

10th July 2017

The Australian Online Poker Alliance Submission to the 'Participation of Australians in Online Poker' Inquiry

Who we are

The Australian Online Poker Alliance (AOPA) is a community based organisation. We aim to ensure that the tens of thousands of ordinary Australians who actively enjoy playing online poker as a hobby in our country have their voices heard.

What we believe In

Our objective is to ensure that Australians have the freedom to enjoy the game of online poker. We seek to implement an environment where appropriate consumer protections can be put in place ensuring that whilst individuals are empowered to make their own choices regarding online poker that appropriate safeguards are in place to provide help and assistance for those in need.

The AOPA also believes that the ability for operators to offer online poker services to Australians is a privilege not a right. It is only fair that commercial entities seeking to gain from offering these services to Australians should pay for this privilege.

We believe that due to the extremely low prevalence of problem gambling that comes from online poker that a fair and reasonable revenue structure can be put in place which is of benefit to the Australian government, the operators and the Australian players whilst having a net positive benefit to the Australian economy.

Key Summary

- In its current form the *Interactive Gambling Act 2001 (The Act)* is neither a reasonable, nor proportionate response to online poker.
- All major government studies into online poker have found the game to be a low risk activity and called for online poker to be licenced (details below).
- Online Poker is a 'peer to peer' game where players compete against each other, not against the house. This is very different to other types of online gambling. This must be considered when deciding on the correct legislation
- Australians of mature age should be free to choose whatever hobby they like without government intervention, providing that they are not hurting others
- Online poker will still be available to Australians whether it is regulated or not. In it's current form, The Act will cause operators who want to operate within Australian law to leave and be replaced by those that choose to operate outside our laws therefore putting Australian consumers at greater risk of fraudulent activity whilst not providing the support and protection that vulnerable Australians need

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- Regulation of online poker will be extremely beneficial in relation to government revenue. The income generated through taxes and other benefits (employment, investment in marketing and media) will be significant whilst the cost of licensing is very low
- Prohibition has been trialled in other countries with disastrous effects (details below). Contrastly, nations that have decided to licence online poker have been able to implement sensible laws which have been deemed a win win by consumers, operators and governments alike

The Difference Between Online Poker and Other Online Gambling Variants

The first thing that needs to be made clear is that not all gambling is equal and as a nation we cannot take a 'one size fits all' legislative approach when looking at different forms of gambling.

As Dr Sally Gainsbury, Deputy Director, Gambling Treatment and Research Clinic, Sydney University, wrote in her submission to the 2012 IGA review ¹(page 22):

"The IGA must differentiate between various forms of online gambling and recognise that online gambling is not a homogenous activity but that different gambling opportunities pose different risks to players."

This has never been more true than it is in regards to online poker. The 2015 review of illegal offshore wagering ² lists poker as a casino game (Definitions, Page 4) that is 'games which are usually found in a casino and includes electronic gaming machines (EGMs) and table games such as poker, roulette, blackjack etc'. This definition is misleading.

There is a major difference between poker and all of the other games listed under that definition. Poker is a 'peer to peer' game. All of the other games listed are games where the player plays against the casino (house). This is not the case in poker. A poker game comprises of individual players competing against each other. The house is not playing, it has no vested interest in who wins the hand. In the other casino games listed the house is remunerated by taking the money lost by the player. In poker the house is remunerated by taking a small percentage of the pot the players are playing for, a small percentage of the entry fee for a tournament or a set charge for using the table. In our view this point is a key difference that needs to be understood when legislating in relation to poker. If legislators are unclear on this difference we would urge them to contact the AOPA so we can help to clarify this difference.

¹ 2012 Review of the *Interactive Gambling Act*: <https://www.communications.gov.au/file/7811>

² 2015 Review of Illegal Offshore Wagering:
<https://www.dss.gov.au/communities-and-vulnerable-people/programmes-services/gambling/review-of-illegal-offshore-wagering>

The amount that is charged to the player is clearly listed and identified to the players prior to them playing. The amount is not dependent on the player's results. That is, all players pay the same price to the house regardless of whether they win or lose. The best comparison of how to consider house remuneration in poker is to think of a consumption tax. Players play a set amount depending on how much of the service provided they use.

The fact that the house has no vested interest in the outcome of the poker game and the fact that you are playing against other players leads to one other very important difference between poker and other casino games. Due to the mixture of luck and skill, over time a more skillful player will always beat a less skillful player. The ratio of luck to skill in poker is inverse to the length of time that somebody plays. If you were to play one hand against somebody, there is a good chance that either player will win depending on the cards they are dealt. However, once these players play a larger amount of hands/sessions against each other the luck between two players will even out making it neutral. This allows the more skilled opponent to win.

This is different to other casino games where over the long term the player has no chance of winning. The rules to the games are set so that the house has a mathematical advantage which is impossible to overcome. No length of time and no amount of skill will ever overcome the fact that the rules of the game are against you. This is a major difference between poker and other types of gambling which is why we should not be painting them all with the one brush when determining the right legislation for our nation.

a) The Participation of Australians in Online Poker

The 2010 Productivity Commission Inquiry Report into Gambling stated that there were 363,000 active online poker accounts (players) in 2008³. The population of Australia in 2008 was 21.37 million⁴ suggesting that 1.7% of Australians were active poker players at this time.

Since the creation of the AOPA we have spoken with thousands of Australian poker players. The most amazing thing has been the diverse cross section of our society that are represented at the poker table. The responses we have had range from university students who play to take a break from studying, elderly people looking for some mentally stimulating entertainment, mothers that want a bit of 'me time' after putting their kids to bed and professionals who use it to relax after a busy day in the office.

Online poker truly is a game that knows no boundary when it comes to the player base. The Australian online poker community comes from all walks of life and from all corners of Australia.

³ 2010 Productivity Commission Inquiry Report into Gambling:

<http://www.pc.gov.au/inquiries/completed/gambling-2009/report/gambling-report-volume1.pdf>

⁴ Australian Bureau of Statistics, Australian Demographic Statistics June 2008 -

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/0/A3D845ADEFBFA7CA25757C00137633?opendocument>

So why do so many Australians love playing online poker so much? There is a saying that has been going around poker venues for years “Poker takes five minutes to learn and a lifetime to master.” It is this simple fact that has so many so enthralled with the game.

You can sit down at a table and someone can teach you the basics very quickly but the more you learn with poker the more you realise there is to learn. Like chess, poker is a mental challenge between two opponents. The cards and the chips are not the basis of the game, they are merely the tools you use. There are countless books teaching poker math and poker game theory. At the risk of getting too far off topic we will not go into further detail on this here but the AOPA invites any committee member who wants a greater understanding of the depth of study available for the game to contact us. We would be happy to have a chat with you about this or recommend some reading materials on the subject.

This leads to the main reason why participation of Australians in online poker is so high and diverse. The poker table is a completely level playing field. When you sit down to play online poker your wealth, weight, gender, height, background and age are all irrelevant. All players receive an equal amount of chips to start a tournament and the same amount of cards as everyone else. Every player has a fair chance of winning. It doesn't matter who you are, with practice anybody can improve their poker game.

Australia is an extremely diverse country with many different cultural backgrounds. Poker players come from all over the earth. At last year's World Series of Poker (The annual 'World Championship' of Poker) players represented 107 different nations⁵. With poker reaching all corners of the globe and Australia being such a multicultural country, it stands to reason that participation in poker is as diverse and vibrant as Australia itself.

Another point of consideration is the amount of champions we have been able to produce on the poker world stage. At time of writing, this year's World Series of Poker is being held. We have already had two Australians win World Championship titles this year. James Obst⁶ and Heidi May⁷. If these players were not able to compete with the best in the world on the virtual felt it is unlikely that they would be as skilled at the game of poker as they are today.

⁵ “47th Annual WSOP Sets Attendance and Several Other Records”, WSOP.com:
<http://www.wsop.com/news/2016/Jul/7889/47TH-ANNUAL-WSOP-SETS-ATTENDANCE-AND-SEVERAL-OTHER-RECORDS.html>

⁶ James Obst WSOP Profile: <http://www.wsop.com/players/profile/?playerID=185406>

⁷ Heidi May WSOP Profile: <https://www.wsop.com/players/profile/?playerID=215574>

b) The nature and extent of any personal or social harms and benefits arising from participating in online poker

Australian governments have held extensive research into any effects of online gambling over the past decade. The commentary from these reports in relation to online poker is as follows:

i) The 2010 Productivity Commission Report into Gambling: This report listed online poker as the safest form of online gambling.

Recommendation 15.1 of the Report stated: "In consultation with state and territory governments, the Australian Government should amend the *Interactive Gambling Act* to permit the supply of online poker card games."⁸

ii) The 2012 Department of Broadband, Communications and the Digital Economy's Review of the Interactive Gambling Act found that:

Online Poker had a relatively low likelihood of leading to gambling problems because poker:

- Is partly a game of skill
- There is no evidence to suggest that players experience the trance like states that occur when players are playing Electronic Gaming Machines (EGMs)
- There is a social element to the game as you are playing against other people so it is very interactive
- It is a game in which people compete for a pot of money to which they contribute which therefore limits losses

In the report Dr Gainsbury found that in a recent online survey of 6,682 Australian gamblers, median monthly losses for online poker were \$1, suggesting that most players gamble for relatively low stakes. This was the lowest monthly loss reported for any gambling activity.

This 2012 report listed online tournament poker as the lowest risk type of online gaming and recommended paving the way for online poker operators to be licensed in Australia (Recommendation 22)⁹.

iii) The 2015 Review of Illegal Offshore Wagering Report to the Minister of Social Services made no specific recommendations in regards to online poker but did note that 'the possibility of obtaining an online poker licence in the US led to several major operators withdrawing from illegal markets as it was a condition of their US licence that they were not offering services prohibited in other jurisdictions. Some stakeholders argue this could be a useful mechanism to encourage operators to come onshore.' (Section 1.3 of the review).¹⁰

⁸ 2010 Productivity Commission Inquiry Report into Gambling:

<http://www.pc.gov.au/inquiries/completed/gambling-2009/report/gambling-report-volume1.pdf>

⁹ 2012 Review of the *Interactive Gambling Act*: <https://www.communications.gov.au/file/7811>

¹⁰ 2015 Review of Illegal Offshore Wagering:

<https://www.dss.gov.au/communities-and-vulnerable-people/programmes-services/gambling/review-of-illegal-offshore-wagering>

We can see from the above that of these three reports, one held no opinion on the future of online poker and the other two noted that it is the safest, most low risk form of online gambling and called for it to be regulated to allow safe access for Australians.

That the harms of online poker are extremely low has been well and truly established by other inquiries so this submission will instead focus on the personal and social benefits provided by online poker.

Before doing that, it is important to recognise that there will still be a tiny portion of players who have a problem with gambling and play poker. The most effective way of dealing with this is to ensure that these players get the information, tools and support that they need to manage this problem. The only way to effectively do this is to license and regulate reputable operators to ensure that controls are in place.

There are key fundamental benefits provided to Australians by online poker being allowed. In The Act's current form we are saying that citizens are permitted to play poker in pubs, clubs and casinos but not online. Surely the legality of an activity should be based on the activity in it's entirety, the mode of delivery should not be considered.

What does this mean for poker players who live in remote regional and rural areas as opposed to city centres? They are indirectly being limited in their freedom of choice. We have the capacity to provide services to all Australians using the internet and this should be celebrated not limited.

It is 2017. In this day and age it is not logical to allow a pastime to be offered offline but not allow it to occur online. Furthermore, it is far easier for an operator to install protections and for a player to monitor their own activity online than it is in a land based environment. In the same way that access to health services, banking and other day to day activities move online we should not be curtailing the ability of hobbies that Australians enjoy to do the same.

Another benefit that comes from online poker is the ability for players to manage how much they spend playing poker. For the vast majority of players the cost of online poker is extremely low when compared to playing poker in a club or casino.

Information compiled by the AOPA from the world's largest poker site discovered that 75% of tournaments played for real money online are for a buy in of \$10 or less. There are many free tournaments online and the lowest cost buy in tournament costs \$0.11. 80% of the ring games played online are for a Big Blind of \$0.50 or less. The lowest ring games available online have a Big Blind of just \$0.02. (a player can sit at these tables with \$1). Given the overheads associated with running a live poker game it is simply not possible for a casino to be able to offer games to players at this price point. For example, the lowest cost tournament available at the Crown Casino in Melbourne costs \$60 to enter¹¹. The lowest

¹¹ Crown Poker - Tournament Schedule: <https://crownpoker.com.au/tournament-schedule>

cost tournament at The Star in Sydney is \$220¹². The smallest Big Blind available on a ring game at the Crown Casino is \$2 (players need \$50 to sit at the table)¹³ and at the Star in Sydney is \$3 (players need \$100 to sit at the table)¹⁴.

By removing online poker we are telling players that if they want to continue playing the game that they must play for a higher stake than they may be comfortable with. This is clearly not the government's intention with The Act but it is a risk that must be considered.

Online poker, unlike many other games it is compared to has a very strong and rich community around it. The campaign that the AOPA has organised to keep online poker in Australia (#AusFight4Poker) is a clear example of this. This has been a campaign backed by the everyday men and women who make up the Australian online poker community¹⁵. It has not been run by big businesses with vested interest but by the playing community. This whole movement is Australian citizens fighting hard to keep the game that they love.

When Senator Leyonhjelm moved his amendment to the *Interactive Gambling Amendment Bill (2016)* in regards to online poker many Senators, including the Minister, mentioned just how much contact they have had from concerned community members about this issue. This is a community filled with everyday Australians fighting for the game that they love. At time of writing this submission almost 4,000 different Australians have made direct contact with the AOPA about this issue asking what they can do to help. A forum thread about this issue (website twoplustwo.com) has over 2,600 individual comments about the future of Australian poker and has been viewed almost 300,000 times. There is a strong vibrant community in Australia that loves this game. The government should be supporting and embracing this community, not shutting it down.

The competitive nature and strategy component of the game leads to a lot of players formulating strong friendships. Many build lifelong relationships from the online poker community. Poker players come from different walks of life and many who have made firm friends through online poker note that they would otherwise have very little in common. But it is the nature of a game that pushes players to excel and achieve their full potential that unifies so many that play.

Poker is an extremely aspirational past time. Regardless of age, gender, background or fitness level it is a hobby where people constantly try to improve. When poker players talk to each other about different poker situations it isn't a discussion about whether they won or lost. It is about whether they played the hand the best that way that they could. This assists poker players in creating a strong level of critical thinking which is effectively carried on to other areas of life. Poker is a mentally stimulating hobby which is the main factor people enjoy about it. As studies have shown¹⁶, poker is not a game where the sole focus is to win

¹² Star Poker - Tournament Schedule: <https://www.starpoker.com.au/tournaments>

¹³ Crown Poker - Cash Games: <https://crownpoker.com.au/cash-games>

¹⁴ Star Poker - Cash Games: <https://www.starpoker.com.au/cashgames>

¹⁵ 'Online Poker Heads Back to Australian Parliament for Legality Inquiry', Pokernews.com: <https://www.pokernews.com/news/2017/06/online-poker-heads-back-to-parliament-australia-28261.htm>

¹⁶ Dr Sally Gainsbury, 2012 Submission to the Interim Report of the IGA Review

money. The ability to win a tournament by outwitting and outsmarting your opponents is where the enjoyment for many comes from.

The ability for Australian citizens to take part in a hobby they enjoy regardless of their location at a price point they are comfortable with is a great benefit that is provided by online poker.

c) Whether the current regulatory approach, in particular the recently amended *Interactive Gambling Act 2001* is a reasonable and proportionate response to these harms and benefits

Whilst well intentioned the *Interactive Gambling Act 2001* is in no way a reasonable and proportionate response to online poker. This has been clearly evidenced by the fact that most government reports (as listed previously) that have looked into online poker have called for a regulatory framework to be put in place in order to allow safe, legal online poker to be enjoyed by Australians.

Since 2001 the *Interactive Gambling Act 2001* the list of excluded services in the act has remained unchanged. Given the significant advancements in technology over the past 16 years this puts Australia in a situation where legislation has not kept up with technology. In 2001 online poker was in its infancy. It did not exist as part of Australian culture in the way that it does today.

It is not reasonable for us to assume that those legislating in 2001 would have known what online poker would develop into in 2017 and therefore the Act needs to be amended to allow peer to peer gaming services, such as online poker, to be licenced in Australia.

There is little merit in legislation existing that does not achieve its objective. We need to appreciate the likelihood that a percentage of Australians will access online poker regardless of whether it is regulated or not. By regulating we allow the government to set the terms that operators must comply with if they are to offer online poker to Australians. By allowing a black market to operate we have no control over which providers offer games to our citizens. We have seen prohibition of online poker be attempted in other countries with disastrous effect. The United States being the biggest example. A vacuum was created and sites that chose to operate outside of the law filled the void. Lock Poker, a site based on the island of Curacao, was a prime example of this. When publicly listed sites left the market Lock Poker moved in and after some troubled years disappeared from the US Market in 2015, reports suggest that the company owed players as much as USD\$15 million at the time¹⁷, as they were operating outside the law little could be done to assist the players or return their funds.

¹⁷ 'Lock Poker Finally Closes, Owing Millions', Pokerfuse.com:
<http://pokerfuse.com/news/poker-room-news/26762-lock-poker-finally-closes-owing-millions/>

It is not unreasonable to assume that if Australian poker players had a choice between two poker services, One that was licensed in Australia and that was paying for the privilege of offering games to Australian players and a second site that was deliberately operating outside of Australian law that Australians would choose the site approved by the Australian government.

The poker landscape in Australia is currently serviced by large, public companies listed on stock exchanges including London and Toronto. These companies answer to shareholders and because of that have an implied corporate social responsibility that they adhere to. These include the segregation of player funds from operation funds as well as responsible gaming standards that are supported by state of the art technology¹⁸. These large reputable companies have announced that they will leave the market once the current amendments to The Act go through as they do not want to operate against the will of a sovereign nation¹⁹. However, many sites will stay. In effect what this legislation does is remove the sites that are prepared to work with the Australian government and replaces them with those that care little about Australian people or Australian laws.

A clear example of this is happening right now. On July 4th 2017 an Online Poker company based in Costa Rica (Ignition Poker) announced that they were about to enter the Australian market²⁰. This is right in the middle of the current online poker debate and at a time when publicly listed providers are looking to leave the market out of respect to Australian law, this private offshore company sees an opportunity to enter the market that they vacate.

The Act creates an environment where Australians that want to keep playing poker are indirectly being told to leave the sites that want to cooperate with the Australian government and instead play on sites that choose to operate outside of our laws. How likely is it that these companies will act with integrity when it comes to holding the funds of Australian players as well as running honest games?

The sites currently operating in Australia have safeguards implemented to protect problem gamblers (an example of this is that you cannot just enter into a high dollar amount ring game. You need to first contact the site asking for permission. This process takes approximately 24 hours ensuring that players do not play higher games than they normally do out of impulse).

¹⁸ PokerStars Responsible Gaming Information:

<https://www.pokerstars.com/about/responsible-gaming/>

¹⁹ 'Australian Online Poker Players fear major sites will disappear with crackdown on offshore gambling websites', news.com.au:

<http://www.news.com.au/technology/online/australian-online-poker-players-fear-major-sites-will-disappear-with-crackdown-on-offshore-gambling-websites/news-story/a1ec69aaa179f0fd13d3cce7716f07d2>

²⁰ 'Ignition Casino and Poker Expands to Australian Market', Pokernewsreport.com:

<http://www.pokernewsreport.com/ignition-casino-and-poker-expands-to-australian-market-21773>

The ability to be able to protect those who are vulnerable is an important consideration. We must ensure that we have safeguards in place to protect vulnerable Australians. We can do this by dealing with the sites that are prepared to work with the government to get licensed

Another key reason as to why this legislation needs to be amended to allow online poker is that Australians should have the right to choose. A fundamental part of our society needs to be for individuals to choose how they spend their free time and money on the proviso that they are not hurting others. Given the minimal risks associated with online poker which have been proven beyond doubt in previous inquiries it is not reasonable for the government to limit access to online poker games to Australian citizens.

Another important reason as to why we must allow online poker providers to be licensed to Australia is the significant revenue stream that it brings. Australian citizens are valuable and operators must pay for the privilege of offering services to them.

The 2010 Productivity Commission report shows that in 2008 \$249 million was spent on online poker by Australians. This was a 170 percent increase on 2004 levels²¹.

The 2012 Report showed that Global and Betting Gaming Consultants estimated that the total value of online gambling in Australia in 2010 could be as high as \$1.6 billion. In the same report, Bet365 suggested that as much as \$922 million of that was on prohibited services including poker. Table 4.2 from the KPMG 'Estimating the Potential Size of an Online Gaming Market in Australia' report included in the review showed that Online Poker comprised 32% of this figure²².

These are significant numbers and our fair share should be coming back into Australia. Allowing sites to licence is a great way to do this. There are several licensing models that operate currently around the world in relation to online poker. The model brought in to the United Kingdom through the *Gambling (Licensing and Advertising) Act 2014*²³ is widely regarded as the best example by service providers, consumers and governments. Given our similarities with the United Kingdom this would be a great model to look at when considering the Australian approach.

Conclusion

To conclude, we would like to say thank you on behalf of the entire Australian online poker community for allowing the Australian people to have our say about the game we love. We are lucky to live in a nation where the government listens to it's people.

²¹ 2010 Productivity Commission Inquiry Report into Gambling:

<http://www.pc.gov.au/inquiries/completed/gambling-2009/report/gambling-report-volume1.pdf>

²² 2012 Review of the *Interactive Gambling Act*: <https://www.communications.gov.au/file/7811>

²³ *Gambling (Licensing and Advertising) Act 2014*, Legislation.co.uk:

<http://www.legislation.gov.uk/ukpga/2014/17/contents/enacted>

The Australian Online Poker Alliance is committed to ensuring the transition to safe, legal online poker being offered in Australia is smooth and carried out with the best interests of Australia in mind.

We believe that we are the organisation best placed to assist the government in formulating the right legislative framework in relation to online poker and call on the Committee, the Minister and the Government to utilise our expertise in this area.

Please do not hesitate to contact us if you have any questions about this submission or the transition of Australia to a regulated online poker market.

Yours Sincerely,

Joseph Del Duca
Founder
Australian Online Poker Alliance