

## SUBMISSIONS TO THE SENATE STANDING COMMITTEE ON ENVIRONMENT AND COMMUNICATIONS

### INQUIRY INTO THE PARTICIPATION OF AUSTRALIANS IN ONLINE POKER

#### PARTICULARS OF THE SUBMITTER

1. This submission is made by Mr Luke Brabin. Mr Brabin is a person with a history of regular participation in, and high performance as, an online poker player. He was the winner of the 2014 World Series of Poker bracelet. In the same year, he was the highest ranking Australian player in the Poker Stars Australia and New Zealand Tour.
2. Mr Brabin, through the company of which he was a director, Plus EV Pty Ltd, was also the operator of Australia's first online poker website, Poker Asia Pacific (**PAP**). For this he was, on 5 June 2017, convicted on his own plea of guilty of an offence against s 15(1)(a) of the *Interactive Gambling Act 2001* (Cth) (hereafter, the **IGA**). That section makes it an offence to provide an interactive gambling service to customers in Australia. He was sentenced in the Southport Magistrates Court to a fine of \$10,000, with the recording of a conviction (as is mandatory under the *Crimes Act 1914* (Cth) where a fine is imposed).
3. The recent prosecution of Mr Brabin represents the one and only time that the IGA has been enforced, despite being on the legislative "books" since 2001.
4. PAP attracted players based in Australia and overseas. Between 5,500 and 6,000 people were registered to play on that site, and at least 15% of those players were not Australia-based. The percentage of players who were of foreign domicile was increasing during every month in which the website operated.
5. PAP was, because of its competitive terms and fair treatment of players, fast developing a reputation as a serious market rival to the multi-million and multi-billion-dollar foreign poker websites that have operated for years in Australia, providing services to Australian players, without any apparent attempt by Australian authorities to prevent that service being offered. PAP was also developing a reputation for offering among the fairest terms for players. PAP charged half the rake of the major online poker websites<sup>1</sup> and, unlike many of

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<sup>1</sup> PAP charged a 2% rake (or commission on the "pot" played for in an online poker tournament), whilst market leaders Poker Stars and 888 Poker charged 4%.

its foreign competitors, PAP did not use computer-generated “players”, presented as real people, to stack the odds against genuine tournament participants. These initiatives sprang from Mr Brabin’s own experiences as a player.

6. The website was shut down following the execution of warrants by the Australian Federal Police in August 2016. In doing so, Australian online poker players lost the opportunity to play the game on some of the fairest terms to have existed in the market for online poker play.

#### **SUMMARY OF THE SUBMISSION**

7. As was acknowledged by the Productivity Commission in 2010, *“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.”*<sup>2</sup> For these reasons, it is an appealing game to many Australians.
8. Online poker has far fewer social harms than more popular gaming methods, such as the electronic gaming machines (**EGMs**) commonly referred to as “pokies” (but which in fact do not involve playing the game of poker). Because games often have a duration of several hours, poker play offers a surprisingly affordable entertainment option. While minimum buy-ins range from \$60 to \$100 at most physical casinos, in online poker play tournaments can be entered across a wide range of price points, often as low as \$1 to \$2, and offer an average player well over an hour of entertainment for that buy-in.
9. Because online poker games are a game of skill, there is substantial intellectual stimulation offered by the mathematical and strategic options presented by the game. It is not a game that depends on the trance-like qualities that make EGMs so addictive and socially problematic.
10. Online poker presents an opportunity for adult players to exercise that skill as a part of an entertainment experience, whilst presenting an opportunity for the Commonwealth government to source a new revenue stream.
11. Online poker is more affordable than playing poker in a physical casino, and it is more accessible for those who live in rural and remote areas. Online poker is able to be played by those who face mobility issues, in a way that provides an equitable approach to access to entertainment.

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<sup>2</sup> Productivity Commission 2010, *Gambling*, Report No 50, Canberra, Volume 1, Overview, p36.

12. The IGA is ineffective in that it does not prevent Australians from playing online poker – all it does is prevent Australians from setting up poker-play businesses. Realistically, foreign poker play websites proliferate and Australians who wish to play face no real restriction in their ability to do so. Those foreign sites contribute nothing to the Australian revenue. Poker stars is worth \$5bn on the Toronto Stock Exchange, but delivers nothing for the Australian taxpayer. In that context, it defies logic to prosecute local operators, who are willing to contribute to the Australian revenue and abide by an appropriate regulatory regime which affords consumer protection.
13. Finally, it is an affront to notions of personal liberty to prohibit an adult from using their own money to engage in this form of entertainment, when to do so presents so few potential harms. Indeed, the broader social and governmental impacts of legalisation of the game should be regarded as positive overall. It is fundamental to the traditions that underpin the success of Western civilisation that individual liberty must not be constrained unless there is a real and pressing reason to do so.
14. Online poker should be:
  - (a) legalised in Australia;
  - (b) subject to a sensible regime of regulation of operators;
  - (c) subject to a regime of consumer protections; and
  - (d) subject to taxation.

#### **THE PARTICIPATION OF AUSTRALIANS IN ONLINE POKER**

15. Online poker represents a \$249m industry in Australia, despite its prohibition.<sup>3</sup> This is comparatively small, when considered against the \$19bn industry constituted by EGMs in RSLs and clubs, wagering and betting, lotteries and casinos.
16. One would expect the size of the industry to expand if it were legalised and regulated.
17. Australians like Mr Brabin play poker online for a number of reasons. Those include:
  - (a) It offers a challenging game of skill, in which mathematical and strategic ability can be employed to personal advantage in a way that is not possible in most casino games, wagering options or in the use of EGMs;

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<sup>3</sup> Productivity Commission 2010, *Gambling*, Report No 50, Canberra, Volume 1, Overview, p7.

- (b) It represents good value: for a small buy-in, a player can access an average of over an hour, and often several hours of entertainment. Such small buy-ins are not available in physical casinos;<sup>4</sup>
  - (c) For those who develop their skills in the game, there are opportunities to win prizes of real substance, such that intellect and development as a player are rewarded;
  - (d) There is a social element to participation, even in an online forum. It has led to the formation of many friendships with people across the country who share an interest in the game, and those friendships have extended over several years;
  - (e) There is a greater selection of game types available online than are available in a physical casino (where Texas Hold'em and Omaha are the only varieties readily available);
  - (f) The game has not presented any disadvantage to Mr Brabin, save for being recently prosecuted for his role in facilitating the game.
18. Online poker also provides an advantage to players with a skill for mathematics: they are not excluded for consistently performing well. Whilst in the online sports betting and horse racing markets, a player who tends to be successful is quickly excluded from being able to place bets with corporate bookmakers, that course is not followed in poker because the structure of the game means the host is not prejudiced by the success of a particular player. This is a further reason why online poker play is attractive to Mr Brabin. From the perspective of principle, online poker is fairer to players, because one is not excluded for good performance as is the case with other gaming types.

#### **THE NATURE AND EXTENT OF ANY PERSONAL AND SOCIAL HARMS AND BENEFITS ARISING FROM PARTICIPATING IN ONLINE POKER**

19. There are several social benefits that come from online poker play, as opposed to other gaming options. One important benefit is that it allows a player a long period of entertainment, on average in excess of an hour but often for several hours, for a single buy in. As mentioned above, buy-ins for poker tournaments can be very modest, and represent great value for the time played (even if one were to lose).
20. The fact that online poker is a game of skill means that the intellectual engagement it offers, and the mathematical and strategic abilities it develops, represent a social benefit that is not present in other gaming options, including those which are currently legalised.

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<sup>4</sup> Where the buy in is usually a minimum of \$100, though there are some examples of a \$60 buy-in that can be found in Australia.

21. The Committee will no doubt recall when mandatory pre-commitment laws were being considered by the Commonwealth Parliament. One of the advantages of online poker is that gambling within one's means is a part of the structure of the game: tournaments have a buy-in at the outset, and there is no hand-by-hand pressure to wager more. In this sense, a mechanism much like that which mandatory pre-commitment sought to implement is a natural feature of the game.
22. A further advantage of online poker play is a social one. Australian poker players form a social community that develops into bonds of friendship. That social benefit is accessible to people in any location, including in rural and remote areas where physical casinos are not available, and for socially isolated people, such as those with mobility issues or caring responsibilities that can make being away from home for long periods difficult to manage.
23. It should be regarded as a benefit to players that the commission charged by online poker websites is far lower than that which is charged in other forms of gambling. For example, while the major online poker websites charge around 4% commission on poker tournaments (and PPAP charged 2%), EGMs are programmed to take a 15-16% commission, and bookmakers charge between 5 and 15%. Online poker, in this sense, represents a better value gaming entertainment option for the consumer.
24. To the extent that online poker might appeal to problem gamblers, the following can be said:
  - (a) It would, if legalised, be no more appealing than the current ability of Australians to use foreign online poker websites (which offer no harm minimisation options);
  - (b) There is no reason why harm minimisation strategies, such as self-exclusion and deposit limits, could not be extended to Australian online poker websites. This option would mitigate the potential risk associated with the fact that online poker would be so easily accessible;
  - (c) All the available evidence indicates that poker tournaments are far less likely to give rise to problem gambling than wagering or the use of EGMs;
  - (d) The PC's examination of the available studies on the prevalence and seriousness of problem gambling among online poker players demonstrates that online poker players are less likely to become problem gamblers (within the definition in the DSM-IV), and where they do develop a problem with gambling, they lose far less than those who have problems with other forms of gambling.<sup>5</sup> The leading study of Wood, Griffith and Parke (2007) showed that fewer than 3.5% of online poker

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<sup>5</sup> Productivity Commission 2010, *Gambling*, Report No 50, Canberra, Volume 2, Table 15.1, Part 15.4.

players lost more than \$50 per week in play. La Plante et al. (2009) found that the median loss in online poker per session was a mere \$3, which is relatively small compared with other forms of gaming (LaBrie et al. 2008);

- (e) It is illogical to deny access to online poker based on a potential for harm to problem gamblers, when the currently legalised options in Australia have been demonstrated to be far more socially harmful than online poker ever could be.

25. The PC has acknowledged that *“of the most commonly used forms of online gaming, poker games appear to involve the least risks.”*<sup>6</sup>

**WHETHER THE CURRENT REGULATORY APPROACH; IN PARTICULAR, THE IGA, IS A REASONABLE AND PROPORTIONATE RESPONSE TO THOSE HARMS AND BENEFITS**

26. The IGA is not a reasonable and proportionate response to the potential harms posed by online poker play. Furthermore, it eliminates the opportunity to experience its benefits. For this reason, the IGA should be reformed to allow a regulated, supervised and taxed online poker industry. Such an approach better balances those potential harms and benefits, and ensures that Australian consumers do not participate in online poker offered by unregulated or unscrupulous overseas operators.

27. The Productivity Commission in 2010 acknowledged that *“the Australian ban on online gaming ... has also had the effect of driving consumers to international sites, some with poor harm minimisation features and unscrupulous business practices.”*<sup>7</sup> The PC went on to observe 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.”*<sup>8</sup>

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<sup>6</sup> Productivity Commission 2010, *Gambling*, Report No 50, Canberra, Volume 2, Table 15.1, Part 15.31.

<sup>7</sup> Productivity Commission 2010, *Gambling*, Report No 50, Canberra, Volume 1, Overview, p35.

<sup>8</sup> Productivity Commission 2010, *Gambling*, Report No 50, Canberra, Volume 1, Overview, p35-36.

28. Mr Brabin's experience, of being prosecuted for providing the fairest, most transparent online poker play website available to Australians, demonstrates the counter-productivity of the IGA. By shutting down PAP, players were denied a reliable, fair forum for play, and Mr Brabin's substantial investment in PAP was wasted. It would have been far better for players, and for entrepreneurs like Mr Brabin, had it been permissible for operations such as his to run in Australia. Shutting him down only forced Australian players into games on worse terms, and with lower accessibility in the event of a dispute.
29. That liberalisation of online poker can work is demonstrated by the adoption of this approach in other jurisdictions such as the United Kingdom, France, Italy, Scandinavia and parts of the USA.
30. When making a decision about whether to continue to prohibit online poker in Australia, the central question must be: is this form of regulation better at meeting its objectives than all other feasible alternatives? In the face of the matters raised by this submission, it is plain that prohibition is ineffective, inequitable and counter-productive to the interests of the revenue. A managed liberalisation of online poker is the most sensible course, and adequately addresses the potential risks whilst facilitating the many benefits of making the game more accessible.
31. The PC recommended in 2010 that the IGA be amended to permit the supply of online poker games, subject to a regulatory regime demanding strict probity standards and harm minimisation strategies.<sup>9</sup> In Mr Brabin's submission, this recommendation is sensible and should be implemented by the Australian Government as soon as it is possible to do so because the provisions of the IGA dealing with online poker are out of step with technological advancement, the comparative benefits and risks for consumers, and the economic opportunity online poker presents for business and government alike.

Luke Gregory Brabin

20 July 2017

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<sup>9</sup> Productivity Commission 2010, *Gambling*, Report No 50, Canberra, Volume 1, Overview, p59-60, recommendation 15.1.