

Chapter 1

Introduction

1.1 On 13 June 2017, the Senate referred the following matters to the Environment and Communications References Committee for inquiry and report by 14 September 2017:

- (a) the participation of Australians in online poker;
- (b) the nature and extent of any personal or social harms and benefits arising from participating in online poker; and
- (c) whether the current regulatory approach, in particular, the recently amended *Interactive Gambling Act 2001*, is a reasonable and proportionate response to those harms and benefits.¹

1.2 On 11 September 2017, the reporting date was extended to 18 October 2017.²

Conduct of the inquiry

1.3 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions. The date for receipt of submissions was 21 July 2017.

1.4 The committee received 266 submissions, which are listed at Appendix 1. The committee also received 29 short statements which it has received as correspondence.

1.5 The committee held public hearings in Sydney on 1 August 2017 and in Canberra on 17 August 2017. The list of witnesses who participated in the public hearings is at Appendix 2.

1.6 The public submissions and *Hansard* transcript of the public hearings are available on the committee's website at www.aph.gov.au/senate_ec

Acknowledgement

1.7 The committee would like to thank the organisations and witnesses who provided evidence to the inquiry.

1 *Journals of the Senate*, No. 42, 13 June 2017, p. 1383.

2 *Journals of the Senate*, No. 60, 11 September 2017, p. 1932.

Structure of the report

1.8 This report comprises 4 chapters, as follows:

- Chapter 1 — provides an overview of regulatory frameworks in relation to online poker, and an overview of online poker participation in Australia;
- Chapter 2 — explores the features and impact of online poker;
- Chapter 3 — examines different regulatory approaches; and
- Chapter 4 — includes the committee view and recommendations.

Overview of regulatory framework

1.9 The introduction of the *Interactive Gambling Act 2001* (IGA) provided a three-part regulatory framework in relation to interactive gambling services, including online poker: it created an offence of providing an interactive gambling service to customers in Australia; it established a complaints scheme which would enable people to make complaints in relation to interactive gambling services available to Australians; and it prohibited the advertising of interactive gambling services in Australia.³

1.10 In 2010, the Productivity Commission (PC) re-released its 1999 report examining Australia's gambling industries with updated findings. This included its assessment of the impact of new technologies on government controls of gambling industries. The updated PC report concluded that:

Online gaming by Australians appears to have grown rapidly despite the illegality of domestic supply. Gamblers seeking the benefits it offers are exposed to additional risks and harms from offshore sites that could be avoided under carefully regulated domestic provision.⁴

1.11 The PC report also recommended the staged liberalisation of online gaming, commencing with online poker games. It noted that the impact of the IGA had been to drive consumers to offshore sites, many with poor harm minimisation features and unscrupulous business practices. It stated that 'regulated access to domestic or licensed overseas online providers, rather than prohibition has potential benefits'.⁵

3 Revised Explanatory Memorandum, p. 1.

4 Productivity Commission, *Gambling, Inquiry report*, 50, 2 vols, Canberra, 26 February 2010, p. 3, <http://www.pc.gov.au/inquiries/completed/gambling-2009/report/gambling-report-volume1.pdf>, (accessed 14 August 2017).

5 Productivity Commission, *Gambling, Inquiry report*, 50, 2 vols, Canberra, 26 February 2010, p. 35, <http://www.pc.gov.au/inquiries/completed/gambling-2009/report/gambling-report-volume1.pdf>, (accessed 14 August 2017).

1.12 The PC recommended that:

Liberalising the domestic supply of online poker card games, accompanied by appropriate harm minimisation measures, would test whether managed liberalisation should be extended to all online gaming forms.⁶

1.13 In 2015, the Australian Government commissioned the Hon Barry O'Farrell to undertake a review of the impact of illegal offshore wagering on Australia (O'Farrell Review). This review found that the number of active online wagering accounts in Australia had increased fourfold in the ten years between 2004 and 2014 with many people having multiple accounts. It also found that estimated gambling expenditure by Australians on illegal offshore sites was between \$64 million and \$400 million in 2014.⁷ It should be noted that the O'Farrell Review only examined illegal offshore wagering and not other forms of illegal offshore gambling such as online poker. The purpose of the Review was to examine the specific impact of illegal offshore wagering on the economic viability and integrity of the racing and sports industries, and to ensure that Australians are protected from illegal online wagering operators.⁸

1.14 In April 2016, the Australian Government released its response to the O'Farrell Review and agreed to implement a set of measures designed to strengthen the enforcement of the IGA, including greater powers for the Australian Communications and Media Authority (ACMA). The Government response acknowledged that 'no measure will completely eliminate the illegal offshore wagering market, but the combination of clarifying the law combined with other disruption measures will make a significant difference'.⁹

1.15 As the first stage of the Government's response to the O'Farrell Review recommendations, amendments to the IGA passed both Houses in August 2017.¹⁰ The amendments to the IGA:

- clarify the services to which the Act applies by recognising 'prohibited' interactive gambling services and 'regulated' interactive gambling services;

6 Productivity Commission, *Gambling, Inquiry report*, 50, 2 vols, Canberra, 26 February 2010, p. 3, <http://www.pc.gov.au/inquiries/completed/gambling-2009/report/gambling-report-volume1.pdf>, (accessed 14 August 2017).

7 Department of Social Services, *Government response to the review of illegal offshore wagering*, p. 3.

8 Department of Social Services, *Review of Illegal Offshore Wagering*, 2015, https://www.dss.gov.au/sites/default/files/documents/04_2016/review_of_illegal_offshore_wagering_18_december_2015.pdf.

9 Department of Social Services, *Government response to the review of illegal offshore wagering*, p. 4.

10 The Interactive Gambling Amendment Bill 2016 was referred to committee. The committee tabled its report on the bill on 30 November 2016 and is available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/IGA

- prohibit a person providing regulated interactive gambling services to Australians without a licence granted under the laws of an Australian state or territory;
- introduce a civil penalty regime to be enforced by ACMA, to complement the existing criminal penalty provisions;
- prohibit 'click to call' in-play betting services;
- prohibit wagering operators from providing lines of credit, either directly or via a third party, to persons present in Australia;
- enable ACMA to notify international regulators of information relating to prohibited or unlicensed regulated interactive gambling services;
- establish a register of legal interactive gambling services to be published on ACMA's website to raise awareness amongst Australian consumers; and
- enable ACMA to notify the Department of Immigration and Border Protection of the names of directors or principals of offending gambling services so they can be placed on the Movement Alert List and any travel to Australia can be disrupted.¹¹

1.16 During the course of debate on the bill, Senator David Leyonhjelm proposed an amendment which would make casino-style poker and blackjack gambling services included in the definition of regulated interactive gambling services. This amendment would have allowed for any person who provides online poker or blackjack services licensed under a state a territory law to not face any criminal or civil penalty under Commonwealth law.¹²

1.17 However, in closing the second reading debate on the Interactive Gambling Bill 2016, Senator the Hon Mitch Fifield, Minister for Communications, stated that:

Online poker is and always has been a prohibited service under the IGA. It has always been the intent of the IGA to prohibit this service being offered to Australians. That is why there are no Australian licensed operators of online poker, but because the law has been ambiguous overseas operators have been freely offering these services to Australians...I indicate that the government has no plans to liberalise online poker, and in terms of this bill the government has merely sought to ensure that the original intent of the legislation is upheld.¹³

1.18 Senator Leyonhjelm's proposed amendment was not agreed to by the Senate.

11 Department of Communications and the Arts, *Protecting Australians from illegal online gambling services*, August 2017, p.1, <https://www.communications.gov.au/publications/fact-sheet-online-gambling>, (accessed 14 August 2017). See also Explanatory Memorandum, pp. 1–2.

12 Senator David Leyonhjelm, *Senate Hansard*, 21 March 2017, p. 1577.

13 Senator the Hon Mitch Fifield, Minister for Communications and the Arts, *Senate Hansard*, 20 March 2017, pp. 1462–1463

National Consumer Protection Framework

1.19 The Australian Government is working with Australian states and territories to establish a National Consumer Protection Framework (the National Framework). The National Framework is designed to combat gambling-related harm through the implementation of measures such as a national self-exclusion register and a voluntary opt-out pre-commitment scheme. The National Framework will ensure that higher levels of consumer protection are implemented, and will improve harm minimisation outcomes for Australian consumers. The National Framework will be regularly reviewed and updated.¹⁴

1.20 On 27 April 2017, the Australian Government was able to secure the in-principle agreement of state and territory ministers to the National Framework, and a set of actions and timelines for implementation. It is expected that the Framework will be implemented through a combination of federal and state and territory legislation and licensing agreements. The Australian Government will continue to work with stakeholders to finalise the National Framework over the course of 2017.¹⁵

Participation of Australians in online poker

1.21 Globally, one of the fastest growing forms of gambling is online and interactive gambling. In 2012, it was estimated that Australians' expenditure on online gambling amounted to approximately \$1.5 billion. Online gambling through prohibited offshore services accounted for approximately \$922 million, and approximately \$574 million was spent through Australian licensed services.¹⁶

1.22 The 2010 PC report into gambling found that approximately 4.3 per cent of Australia's adult population participated in online casino-type gambling with nearly 700,000 active accounts. Similarly in 2013, the Global Betting and Gambling Consultancy reported that approximately 1.4 million active online casino accounts were held by Australians.¹⁷

1.23 In 2010, consumer market data showed that 129,714 Australians were actively engaged in online poker playing—the tenth highest number when compared internationally. This number was reduced to 89,963 in 2013, and by 2017 poker was found to be one of the least popular online gambling activities, although similar in level of participation when compared to casino games.¹⁸ It is estimated that in 2016, the Australian online poker market was worth \$135 million.¹⁹

14 Department of Social Services, *Submission 4*, p. 4.

15 Department of Social Services, *Submission 4*, p. 4.

16 iBus Media Limited, *Submission 17*, p. 3.

17 iBus Media Limited, *Submission 17*, p. 3.

18 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 2.

19 iBus Media Limited, *Submission 17*, p. 3.

1.24 Dr Sally Gainsbury and Professor Alex Blaszczynski from the Gambling Treatment and Research Clinic, University of Sydney, conducted a cross-sectional survey in March 2017 of 1001 Australian adults who self-reported that they had engaged in online gambling in the four weeks prior to completing the survey. According to Dr Gainsbury and Professor Blaszczynski, this survey was intended to collect baseline data prior to the introduction of amendments to the IGA proposed by the Government in response to the O'Farrell Review.²⁰

1.25 The results of this survey suggested that 'online poker is less popular than online wagering, lotteries, and slot machines, and used to a similar extent to online casino games. Nevertheless there are a small proportion of Australians highly engaged in this activity'. For example:

Only 25% of respondents had played online poker in the month preceding the survey. Among the past month online poker players (N=239), just over half had played at least once in the last four weeks, while over one-third played weekly, and 10% played daily.²¹

1.26 This survey also found that demographically, past-month online poker players had an average age of 39 years, 62 per cent were male, and 74 per cent had achieved qualifications beyond high school. The majority were engaged in full-time employment, with a further 17 per cent engaged in part-time employment. Dr Gainsbury and Professor Blaszczynski submitted that:

In comparison to the larger cohort of past-month online gamblers, the poker players were younger, more likely to be male, more highly educated, more likely to work full-time, reported a higher household income, were more likely to be Australian-born, more likely to report speaking a language other than English, and more likely to have children living at home (Gainsbury & Blaszczynski, 2017). Although analyses are preliminary, the results suggest that online poker players are a distinct group of online gamblers as compared to those who are more likely to engage in online lotteries and wagering.²²

1.27 Dr Gainsbury and Professor Blaszczynski found that though only five per cent of online poker players surveyed reported that they were professional gamblers, an additional 28 per cent reported being a semi-professional gambler with gambling forming part of their main source of income. These results were considerably higher when compared to the greater cohort of online gamblers. Dr Gainsbury and Professor Blaszczynski noted the survey did not identify whether this income was derived from poker or from engagement in other gambling activities. It was also noted that it was unlikely that these survey respondents had paid income tax on these

20 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 1.

21 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 2.

22 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 2.

winnings, and that it was 'highly possible' that they had been obtained through activity on offshore sites.²³

1.28 The survey found that a significant proportion of all participants had an inaccurate knowledge of current legislation in Australia as it pertains to online gambling. It found that two-fifths of all respondents incorrectly believed that an operator licensed in Australia could legally provide online poker services to Australian residents. Among online poker players however, only 11 per cent incorrectly stated that licensed providers could legally provide this service to Australians. Dr Gainsbury and Professor Blaszczynski concluded that the results indicate that the majority of online poker players are aware of current legislative prohibitions, and knowingly engage with offshore operators.²⁴

Prosecution of offences

1.29 To date, only one person has been charged under the IGA for the provision of an interactive gambling service to Australian customers.

1.30 On 5 May 2017, Mr Luke Brabin was convicted in the Southport Magistrates Court of running an online poker service. Between April and August 2016, Mr Brabin was director of a business and websites collectively referred to as Poker Asia Pacific. The websites allowed customers in Australia to register accounts, and use Australian dollars to play online poker. Approximately 5,500 of the 6,000 players registered with the site were based in Australia.²⁵

1.31 A two per cent commission was charged on the amount gambled in each hand of poker and the website generated approximately \$10,000 per month. The Commonwealth Director of Public Prosecutions stated that 'Brabin knew running his online poker business was illegal and said he had started it to lobby for changes to the *Interactive Gambling Act 2001*'.²⁶

1.32 Mr Brabin was convicted and fined \$10,000 in relation to one count of intentionally providing an interactive gambling service to customers in Australia, contrary to subsection 15(1) of the IGA. In sentencing Mr Brabin, Magistrate Callaghan noted that the website had generated \$260,000 in income, and rejected the defence submission that it was a 'victimless crime'. His Honour noted that some of the customers must have lost money from using the website, and that

23 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 2.

24 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 2.

25 Commonwealth Director of Public Prosecutions, *Case Reports: Luke Brabin*, <https://www.cdpp.gov.au/case-reports/luke-brabin>, (accessed 8 September 2017).

26 Commonwealth Director of Public Prosecutions, *Case Reports: Luke Brabin*, <https://www.cdpp.gov.au/case-reports/luke-brabin>, (accessed 8 September 2017).

Mr Brabin 'knew what he was doing was illegal at the start and that he obviously wanted to make money from the business'.²⁷

1.33 Magistrate Callaghan further stated that the offending was not trivial, nor committed under extenuating circumstances. His Honour considered that general deterrence was necessary this case.²⁸

27 Commonwealth Director of Public Prosecutions, *Case Reports: Luke Brabin*, <https://www.cdpp.gov.au/case-reports/luke-brabin>, (accessed 8 September 2017).

28 Commonwealth Director of Public Prosecutions, *Case Reports: Luke Brabin*, <https://www.cdpp.gov.au/case-reports/luke-brabin>, (accessed 8 September 2017).