



Clubs Australia

Inquiry into Australians participation in online poker

Clubs Australia Submission

21 July 2017

About Clubs Australia

Clubs Australia is the national, peak industry body representing the interests of Australia's 6,413 licensed clubs.

Clubs are not-for-profit community based organisations whose central activity is to provide infrastructure and services for the community. Clubs contribute to their local communities, through employment and training, direct cash and in-kind social contributions and through the formation of social capital by mobilising volunteers and providing a diverse and affordable range of services, facilities and goods.

Club members are people from all walks of life and with many different interests. Clubs, as local community organisations, are highly responsive in addressing the needs of their members, guests and broader community.

The KPMG National Club Census 2015 revealed the following facts about that the Australian club industry:

- 13.7 million club memberships;
- 172,000 jobs supported;
- \$8.3 billion in economic contribution;
- \$5 billion in social contribution; and
- \$2.6 billion in taxes paid.

Clubs have an established history as a responsible provider of gambling services to the Australian community.

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1. Introduction

Clubs Australia welcomes the opportunity to submit to Senate Environment & Communications Committee inquiry into *Participation of Australians in online poker*.

Clubs Australia acknowledges that there are legitimate concerns within both Parliament and the community about the risk associated with online gambling.

In the early 2000s, governments around the world adopted various regulatory measures to constrain and prohibit the online gambling market. However, as a result of the increasing difficulties associated with enforcing such prohibitions, has been a global shift in favour of managed liberalisation.

The rapid evolution of digital technologies and exponential growth in the global online gaming market, has seen a number of countries elect to revisit their existing internet gambling regulations, amending laws to capture taxation benefits, and provide citizens with an enhanced level of protection against potentially unscrupulous unlicensed online operators.

The legislative framework in Australia contains a mixture of prohibition and regulation. The *Interactive Gambling Act 2001 (IGA)* prohibits online gaming, comprising casino table games (including poker) and virtual gaming machines. However, the IGA does allow operators licensed in Australia to offer online wagering, sports-betting and lottery services.

In December 2015, former NSW Premier the Hon. Barry O'Farrell, released the Department of Social Services *Review into Illegal Offshore Wagering* (the O'Farrell Review), which estimated that Australian spend over \$2.4 billion per annum on online gambling.¹ It was also estimated that **Australians spend \$1.1 billion on illegal offshore online gambling.**²

The O'Farrell review also found, illegal and offshore gambling have adverse effects on Australian consumers and government. Offshore operators do not pay taxes to the Australian government, often fail to implement harm minimisation programs and lack basic consumer protection measures.

Clubs Australia has strong interest in ensuring a properly regulated gambling sector. In our view, the O'Farrell review demonstrates that the current regulatory framework is failing to adequately protect Australians against the risks associated with gambling online.

We note that the O'Farrell Review made a number of recommendations for strengthening the enforcement of the prohibition on unlicensed operators, as well as for improving harm minimisation and consumer protection measures for Australian licensed online gambling operators.

Clubs Australia supports the proposed amendments to IGA under *Interactive Gambling Amendment Bill 2016* that will implement a number of the O'Farrell Review recommendations.

Clubs Australia is supportive of the Australian Government's approach to strengthening enforcement of the ban on unlicensed operators providing services to Australians. However, we submit that further measures need to be taken to frustrate the businesses models of illegal unlicensed operators at protect Australian consumers.

We also support the introduction of the *National Consumer Protection Framework* to ensure that appropriate harm minimisation and consumer protection measures apply to online gambling operators licensed in Australia.

¹ *Review of Illegal Offshore Wagering Report*, Commonwealth of Australia (Department of Social Services) 2015 p.43

² *Ibid* p.44

In our view, the overriding aim of all gambling legislation should be to ensure that Australians have access to, safe and regulated gambling opportunities, where the economic benefits derived from gambling flow back into the Australian community.

When considering the potential licensing of new services the Commonwealth should work cooperatively with state and territory governments in order to best address the risks associated with problem gambling and also to maximise the social benefits.

The evidence indicates that a community-owned structure, delivered through not-for-profit clubs, is the preferred model for the delivery of gambling regardless of the platform. A community-owned gaming model coupled with effective harm minimisation measures, taxation regimes and community benefit programs will provide the maximum possible benefit to Australian consumers and local communities.

2. Online Poker Risks

Federal and state governments and oppositions together with community groups have expressed a number of legitimate concerns regarding legalising online gambling. There are a number of inherent risks to consumers present in the online gambling environment compared to land-based gambling including:

- convenient 24 hour access on any internet enabled computer or mobile device;
- ability to play in private and without supervision;
- ability to play while intoxicated;
- ability to gamble using credit; and
- lack of consumer safeguards compared to land-based gambling.

Unlike gambling in a licensed venue where gambling occurs in a social context and under the supervision of trained staff, online gambling often takes place in social isolation without any supervision. There is a genuine concern that the 'anywhere / anytime' nature of online and mobile phone gambling increases the risk of consumers developing a gambling problem.

Research indicates that there are higher rates of problem gambling prevalence rates among online gamblers in Australia.³ Clubs Australia is not aware of any evidence with respect to problem gambling prevalence rates among Australian online poker players.

Concerns have also been raised regarding the difficulty in preventing minors from accessing online gambling. Clubs Australia is not aware of any research that specifically deals with prevalence of online poker playing amongst Australian minors.

In addition to the potential problem gambling risks, there are also a range of consumer protection risks. There are documented issues of large online poker companies lacking appropriate governance structures, despite holding licences overseas, including the convictions of online poker company executives and directors for frauds involving the alleged misappropriation of \$44 million in online poker players' funds.⁴

³ Gainsbury, S., Russell, A., Hing, N., Wood, R., Lubman, D. & Blaszczynski, A. 2014, The prevalence and determinants of problem gambling in Australia: Assessing the impact of interactive gambling and new technologies. *Psychology of Addictive Behaviors*, 28(3):769-779

⁴ *United States v. Scheinberg*, 10 Cr. 336 (2011)

3. Online Poker Prohibition

Given the risks outlined above, Clubs Australia supports retaining the prohibition on unlicensed offshore poker companies offering their services to Australian residents.

The fact is Australians are, and will continue, to gamble with illegal offshore services while the prohibition is in force, as evidenced by the fact that Australians are currently spending in the vicinity of \$1 billion per year on illegal online gaming⁵. Based on current trends Australians are set to **spend in excess of \$17.9 billion**, on illegal online gaming over the next decade⁶. This suggests the Act in its current form is ineffective in preventing illegal online gambling services from offering their services to Australians.

Therefore we support the additional steps being taken by the Australian Government to strengthen the enforcement provisions in the Interactive Gambling Act, including:

- further clarifying the definitions of prohibited interactive gambling services;
- strengthening the enforcement power of the Australian Communications and Media Authority; and
- Introducing measures to disrupt and deter business from illegal offshore operators, such as creating a list of illegal websites and placing directors or principals of illegal services on the movement alert list.

We note the Government's commitment to work closely with internet service providers (ISPs) to voluntarily block access to illegal gambling service providers. However we believe the government should make ISP blocking of these sites mandatory.

Clubs Australia also believes the government can help disrupt the supply chain, by blocking transaction payments and making it an offence to provide gambling-related software to unlicensed interactive gambling services that offer services to Australians.

4. Regulated Online Gaming

The Commonwealth should consider, in cooperation with state and territory governments, the introduction of a regulatory regime that ensures Australians have access to safe and regulated online gambling opportunities. Any such regime should also seek to channel the economic benefits back into the local community. We submit the best way to achieve this is through the community owned gaming model.

4.1. Community-owned Gaming

The difficulties associated with protecting Australian consumers from the dangers of illegal offshore online gambling has given rise to the need for a regulatory regime that provides Australians with access to safe and regulated online gaming opportunities, including online poker. When developing such a framework the Government should consider the additional social and economic benefits that a community-owned online gaming model could provide for both consumers and the local community.

Community-owned gaming, as delivered through the not-for-profit club model, provides local communities with a significant social dividend. Clubs are not-for-profit entities, and any revenues are invested into the local community to provide local jobs, services and community facilities. The total social and economic contribution of clubs in Australia is valued at \$13.3 billion annually.⁷

⁵ Interim Report, Review of the *Interactive Gambling Act 2001*

⁶ Clubs Australia modelling

⁷ KPMG, *National Club Census 2015*

A locally based, club operated online gaming model would provide Australians a legitimate avenue for consumers to exercise their gambling preferences, and engage in an enjoyable activity within a safe and regulated environment. In addition, it would ensure that the economic benefits associated with online gaming are returned directly to local communities throughout Australia.

4.2.Harm Minimisation and Consumer Protection

Importantly as not-for-profit organisations clubs' emphasis is on community enhancement and consumer protection. With a base that is strongly rooted in communities, clubs are careful to ensure that they minimise any potential for harm from their activities. As such, clubs across Australia have implemented a range of best practice harm minimisation and consumer protection measures such as banning gambling on credit, access to 24 hour counselling and providing world leading self-exclusion schemes.

Licensing clubs to provide online gaming, including online poker would ensure that as far as is practicable the same best practice harm minimisation and consumer protection measures that apply in land-based venues would transfer to the online environment.

Clubs also establish the bona-fides of members, including age verification in person, placing them in a uniquely superior position to prevent minors from accessing any regulated online gaming services.

The strength of the club brand within the Australian community as a responsible gambling provider would also be a key draw card in attracting consumers away from unsafe and unregulated sites towards a licensed operator.

4.3.Community benefits

Clubs play a significant role in our economy, supporting local suppliers of food and drink, entertainment, sporting supplies and services, and, importantly, construction through major capital expenditure programs. The total economic contribution of clubs is valued at \$8.3 billion per annum⁸.

Clubs also provide direct cash and in-kind support for community groups, support sport at all levels, and create opportunities for volunteering. They offer affordable or free meeting rooms, facilities, entertainment and safe social outlets for the whole community. This is especially the case for senior citizens, the socioeconomically disadvantaged and youth. KPMG recently valued the social contribution of clubs at \$5 billion a year nationally⁹.

Gaming plays a crucial role in the financial success of clubs and their corresponding ability to make community contributions. For instance, clubs with gaming account for \$2.022 billion of the \$2.121 billion total wage bill calculated by the ABS in 2004/05.

It is through the revenue derived from gaming that many Australian clubs have been able to provide important social and sporting facilities. Club services, such as entertainment, food and beverage are offered at affordable prices in safe, friendly and comfortable facilities for millions of club members and their guests. Equally importantly, the revenue allows support for a myriad of charities and 'good causes', for the aged, our returned servicemen and women, the games of rugby league, AFL and surf life-saving, as well as opportunities to reduce the social isolation of the growing population of our elderly community members and those in remote and rural areas. In addition, Clubs are active in establishing and maintaining recreational facilities, such as golf courses, bowling greens, football and sporting fields, swimming pools etcetera, which promote participation in physical activities for

⁸ ibid

⁹ ibid

children and adults. It is for these reasons that clubs are so highly valued by governments and communities throughout Australia.

Channelling online gaming revenues through licensed clubs would improve their capacity to make social and economic contribution to the local community.

4.4. Effective Taxation

In addition to providing an effective means of channelling the economic benefits of online gaming back into local communities, clubs could also provide an efficient means for the taxing of online poker.

However, governments need to cooperate to ensure that any taxation arrangements established in relation to online poker are fair and equitable. Licensing clubs to provide online gaming would be an effective mechanism for ensuring that taxation of online poker is consistent with its land-based gaming. This would prevent an erosion of government revenues if consumers switch from land-based gaming to online poker.

Moreover, licensing clubs to provide online poker services would also help to avoid destructive tax competition between state and territory governments. Where online poker licences are not tied to land-based venues, operators typically seek out the jurisdiction with the lowest taxation rates. Competition between state and territory governments to attract the business of online gambling operators inevitably leads to a 'race to the bottom' in regards to taxation rates.

Club operated online poker would not only ensure that tax rates were comparable with land-based gaming, but would allow taxation to occur based on the place of consumption. Taxation based on the point of consumption is more equitable than arrangements in which the state or territory government with the lowest rate captures the bulk of the online gaming tax revenue.

5. Conclusions

Clubs Australia is committed to the development and implementation of targeted, effective and evidence-based gambling policy. We support proposed changes to the IGA as recommended by the O'Farrell review and provided for in the Interactive Gambling Amendment Bill 2016. However, we believe if the government continues to prohibit online gambling they need to go further in enforcing the ban.

A large number of Australians continue to gamble on illegal online poker sites that lack adequate harm minimisation and consumer protection measures. The economic benefits derived from online poker continue to flow offshore depriving local communities of jobs, taxation revenue and community funding.

Clubs Australia believes that if the government cannot or will not properly enforce the prohibition, the community-owned structure, delivered through not-for-profit clubs, is the preferred model for the delivery of gambling regardless of the platform. A community-owned approach to operating online poker model coupled with effective harm minimisation measures, taxation regimes and community benefit programs will provide the maximum possible benefit to Australian consumers and local communities.