.01% of the value of the Australian gambling industry, including lotteries, casinos, wagering and EGMs in bars, clubs, hotels and restaurants that account for \$19 billion AUD.
15. In 2012, Independent German research group Academicon found that 129,714 Australians were playing poker online. The resulting financial outflow to United

¹ British Gambling Commission submission to the O’Farrell Review of Illegal Offshore Wagering, November 2015, at 4.2 https://engage.dss.gov.au/offshore_wagering-submissions/1447618452/

² Productivity Commission 2010, Gambling, Report No 50, Canberra, Volume 1, Overview, pg. 35.

³ Productivity Commission 2010, Gambling, Report No 50, Canberra, Volume 1, Overview, pg. 7.

States-based online poker providers alone was estimated at \$68 million AUD.⁴ This figure represents a significant outflow of capital which the current prohibition on online poker has failed to mitigate. It is likely that legalised online poker in Australia, will allow regulated and monitored Australian businesses to seize a significant share of this market while providing better consumer protections, generating revenue for the government and employing Australian workers in the process.

16. Legalised online poker will also allow revenue raised by Australian online poker providers to fund government programs and services to target problematic behaviour. The current financial outflow to foreign companies due to Australia's prohibitionist domestic laws governing online poker mean that this is not possible.

Nature and extent of personal and social harms and/or benefits arising from online poker

Online poker does not pose harms significant enough to justify its prohibition

17. Though it classified online poker as a form of gambling, the Productivity Commission nonetheless noted that online poker poses the least problem gambling risk compared to other forms of gambling.⁵ The Productivity Commission also found that where online poker players developed problematic behaviour, they lost significantly less money compared to problem gamblers engaged in other formats.⁶
18. Median loss in online poker sessions was found to be 3 \$ USD,⁷ a fraction of the loss incurred in the average sessions of gambling games (EGMs, wagering, non-poker casino games etc.) that are legal in Australia.⁸
19. A leading study found that fewer than 3.5% of online poker players lost more than \$50 USD a week.⁹
20. Legalised online poker will mitigate any harms or links to problem gaming associated with online poker. This can be achieved through sensible regulations which do not currently apply to easily accessible foreign online poker websites.

⁴ Richard Willingham, "Online Poker is costing Australians \$68 m", Sydney Morning Herald, July 2012 <http://www.smh.com.au/technology/technology-news/illegal-online-poker-is-costing-australians-68m-20120705-21kdg.html>

⁵ Productivity Commission 2010, Gambling, Report No 50, Canberra, Volume 2, Table 15.1, Part 15.31; Productivity Commission 2010, Gambling, Report No 50, Canberra, Volume 2, Table 15.1, Part 15.4.

⁶ Productivity Commission 2010, Gambling, Report No 50, Canberra, Volume 2, Table 15.1, Part 15.31

⁷ LaPlante, D. A., Kleschinsky, J. H., LaBrie, R. A., Nelson, S. E., & Shaffer, H. J. (2009). Sitting at the virtual poker table: A prospective epidemiological study of actual Internet poker gambling behavior. *Computers in Human Behavior*, 25(3), 711-717.

⁸ Kessler, R. C., Hwang, I., LaBrie, R., Petukhova, M., Sampson, N. A., Winters, K. C., & Shaffer, H. J. (2008). DSM-IV pathological gambling in the National Comorbidity Survey Replication. *Psychological medicine*, 38(9), 1351-1360.

⁹ Wood, R. T., Griffiths, M. D., & Parke, J. (2007). Acquisition, development, and maintenance of online poker playing in a student sample. *Cyberpsychology & behavior*, 10(3), 354-361. http://irep.ntu.ac.uk/id/eprint/8410/1/187676_5313%20Griffiths%20Publisher.pdf

21. It is logically and morally inconsistent that online poker remains illegal, yet forms of gambling which are far more strongly linked to problem gambling remain legal. Over 70% of problem gamblers seeking treatment are EGM users, indicating that the link between problem gaming and poker has been overplayed given its relative insignificance.¹⁰
22. A leading study focusing on online poker players, found that length of time spent playing was not correlated with psychometric indicators of problem gambling behaviour.¹¹
23. Furthermore, the online format enhances the effectiveness of harm minimisation, regulatory enforcement and anti-problem gaming strategies relative to casino poker as gameplay can be monitored and reviewed and identified players can be contacted directly. This advantage has been recognised by other jurisdictions that have legalised and regulated online poker such as Canada and Sweden, whereby these countries have developed and implemented online systems to maximise responsible play.¹² Such systems could be implemented in Australia as well and can be enforced through regulations applicable to Australian online poker providers. For example, online intervention has been noted as a successful and cost-effective strategy for targeting problematic gambling and minimising its harms.¹³

Poker is a game of skill, not luck, and therefore should not be treated the same as gambling games. Online poker also provides a range of benefits which distinguish it and render it fundamentally different from gambling.

24. Poker is a game of mathematical skill and strategy whereby the intellectual challenge and honing of the players' intellectual capacities and abilities are rewards of the game. Though the element of chance remains, multiple studies have conclusively established that the primary element of poker is skill which can be honed over time and is crucial to long-term success.¹⁴
25. Multiple studies testing the role of skill versus luck in poker have found that luck plays only an incidental role, whereby the influence of luck decreases sharply when

¹⁰ Dickerson, M. (2004). Analysis of clients presenting to problem gambling counselling services, July 2001 to June 2002, client and services analysis report No. 8. Melbourne: Victorian Government, Department of Human Services.

¹¹ Griffiths, M., Parke, J., Wood, R., & Rigby, J. (2010). Online poker gambling in university students: Further findings from an online survey. *International Journal of Mental Health and Addiction*, 8(1), 82. https://www.researchgate.net/profile/Mark_Griffiths2/publication/225566561_Online_Poker_Gambling_in_University_Students_Further_Findings_from_an_Online_Survey/links/56e86c9b08ae166360e51ecf.pdf

¹² Gainsbury, S. (2010). Response to the productivity commission inquiry report into gambling: Online gaming and the interactive gambling act. *Gambling Research: Journal of the National Association for Gambling Studies (Australia)*, 22(2), 6.

¹³ Rodda, S. (2010, December). Gambling Help Online: Program engagement and client characteristics. Paper presented at the 20th Conference of the National Association for Gambling Studies, 1-3 December, Gold Coast, Australia.

¹⁴ DeDonno, M. A., & Detterman, D. K. (2008). Poker is a skill. *Gaming Law Review*, 12(1), 31-36. https://media.intellipoker.com/downloads/skillgame/casewestern_study.pdf

longer-term periods of play are observed. They have concluded that “*the unequivocal finding is that poker is a game of skill... given that poker is a complex skill, it is somewhat surprising that even elementary instructions and limited practice had an effect [on successful outcomes]. The reason that poker appears to be a game of luck is that the reliability of any short session is low... Luck [random factors] disguises the fact that poker is a game of skill. However, as these studies show, skill is the determining factor in long-term outcome.*”¹⁵

26. In the United States, courts have ruled that poker operators should not be prosecuted under anti-illegal gambling laws as poker is a game of skill, not luck. For example, the Federal District Court of Brooklyn has issued a ruling to this effect.¹⁶
27. The primacy of skill over chance in online poker (in contrast to the primacy of chance in gambling games), was also confirmed in a 2015 joint study from the University of Rotterdam, University of Amsterdam and VU University (Amsterdam) which examined over 456 million player-hand observations over a year’s worth of online games. It found that skill was a highly predictable indicator of success and that the role of skill dominated chance after 1,500 hands of play – a point reached within just 19-25 gaming hours.¹⁷ By contrast, the odds of success in most gambling games do not improve by virtue of any skill or experience and are often completely contingent on chance.
28. Studies have found that these skills are transferrable to other games and intellectual pursuits, finding that poker play developed cognitive skills which could aid in workplace promotion and conflict resolution.¹⁸ Some of the skills gained through long-term poker play include:
- “Critical evaluative skills:** *The ability to appraise information and situations realistically, and to anticipate problems and difficulties, is vital in poker. To critically evaluate your playing decisions (“did I play that right?”) and those of others is common. These are also essential skills in the workplace—particularly in management.*
- Numerical skills:** *The ability to handle and interpret numerical and statistical information is an important skill in many areas of employability. In poker, there are many levels of numerical skill, such as the micromanagement of funds—every penny is important—or the cards themselves. Not many jobs require mathematical wiz-kids but many decision-making judgements can be based on the balance of probability or the ability to interpret data summaries.*

¹⁵ DeDonno, M. A., & Detterman, D. K. (2008). Poker is a skill. *Gaming Law Review*, 12(1), 36.

https://media.intellipoker.com/downloads/skillgame/casewestern_study.pdf

¹⁶ New York Times, August 2012. http://www.nytimes.com/2012/08/22/nyregion/poker-is-more-a-game-of-skill-than-of-chance-a-judge-rules.html?_r=0

¹⁷ van Loon, R. J. P., van den Assem, M. J., & van Dolder, D. (2015). Beyond chance? The persistence of performance in online poker. *PLoS one*, 10(3), e0115479.

<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0115479> Also discussed here: <https://theconversation.com/hard-evidence-is-poker-a-game-of-chance-or-skill-39224>

¹⁸ Parke, A., Griffiths, M., & Parke, J. (2005). Can playing poker be good for you? Poker as a transferable skill. *Journal of Gambling Issues*, (14). <http://jgi.camh.net/index.php/jgi/article/view/3693/3653>

Pragmatism skills: *The ability to make the best of a nonideal situation and to work within preset constraints is a valuable skill in poker. For example, players need to accept what they cannot change (their cards) and play with what they have.*

Pragmatism is an undervalued skill within the workplace—most probably because it is more of an inherent skill than something that is learned. Success in almost any job will require good use of pragmatism.

Problem-solving skills: *The ability to identify different strategies and approaches is of great benefit when playing poker. Problem-solving skills in the workplace are extremely important to anyone wanting to be successful in their career, especially when they are tied in with pragmatism skills.*

Goal orientation skills: *The ability to set goals and to formulate strategies to achieve those goals can be of benefit while playing poker. Being hungry and insatiable in the desire to achieve (i.e., winning) is a common characteristic of good poker players. Having goals gives people a purpose, which is very valuable in the workplace. It allows people to measure their success in some way, just as the poker player does when winning or losing.*

Learning skills: *The ability to continuously learn and not rest on your laurels is a valuable skill in poker (as it is obviously in almost all areas of life). In poker, being humble enough to learn from those more experienced and to take others' expertise into future games is akin to other learning experiences in other environments—including the workplace. In poker, such learning can bring about objectivity. For instance, poker players should not act in haste but ponder and deliberate responses objectively. In essence, this is continuing professional development. It doesn't matter what walk of life you find yourself in—learning from others is paramount.*

Higher-order analytic and strategic skills: *The ability to extract general principles from immediate or concrete situations and to formulate appropriate strategies can be very important while playing poker. For example, good poker players know not to let the cards get them frustrated or not to fight battles they can't win. There are clear parallels in the workplace, including office politics.*

Flexibility skills: *The ability to adapt to any situation or to be opportunistic when a situation presents itself underlies skills in flexibility. In poker, adapting to your environment (e.g., who are you playing against, how big is your stack) comes with playing experience. The ability to look from several points of view is not something that can necessarily be taught but is certainly a valuable skill to an employer.*

Self-awareness skills: *The ability to play to strengths and acknowledge weaknesses is a common trait in many walks of life. In poker, such skills can be very important. For example, skilful poker players remember that bad luck doesn't always last and good luck definitely doesn't last. Poker players also know that there is no room for apathy or complacency (in winning or losing streaks). In the workplace, self-awareness skills will help employees succeed in areas of strength and delegate in areas of weakness.*

Self-control skills: *The ability to act with a cool head under pressure and to show the nerve and the mettle to cope under adversity is critical in good poker playing. Quite clearly, in the workplace, many team leaders and managers need such skills in order to get the most out of themselves and their teams. Such skills are also important in*

*terms of stress management.*¹⁹

29. Though casino poker is legal, online poker offers a number of unique benefits. The minimum buy-ins tend to be a fraction of that which is required for casino poker (see pt. 9). Furthermore, the technology makes the game accessible to a wider-ranging audience from a greater range of backgrounds, thereby aiding in equitable consumer participation. The online format allows those suffering from disability/mobility issues, marginal communities, those suffering from socio-economic disadvantage and those living in remote, regional or rural settings far removed from expensive casinos the opportunity to participate in a socially and intellectually stimulating game of skill.
30. As casino poker and legal gambling formats tend to take place at venues such as bars, clubs and casinos where alcohol is served and/or offered, online poker is likely to materially reduce the link between problem gambling and alcohol consumption whereby the latter has been closely linked with increased impulsiveness impaired control of gambling behaviour.²⁰
31. Online poker also provides a social element, with long-term friendships developing between individuals who were connected by online poker participation and involvement in the online poker community. Players can bond by sharing tips and strategies, imparting skills and advice to less experienced players as well as providing a social support network which is far more difficult to form in more chance-based or offline gambling formats. One study found that seniors participating in online poker games formed beneficial social groups and experienced improvements in learning and cognitive skill development.²¹
32. Online poker also produces its own celebrities and star players who are capable of accruing multi-million dollar earnings in international tournaments, the same salaries as elite athletes in top sports. The success of future Australian players in this game of skill should be facilitated rather than hindered as is the situation under our current laws, as there is a genuine opportunity to enhance Australia's international prestige and brand as is the case with elite athletes who represent us internationally.
33. The Productivity Commission has recognised the benefits of poker and its differences to other chance-oriented and problematic gambling games, finding that *“Poker tournaments are social games of skill and usually involve a low number of bets in any given period. Indeed, in many cases, gamblers make a single modest contribution to a common ‘pot’ at the commencement of play.”*²² As noted above, the online format only serves to make these benefits more accessible.

¹⁹ Ibid.

²⁰ Baron, E., & Dickerson, M. (1999). Alcohol consumption and self-control of gambling behaviour. *Journal of Gambling Studies*, 15(1), 3. http://www.gamblinglaw.co.nz/download/Misc/Baron_Dickerson.pdf

²¹ Shim, N., Baecker, R., Birnholtz, J., & Moffatt, K. (2010, May). TableTalk Poker: an online social gaming environment for seniors. In Proceedings of the International Academic Conference on the Future of Game Design and Technology (pp. 98-104). ACM.

²² Productivity Commission 2010, Gambling, Report No 50, Canberra, Volume 1, Overview, p36.

Whether the current regulatory approach is a reasonable and proportionate response to those harms/benefits

34. As noted above at points 3 to 11, the current legal regime is:

- Anti-consumer choice and paternalistic.
- Misguided and therefore ineffective in targeting problem gambling as more problematic forms of gambling remain legal and consumers who wish to play online poker are more likely to simply switch to them.
- Fails to prevent access to foreign online poker websites.
- Causes a significant financial outflow from Australia to foreign nations (\$68 million to the U.S alone as of 2012) as a result.
- Unfairly discriminates against Australian businesses, innovators and potential workers by only preventing them from competing against the foreign players in our own domestic market.
- Facilitates consumer fraud as players are forced to seek online poker services from unregulated foreign websites.
- Fails to minimise and indeed inadvertently exacerbates any harms linked to online poker as foreign online poker providers catering to the Australian market are not subject to government oversight or regulation the way that Australian providers would be.
- Denies the government the benefit of a regulated and taxed online poker industry as supported by the Productivity Commission's 2010 recommendation.²³
- Denies players the benefit of an intellectually stimulating and challenging game of skill that is accessible to the financially disadvantaged, immobile and/or otherwise marginalised demographics who cannot access casino poker due to the high minimum buy-in costs or due to geographic disadvantage – therefore favouring wealthier poker players in well-resourced cities and large towns who can more easily access the casino.
- Runs contrary to the 'innovation' agenda promoted by the current government. Technological innovation has been recognised as a cornerstone of Australia's future economic growth and prosperity. It is therefore incumbent upon the

²³ Productivity Commission 2010, Gambling, Report No 50, Canberra, Volume 1, Overview, pg. 59-60, recommendation 15.1.

government to remove regulations which stifle rather than promote these innovations. Allowing Australian businesses and innovators to enter the online poker market would support the innovation policy platform.

35. In 2010, the Productivity Commission noted that *“regulated access to domestic or licensed overseas online providers, rather than prohibition, has potential benefits. It could achieve many of the benefits of online gambling to consumers, while diverting consumers away from unsafe sites to ones that met stringent probity and consumer safety standards — thus reducing the risks of harms to online gamblers. It would also increase competition in gambling with better outcomes for consumers, and provide Australian businesses with greater commercial opportunities.”*²⁴

Conclusion and Recommendations

36. Based on the evidence above, the ATA and MC recommend that the government legalise online poker in Australia and accompany this reform with appropriate tax and regulatory policy in order to promote responsible play. This would bring Australia in line with major western nations including the UK, Italy, France, Denmark, Norway and Sweden as well as several American states.

37. Examples of potential regulations include:

- Requiring players to provide identification, thereby preventing underage gambling or duplicate accounts.
- A ban on the use of automated ‘bots’ i.e. ‘fake players’ designed to artificially manipulate the odds of winning. Exceptions to the ban can be made where the website explicitly notifies the player that they are competing against an automation beforehand and/or obtains their informed consent.
- Requiring online poker providers to monitor and review account activity, providing reports of activity in a meaningful format.
- Regulations which moderate or limit financial pre-commitment by players.
- Information guidelines, including information about the rules of play, realistic odds of success, practical strategies for promoting responsible play and self-identifying problematic behaviours, information to raise awareness about strategies, resources and options available to address problem gaming. A 2009 study found that optional tools to facilitate self-control of online gaming behaviour were used by a significant minority of online gamblers (26%) and were considered useful by 52% or more than half.²⁵

²⁴ Productivity Commission 2010, Gambling, Report No 50, Canberra, Volume 1, Overview, pg. 36.

²⁵ Griffiths, M., Parke, J., Wood, R., & Rigbye, J. (2009). Online poker gambling in University students: Further findings from an online survey. *International Journal of Mental Health and Addiction*, 8(1), 82-89.

- Feedback on a player's behaviour, including alertness-monitoring systems or access to self-administered tests.
 - Customer support guidelines and training requirements: customer support staff working for online poker providers can also help to identify and inform customers about problematic behaviour and practical strategies to target these. This training would operate in a similar manner to existing training requirements governed by the issuance of an RCG (Responsible Conduct of Gambling) certificate which is a mandatory requirement to work in casinos, bars, clubs or restaurants that offer offline gambling.
 - Consumer protection regulations.
38. The costs of implementing these regulations and/or any initiatives or programs needed to target problematic gaming can be funded by a voluntary, industry-regulated payment of part of the profits gained from online poker. If a workable voluntary arrangement is not achieved, then a tax to be imposed on online poker operators could be considered.

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