

Chapter 3

Regulatory approaches

3.1 During the course of the inquiry, evidence was provided to the committee on the relative strengths and weaknesses of prohibition in comparison to legalised and regulated online poker services.

3.2 It was argued by those in favour of a regulated and licensed online poker industry, that regulation would offer important consumer protections, and the opportunity for the Australian government to collect significant revenue. These submitters particularly highlighted that prohibition has not prevented many Australian online poker players from accessing offshore services, and that these players are likely to continue accessing such offshore services. Submitters also argued that the current regulatory approach is an unfair restriction of their personal rights and freedoms.

3.3 However, submitters concerned primarily with the harms associated with online gambling argued that prohibition remains an important harm reduction strategy and that liberalisation may lead to an increase in problem gamblers engaging in online poker. These submitters supported the Australian Government's current legislative approach, particularly the National Consumer Protection Framework and efforts to strengthen enforcement activity.

Evidence received on the negative outcomes of the prohibition of online poker

3.4 As previously noted, the Australian regulatory approach is one of prohibition. Under the *Interactive Gambling Act 2001* (IGA), it is an offence to provide an interactive gambling service to customers in Australia, and this includes online poker.

Personal freedoms and leisure activities

3.5 Many of the submitters who argued in favour of the legalisation of online poker submitted that the current regulatory regime impacts adversely on personal freedoms and unfairly restricts their access to a leisure activity that is legal in other parts of the world, and which brings them personal enjoyment.

3.6 The Australian Taxpayers' Alliance and MyChoice Australia described the ban on online poker as 'a paternalistic approach that punishes and patronises Australians'¹ while Mr Oliver Gill Gaber stated that:

...it is a severe infringement upon the rights of the individual to restrict Australian adult citizens from playing a game of online poker with their own money against other consenting adults should they choose to do so.

1 The Australian Taxpayers' Alliance and MyChoice Australia, *Submission 12*, p. 1.

We as citizens do not want to live in a nanny state where highly unnecessary restrictions are placed upon our personal freedom.²

3.7 Mr Joseph Del Duca, founder of the Australian Online Poker Alliance (AOPA) told the committee that 'if Australians aren't hurting other people and are doing something that they enjoy, they should have the right as taxpaying Australians to do that and to enjoy that right from the safety of their home'.³ Similarly, Mr Daniel Laidlaw stated that 'players do not want or need protection from the consequences of their choices' and regard moral arguments conflating poker with other forms of unregulated internet poker as 'disingenuous'.⁴

3.8 Mr Luke Brabin also provided evidence on personal freedoms and stated that:

...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...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.⁵

3.9 It was also argued that the majority of poker players who engage in the activity do so without experiencing gambling-related harms and so therefore should not be restricted from doing so because some people may be vulnerable to such harm. Mr Laidlaw stated that 'a minority of people will always cause self-harm through abuse of freedom in any endeavour. Limiting that freedom is never the appropriate answer'.⁶

3.10 Similarly, Professor Brian Alspach submitted that:

I am wondering if the initial decision to not provide a special exclusion for online poker was partially based on a fear of poker addiction. If that is the case, then the small minority of problem players should be dealt with and not have the rest of us suffer a loss of online poker because of a lack of courage of the government to make the proper decision.⁷

2 Mr Oliver Gill Gaber, *Submission 10*, p. 5.

3 Mr Joseph Del Duca, Australian Online Poker Alliance, *Committee Hansard*, 1 August 2017, p. 9.

4 Mr Daniel Laidlaw, *Submission 14*, p. 2.

5 Mr Luke Brabin, *Submission 16*, p. 3.

6 Mr Daniel Laidlaw, *Submission 14*, p. 2.

7 Professor Brian Alspach, *Submission 9*, p. 4.

3.11 Submitters also argued that online poker provides those isolated, through caring responsibilities or geographical distance from land-based venues, important access to a leisure activity and subsequent social interaction.⁸ For example, Mr Brabin submitted that:

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.⁹

3.12 AOPA stated that those who are unable to access land-based venues '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'.¹⁰ Similarly, Mr Gill Gaber stated that:

There are also people who cannot easily leave their home to play poker and they deserve equal access to their hobby. I have friends who are physically disabled and friends who are carers. Neither of these groups can easily access the game of poker should they choose to play while the average Australian could attend a casino to play these groups would effectively be excluded if online poker were banned.¹¹

3.13 The committee received a number of submissions from online poker players who are unable to participate in venue-based poker due to disability or caring responsibilities. For example, Mr Jonathan Bredin, a 27 year old poker player with cerebral palsy, submitted that online poker 'provides equal access to people like me with a disability that doesn't allow them to play poker in person easily'. Mr Bredin stated:

I can't speak and use my hands normally and while I endeavour to live my life as anyone else does, it is difficult for me to play poker in live venues like Crown Casino on a regular basis as I need to pay for my carer to accompany me to the casino whereas I can play online poker independently from home.¹²

3.14 Mr Herbert Thompson also commented on the ease of access to online poker for people with a disability:

I am a 77 year old retired academic economist, now somewhat socially challenged due to a laryngectomy. I live happily with my wife and two dogs and look forward very much to an hour or two each day when I can sit

8 Australian Taxpayers' Alliance and MyChoice Australia, *Submission 12*, p. 8.

9 Mr Luke Brabin, *Submission 16*, p. 5.

10 Australian Online Poker Alliance, *Submission 2*, p. 6.

11 Mr Oliver Gill Gaber, *Submission 10*, p. 6.

12 Mr Jonathan Bredin, *Submission 173*, p. 1.

down with a cold beer and play online poker... Given my age and speaking disability online poker is one of the few social entertainments I am able to enjoy.¹³

3.15 Mr Bredin described the prohibition of online poker while allowing venue-based poker as 'effectively discrimination against people living in rural areas or people like me living with a disability'.¹⁴

3.16 Mr Del Duca, AOPA, explained to the committee that the 'poker community' sees itself as one entity without division between those who play land-based poker and those who play online. Further, that some players move from land-based poker to online poker due to changes in personal circumstances and that this allows for players to maintain important social networks. Mr Del Duca provided evidence about one online poker player:

...there is a gentleman who asked me to mention him today. Eddie Tredrea is his name. He is a 75-year-old man, and I think was asked to come and present, but, due to his physical ailment, he was unable to attend. One of the great loves of his life was always playing poker. It still is one of the great loves of his life, but now he is limited in his capacity, due to respiratory issues, to go and play in pubs and clubs. He can still get that same enjoyment playing online and he still has those conversations with the people he used to speak to. We have been emailing back and forth a fair bit. So, by being able to play online poker he does now find himself in a community, which he would lose without online poker being there.¹⁵

Use of illegal offshore providers

3.17 Evidence provided to the committee indicated that a proportion of Australian online poker players currently access offshore service providers, and are likely to continue to do so despite the ongoing legislative prohibition. It was argued that offshore access may expose Australian consumers to websites with unscrupulous business practices (so-called black market sites) and therefore to gambling related harms which may arise as a result.

Access to offshore providers

3.18 It was noted that licensed operators will restrict online poker services to Australians and evidence was received that several operators have already done so.¹⁶ Betway commented that 'whilst legitimate offshore licensed operators will use best

13 Mr Herbert Thompson, *Submission 72*, p. 1.

14 Mr Jonathan Bredin, *Submission 173*, p. 1. See also Mr Mike Subacius, *Submission 49*, p. 1; Mr Jim Langford, *Submission 189*, p. 2; Mr Daniel Peiris, *Submission 159*, p. 1; Name Withheld, *Submission 154*, p. 1; Name Withheld, *Submission 142*, p. 1.

15 Mr Joseph Del Duca, Australian Online Poker Alliance, *Committee Hansard*, 1 August 2017, p. 15.

16 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 6.

endeavours not to offer online products which are "banned" in Australia, the same cannot be said for unlicensed, unregulated operators'.¹⁷

3.19 Access to other, unlicensed sites, was seen as a predictable response to the prohibitions put in place by the IGA. Mr Del Duca commented that 'I do not believe that putting in legislation to prohibit online poker will see any drop in the number of online poker players'.¹⁸

3.20 Dr Gainsbury and Professor Blaszczynski provided evidence on the use of offshore sites for online gambling. They submitted that surveyed past-month online gamblers reported playing poker on 17 different offshore sites, with three particular sites favoured by respondents. At the time that Dr Gainsbury and Professor Blaszczynski conducted the survey, two of the three most popular sites had already withdrawn from the Australian market as a result of the (at the time) proposed amendment to the IGA. Dr Gainsbury and Professor Blaszczynski commented that this indicates that Australians are finding ways to access offshore sites despite many of these operators implementing policies to restrict access to customers with an Australian IP address. Dr Gainsbury and Professor Blaszczynski suggested that Australian consumers are utilising Virtual Private Networks (VPNs) to access offshore providers.¹⁹

3.21 Other submitters also argued that the IGA prohibitions will not stop Australian players from accessing offshore, unregulated sites. Mr Gill Gaber, for example, stated:

Every online poker player I know intends to keep playing on black market sites if the reputable sites are forced out of the market through bad legislation. I could load up a VPN in under a minute and play on these black market sites that will continue to service the Australian market regardless of legislation if online poker was banned where I am at risk of being cheated or stolen from due to lack of regulation. If online poker is banned in Australia, I and many like me in the Australian poker community will do just that and these black market providers will take over the Australian market if legitimate companies are forced out of the market through an online poker ban.²⁰

3.22 Online gambling providers also raised doubts about the effectiveness of internet and ISP blocking as there is a proliferation of legal VPN and other bypass

17 Betway Limited, *Submission 8*, p. 5.

18 Mr Joseph Del Duca, Australian Online Poker Alliance, *Committee Hansard*, 1 August 2017, p. 12.

19 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 4.

20 Mr Oliver Gill Gaber, *Submission 10*, pp. 8–9.

technology.²¹ Betway stated that 'attempts to block internet access to unregulated and disreputable operators won't work.'²²

3.23 iBus Media submitted that the IGA does not prohibit Australians from playing online poker. That is, the act of playing online poker is not being criminalised. It argued that true prohibition would ban the players from playing online. iBus Media submitted that the legislation simply:

...means that the online poker operators who continue to provide services to Australians will be in breach of Australian law. However, as many of these companies are overseas, they operate outside of the jurisdiction of the Australian government, regulators and law enforcement agencies.²³

3.24 iBus Media went on to comment that, as such, 'there is very little that an Australian regulator can do to prevent these overseas operators from providing their services to Australians'.²⁴

3.25 Online poker players also submitted that the IGA would not prevent Australians playing online poker. Mr Luke Brabin commented that 'realistically, foreign poker play websites proliferate and Australians who wish to play face no real restriction in their ability to do so'.²⁵

3.26 Mr Crispin Rovere submitted that 'with prohibition, circumvention would be the rule and not the exception, while problem gambling would increase and not decrease'. Mr Rovere described prohibition as 'a conscious decision to forgo all the benefits while retaining the drawbacks' and concluded that 'it is hard to see how banning online poker can have any outcome other than abject policy failure'.²⁶

Prevalence of use of unregulated operators

3.27 A number of submitters expressed concern that in the absence of a regulated and licenced market, reputable companies withdraw from providing services. In their place, less reputable offshore operators are able to capitalise on the opportunity to service the market. AOPA submitted that following the prohibition of online poker service provision in the United States, offshore providers sought to service the market. AOPA stated:

We have seen prohibition of online poker be attempted in other countries with disastrous effect. The United States being the biggest example. A

21 See for example, Mr Satyajee Marar, MyChoice Australia, *Committee Hansard*, 1 August 2017, p. 39.

22 Betway Limited, *Submission 8*, p. 5. See also Sportsbet, *Submission 26*, p. 2.

23 iBus Media Limited, *Submission 17*, p. 13.

24 iBus Media Limited, *Submission 17*, p. 13.

25 Mr Luke Brabin, *Submission 16*, p. 3.

26 Mr Crispin Rovere, *Submission 210*, p. 5.

vacuum was created and sites that chose to operate outside of the law filled the void.²⁷

3.28 iBus Media noted that in the United States it has been estimated that the illegal offshore interactive poker market continues to be worth over \$USD 125 million per annum. Analysis of player traffic in the online poker space indicates that the regulated market only accounts for approximately 14 per cent of player traffic in a seven day period. iBus Media stated that 'this means that 86% of all US online poker players are playing on sites that provide players with little to no protections and continue to offer their services in spite of the government ban'.²⁸

3.29 iBus Media went on to state that analysis by H2 Gambling Capital estimates that the Australian offshore poker market will continue to be worth approximately \$50 million (AUD) in the years following prohibition. It concluded that 'one in three Australians who currently plays online poker to continue to do so on sites that offer far fewer protections than the ones they have access to today'.²⁹

3.30 In contrast, Ms Jenny Williams, former Chief Executive of the UK Gambling Commission, told the committee that since regulation and licensing were introduced, the UK black market is very small. Ms Williams stated that it is estimated that the black market is only five per cent, and illegal operators are quickly stopped. Ms Williams noted that payment providers would be in breach of money laundering legislation if they continue to service illegal operators.³⁰

3.31 Ms Williams explained that the UK Gambling Commission typically approaches the illegal service operators firstly, and then if they refuse to cooperate then the Commission contacts payment providers. Ms Williams stated:

Typically, we would get in touch with them [unlicensed service operators] and say: 'Are you aware that what you're doing is illegal? Stop it.' Mostly, they do, partly because a lot of people are quite amateur about this sort of thing—these small sites that pop up. If they don't, then we will do things like get in touch with the payment providers and say, 'Are you aware that these people are illegal? You wouldn't want to carry on dealing with an illegal provider. That would be tantamount to money laundering.' And they cut them off, and that's very effective.³¹

27 Australian Online Poker Alliance, *Submission 2*, p. 8.

28 iBus Media Limited, *Submission 17*, p. 6.

29 iBus Media Limited, *Submission 17*, p. 6.

30 Ms Jenny Williams, Independent Consultant, Betway Limited, *Committee Hansard*, 17 August 2017, p. 3.

31 Ms Jenny Williams, Independent Consultant, Betway Limited, *Committee Hansard*, 17 August 2017, p. 3.

Risks from unregulated gambling sites

3.32 Many submitters argued that an unintended consequence of the amendment of the IGA would be to open up Australian players to exploitation on unregulated sites. Mr Daniel Laidlaw commented:

Legislation can't realistically expect to keep pace with technology or effectively enforce the proposed ban. Those who want to play... will simply do so on more untrustworthy and unregulated services which disrespect Australian law, whether from behind a VPN or on the increasingly popular mobile or tablet based app platforms that are run privately but still constitute online poker in any realistic sense. Since this can't be stopped, why push players to these fringes?³²

3.33 In its submission to the committee, iBus Media Limited stated that the global nature of the internet means that 'unscrupulous operators' will continue to offer their services to consumers in Australia. It warned that:

A blanket prohibition will see Australian online poker players turn to fly by night poker providers who are not held to high ethical and legal standards by regulators (including gambling, corporate and financial regulators). Reputable market leading companies who are already regulated strictly under licences granted in other jurisdictions will voluntarily cease to offer their services to Australians despite the Australian market being a big opportunity for them. That is, reputable poker operators who seek to comply with strict licensing standards consistent with the practices applicable to Australian licensed online gambling operators will not be accessible by Australian customers and players will instead be driven to play with unregulated offshore operators, placing Australian players at greater risk with less reputable operators rather than known poker brands who have exited the market in accordance with their obligations under Australian law.³³

3.34 Similarly, Betway submitted that Australia's current legislative approach 'is not in the interests of legitimate players, licensed and legitimate providers around the world, and particularly vulnerable gamblers. It only serves to drive online gambling to unregulated "black" markets'. It explained that:

International evidence suggests this black market is worth billions of dollars, representing a significant risk in the electronic age and undermining the integrity of domestic, poorly regulated, gambling markets. Regrettably, the black market is attractive for problem gamblers, and it also erodes the public revenue opportunities that regulated domestic gambling markets can provide to manage problem gambling.³⁴

32 Mr Daniel Laidlaw, *Committee Hansard*, 1 August 2017, p. 31.

33 iBus Media Limited, *Submission 17*, p.5.

34 Betway Limited, *Submission 8*, p. 2.

3.35 iBus Media noted that in the United States only three states have provided legislation to regulate online gambling and as a result, 'the vast majority of the country's population does not have access to a safe, regulated online gambling market'. It added that in 2011, following the US government's efforts to prohibit online poker, the Lock Poker website emerged as an option for players to continue playing. This website continued to expand for four years until players began experiencing difficulties withdrawing funds. In 2015, Lock Poker stopped offering services and it is believed that players are still owed upwards of \$US15 million. iBus Media noted that this is not the only example of the mismanagement of poker players' funds by illegal website operators.³⁵

3.36 Dr Gainsbury and Professor Blaszczynski also submitted that 'playing on offshore sites likely poses risks for Australians'. These risks arise because:

Offshore sites may have few consumer protection policies or safety nets in place, meaning that players could be cheated and defrauded by operators, and/or other players, have their personal and financial information stolen, and gamble with few harm minimization policies and play management tools.³⁶

3.37 They noted that amongst past-month online poker players surveyed, two-thirds were not aware of the licensing jurisdiction of the offshore sites they were using. Dr Gainsbury and Professor Blaszczynski highlighted that a lack of consumer awareness raises concerns as these consumers then have limited recourse to take action against offshore providers in the event that problems arise. However, Dr Gainsbury and Professor Blaszczynski also submitted that:

It is important to note that there is limited evidence of harms associated with using offshore gambling sites. It is recommended that future research evaluate the harms that are experienced by Australians from using offshore gambling sites.³⁷

3.38 Clubs Australia offered its support for the continued prohibition of offshore poker companies offering services to Australians. It noted that Australians are likely to continue gambling with illegal offshore services despite prohibition and stated that 'this suggest the Act in its current form is ineffective in preventing illegal online gambling services from offering their services to Australians'. Clubs Australia stated that it therefore supports the additional steps being taken by the Australian Government through the strengthening of the enforcement provisions of the IGA. It also submitted that:

We note the Government's commitment to work closely with internet service providers (ISPs) to voluntarily block access to illegal gambling

35 iBus Media Limited, *Submission 17*, p. 5. See also Australian Online Poker Alliance, *Submission 2*, p. 8.

36 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 4.

37 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 4.

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.³⁸

3.39 The risk from accessing online poker through unregulated providers was also noted by individual players. Submitters pointed to unscrupulous operators stealing money from users, advertising targeting problem gamblers and no implementation of harm minimisation strategies.³⁹ Mr Gill Gaber submitted that:

In some cases black market criminal enterprises have been able to steal millions of dollars from their customers with no legal recourse for consumers. These illegal offshore providers will inevitably create a black market in Australia if online poker is not legalised, licensed and regulated in Australia. They are known to target problem gamblers with promotions, run no age verification checks, offer no self-exclusion options and on some occasions outright steal from their customers.⁴⁰

3.40 Mr Richard Jessep presented his view:

In reality, banning online poker in Australia isn't a reasonable response to any perceived harms anyway, because of the fact that determined players will simply play on black market sites, with no guarantee of their funds being secure, or even that the games are fair and square. These sites currently offer online poker in jurisdictions where the game has been banned, such as the USA, where reputable sites such as 888poker, pokerstars, and partypoker are banned. These Legitimate sites are owned by companies which are listed on the international stock markets, and have committed to being socially responsible operators of online poker, hence their willingness to immediately leave the Australian market if online poker is banned here. This displacement of players from legitimate sites to black market sites actually offers no benefit at all, and poses potential risks for Australian players.⁴¹

Evidence received on the positive outcomes of regulated access to online poker

3.41 Submitters advocated for the development of a licensing regime that allows for the provision of regulated online poker services in Australia. It was argued that regulation and licensing provides a number of benefits when compared to legislative prohibition. These include consumer protections, and revenue opportunities.

38 Clubs Australia, *Submission 7*, p. 6.

39 *Submission 141*, p. 1; *Submission 162*, p. 1; *Submission 248*, p. 1.

40 Mr Oliver Gill Gaber, *Submission 10*, p. 7. See also Mr Oliver Gill Gaber, *Committee Hansard*, 1 August 2017, p. 26.

41 Mr Richard Jessep, *Submission 229*, pp. 2–3.

3.42 Submitters highlighted the regulatory model implemented in the United Kingdom as an example of a successful regime which has allowed for the collection of revenues and the virtual elimination of an online poker black market.

Revenue and job creation

3.43 The committee received evidence that the licensing and regulation of online poker would create an opportunity for the Australian government to collect taxation revenues.⁴² Submitters also argued that the online poker industry could support the creation of a number of jobs in Australia.⁴³

3.44 Dr Gainsbury and Professor Blaszczyński submitted that if online poker were to be legalised in Australia then it is likely that a number of existing poker operators would apply for licences to operate in Australia. They noted that Australian online gamblers have a preference for domestically-licensed sites and that legalisation would result in taxation, and employment opportunities for Australians.⁴⁴

3.45 AOPA submitted 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'.⁴⁵ It argued that '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'.⁴⁶

3.46 Similarly, iBus Media commented that 'the Australian government is missing out on potential tax revenue by not regulating the market and applying a tax to the activity'. It stated that regulation would 'bring secondary benefits, licensed operators investing in local marketing and people through setting up premises in Australia, hiring local staff, sponsoring Australian business'.⁴⁷

3.47 Ms Jenny Williams, former Chief Executive of the UK Gambling Commission, told the committee that in the UK, online casino gambling (excluding poker) and bingo accounts for approximately 56 per cent of total online gambling revenue with growth over the past decade of approximately 20 per cent. Online poker now accounts for around two per cent of total online gambling revenue or approximately £100 million, which is considerable less than in previous years when online poker was more popular. Ms Williams noted that online gambling revenue had

42 Mr Luke Brabin, *Submission 16*, p. 2; Name Withheld, *Submission 122*, p. 2; Name Withheld, *Submission 162*, p. 1; Name Withheld, *Submission 164*, p. 4.

43 Name Withheld, *Submission 134*, p. 5;

44 Dr Sally Gainsbury and Professor Alex Blaszczyński, *Submission 3*, p. 6.

45 Australian Online Poker Alliance, *Submission 2*, p. 1.

46 Australian Online Poker Alliance, *Submission 2*, p. 2.

47 iBus Media Limited, *Submission 17*, p. 14.

grown over the past decade driven by a shift from land-based gambling services to online gambling services.⁴⁸

3.48 In relation to the taxation of betting operations, Mr Antony Gevisser, Legal and Regulatory Consultant, Betway, told the committee that gambling operators seek jurisdictions with consistent and competitive tax rates. Mr Gevisser stated that:

...obviously we want a tax system which is as consistent as possible across the board. That's why we generally like working with a Commonwealth/federal basis of taxation, because it's a lot easier to understand and we don't have to get into any differences of opinion or differences of approach which operate at a state level. We also want to see tax rates which encourage us to enter the market and which aren't prohibitive or too large, which makes it commercially viable.⁴⁹

3.49 Mr Gevisser indicated that Betway is generally comfortable with a tax rate of between 15 and 18 per cent which is paid on turnover minus payouts. Mr Gevisser also indicated that though some countries implement consistent tax rates between land-based venues and online ventures to avoid a perception of bias, this results in the market not being 'commercially viable' for online operators.⁵⁰

3.50 The loss of revenue for government was an issue addressed by many individual submitters. Mr Gill Gaber commented that 'licensing and regulating the online poker industry will generate many millions of dollars in ongoing tax revenue through licensing fees and taxes' and that such money can be used to 'fund valuable social programs and/or lessen the burden on the Australian taxpayer'. Mr Gill Gaber went on to describe it as 'financially irresponsible for the government to pass on what is effectively a substantial free revenue stream that cannot exist without a proper legal and regulated online poker industry'.⁵¹

3.51 Submitters also noted that revenue raised from online poker could be used to promote harm minimisation and responsible gambling. For example, a Name Withheld submitter stated that:

Through taxation of online poker companies, the Australian government would have the funds to promote healthy participation of online poker and even in helping with gambling addiction in other areas of recreational gambling.⁵²

48 Ms Jenny Williams, Answer to Question on Notice, p. 1.

49 Mr Antony Gevisser, Betway Limited, *Committee Hansard*, 17 August 2017, p. 6.

50 Mr Antony Gevisser, Betway Limited, *Committee Hansard*, 17 August 2017, p. 6.

51 Mr Oliver Gill Gaber, *Submission 10*, p. 6.

52 Name Withheld, *Submission 110*, p. 2. See also Name Withheld, *Submission 151*, p. 1; Australian Taxpayers' Alliance and MyChoice Australia, *Submission 12*, p. 4; Mr Jonathan Bredin, *Submission 173*, p. 2; Mr Ben Whitby, *Submission 176*, p. 3; Mr Charles Bucar, *Submission 179*, p. 2; Mr James Greenwood, *Submission 185*, p. 3; Mr Jason Smith, *Submission 188*, p. 2; Mr Chris McLoughlin, *Submission 217*, p. 2.

3.52 The committee received evidence from Ms Williams about provisions for a statutory levy in the UK to fund research, prevention and treatment in relation to gambling-related harm minimisation. Ms Williams, however, noted that, to date, the UK Government has preferred to rely on a voluntary scheme which raises about £9 million. Ms Williams also noted that operator licensing fees are used to fund all of the Gambling Commission's costs of regulation—approximately £19 million.⁵³

3.53 Mr Rovere submitted that legalised and regulated online poker could also address the falling revenues of lotteries. Mr Rovere noted that lottery customers are an ageing demographic and that lotteries have failed to engage younger customers who are more likely to participate in online gaming activities. Mr Rovere argued that 'creative policy thinking' could stabilise this revenue base through initiatives such as offering online poker products through newsagencies.⁵⁴

Consumer protection and harm minimisation

3.54 As previously noted, submitters argued that in the absence of a regulated industry, consumers will use illegal offshore services which will expose them to a range of risks. As such, submitters in favour of legalisation focused on the protections that regulated websites offer consumers. These protections include both harm minimisation mechanisms designed to reduce gambling-related harms, and regulatory protection against fraudulent or unscrupulous website operators. Submitters also noted that regulators are also able to implement anti-money laundering and counter-terrorism funding mechanisms.

3.55 Submitters noted that reputable websites which comply with the regulatory requirements of other jurisdictions often implement a range of consumer protection mechanisms. For example, Mr Gill Gaber submitted that the regulatory regime of the United Kingdom ensures that 'players know their funds are safe and kept in segregated and independently audited accounts'. Further, independent audits are undertaken of the random number generators used to create the shuffle to ensure that games are fair. Mr Gill Gaber also highlighted that Know Your Customer and strict identification verification checks prevent underage gambling.⁵⁵

53 Ms Jenny Williams, Answer to Question on Notice, p. 1.

54 Mr Crispin Rovere, *Submission 210*, p. 5.

55 Mr Oliver Gill Gaber, *Submission 10*, p. 9. See also Mr Joseph Del Duca, AOPA, *Committee Hansard*, 1 August 2017, p. 11; Name Withheld, *Submission 103*, p. 1; Name Withheld, *Submission 123*, p. 1; Name Withheld, *Submission 134*, p. 6; Mr Ian Kerry, *Submission 15*, p. 3.

3.56 It was argued that Australian online poker players should be afforded similar protections through a licensing framework. iBus Media highlighted that in the current environment, those operators who continue to provide services to Australians in spite of legislative prohibitions have no incentive to implement responsible gaming policies. iBus Media submitted:

In our view, it is important that Australian online poker players participate in online poker subject to appropriate Australian harm minimisation standards and that those protections are readily available to them. This can only be done through an Australian licensed online framework. When all the online poker in Australia is provided by unlicensed offshore operators, there is no opportunity to enforce responsible gaming policies. The operators that continue to offer their services to Australians once the law becomes effective, will have neither a financial incentive nor a regulatory requirement to implement any responsible gaming policies whatsoever, leaving those that are vulnerable at much higher risk.⁵⁶

3.57 Similarly, Mr Joseph Del Duca, AOPA, told the committee that websites run by publicly listed companies in regulated jurisdictions have an incentive to ensure that they offer a reputable service. Mr Del Duca explained that these companies have 'their random number generators certified by independent labs' and that many 'go above and beyond' in implementing responsible gaming mechanisms. Mr Del Duca stated that some companies require players to email a request to play games at a higher limit than they usually do to ensure that players are making these choices carefully rather than in response to a particular event.⁵⁷

3.58 Mr Del Duca also noted that Know Your Customer (KYC) checks are implemented by sites to ensure that players are both real and that they are who they claim to be. Mr Del Duca stated:

Basically, sites have KYC checks that you need to do for all sites to ensure that you are who you say you are and that each account is a real person, because that is, again, a very important part of the game. From there, the site often has measures. They will monitor players' play to detect activity like that. They will look at hands that have been played, and, if someone has played a hand outside the realms of what would be expected someone would normally do in that situation, they will ask question and then look to ban if there is anything going on.⁵⁸

3.59 Mr Del Duca explained that though free-to-play games can be accessed without identification, to create an account with money in it, reputable sites require players to provide two pieces of identification. Mr Del Duca noted that most players

56 iBus Media Limited, *Submission 17*, p. 7.

57 Mr Joseph Del Duca, Australian Online Poker Alliance, *Committee Hansard*, 1 August 2017, p. 10.

58 Mr Joseph Del Duca, Australian Online Poker Alliance, *Committee Hansard*, 1 August 2017, p. 10.

fund their poker accounts through their personal bank accounts, though some use PayPal and others may utilise credit cards.⁵⁹ Mr Gevisser, Betway, submitted that 'account-based betting is far superior in terms of consumer protection, we submit, with integrity and money laundering protections added, than cash-based betting'.⁶⁰

Crime prevention

3.60 Submitters noted that a regulated online poker industry would allow authorities to monitor criminal activity such as money laundering. Further, that regulated operators are also more likely to ensure that game integrity is preserved. For example, Betway noted that though online poker is generally an unattractive means for money to be laundered, there is still some risk that it could occur. As such, operators providing services in regulated jurisdictions such as the United Kingdom are required to comply with legislative requirements to counter such activity. This includes measures such as the implementation of customer identity verification, suspicious activity monitoring, transaction monitoring and risk assessment and management.⁶¹

3.61 Betway also submitted that regulation of online poker services allows for the protection of game integrity. It noted that organised crime groups in unregulated countries have been known to rig games through collusion, automated software (bots) and account takeovers. Betway noted that:

With strong regulations and laws in place which require online poker operators to work closely with not only gambling regulators, but also financial law enforcement agencies, organised crime and the integrity of online games can be monitored and controlled.⁶²

3.62 Similarly, Mr Michael Stanmore submitted that reputable service providers work with the online poker playing community to detect suspicious activity such as bots. Mr Stanmore noted that service providers such as Pokerstars analyse hand histories, scan for prohibited third party software, collect information on how each player interacts on a technical level, undertake real-time Turing tests during play, and maintain detailed records of players' sessions. Mr Stanmore explained that the best defence against bots is 'a strong collaboration between the security team of the provider, and the community themselves'.⁶³

59 Mr Joseph Del Duca, Australian Online Poker Alliance, *Committee Hansard*, 1 August 2017, pp. 10–11.

60 Mr Antony Gevisser, Betway Limited, *Committee Hansard*, 17 August 2017, p. 2.

61 Betway Limited, *Submission 17*, p. 12.

62 Betway Limited, *Submission 17*, p. 12.

63 Mr Michael Stanmore, *Submission 234*, Supplementary Submission, pp. 7–8.

Issues related to the regulation of online poker

3.63 The committee received evidence about the possible options for the regulation of online poker in Australia and the outcomes of regulation rather than prohibition

Regulatory models

3.64 Many submitters pointed to the UK model while Clubs Australia provided suggestions on the way to provide online poker in Australia.

UK regulatory model

3.65 Submitters argued that the UK has been successful in regulating online poker and providing a safe and secure environment for online poker players.⁶⁴

3.66 Ms Williams, the former Chief Executive Officer of the United Kingdom Gambling Commission, told the committee that the British regulatory model was driven primarily by concerns regarding consumer protection. Ms Williams explained that prior to 2007, UK customers could gamble online, but the gambling service could not be provided from within the UK and in 2007, it became legal to provide advertised online gambling in the UK. In 2014, overseas operators had to obtain a Gambling Commission license to provide online gambling services within the UK.⁶⁵ Ms Williams stated that this change was driven by the need for the regulator, the Gambling Commission, to have visibility of issues affecting consumers. Ms Williams stated:

... it was actually one of the problems about how you actually manage to protect your consumer if you were relying on other regulators or other licensing systems. It was one of the strongest drivers for us. It wasn't the revenue, although that was obviously, from the country's point of view, of great benefit...It was the consumer protection from the Gambling Commission's point of view....We wanted the information, apart from anything else, on what was happening, because we were effectively regulating—well, supervising—with no information on what was happening to players, no visibility on what was happening on marketing and advertising, and no ability to do anything about that.⁶⁶

3.67 Ms Williams told the committee that the UK regulatory regime is one which utilises licensing to ensure that 'anybody with any criminal connections or a dubious background' doesn't get a license. Once a license has been granted, operators are subject to security audits to ensure that games are being offered responsibly. This

64 See also Name Withheld, *Submission 118*, p. 1; Name Withheld, *Submission 248*, p. 1.

65 Ms Jenny Williams, Independent Consultant, Betway Limited, *Committee Hansard*, 17 August 2017, p. 2.

66 Ms Jenny Williams, Independent Consultant, Betway Limited, *Committee Hansard*, 17 August 2017, p. 5.

includes offering customers the ability to set spending limits and time-outs, and problem-gambling reporting requirements. Ms Williams stated:

They're monitored. So, there are all sorts of requirements about the way they provide a safe environment for people to play. Now, obviously, nobody's perfect. Even the most responsible companies aren't perfect the whole time, so obviously there's monitoring, and there are reports and checks on them.⁶⁷

Clubs Australia

3.68 As noted previously, Clubs Australia offered its support for the efforts of the Australian Government to prohibit the provision of illegal offshore poker services. However, it submitted that the Australian Government, in conjunction with state and territory governments, should explore the provision of a 'regulatory regime that allows Australians to have access to safe and regulated online gambling opportunities'. It proposed that a 'community-owned gaming model' would deliver a number of benefits.⁶⁸

3.69 Clubs Australia stated that 'community-owned gambling, as delivered through the not-for-profit club model, provides communities with a significant social dividend'. It proposed that:

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.⁶⁹

3.70 It argued that this model would allow for 'channelling the economic benefits of online gaming back into local communities'.⁷⁰ Clubs Australia also submitted that clubs have experience in implementing effective harm minimisation strategies and effective consumer protection measures. It stated that:

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.⁷¹

67 Ms Jenny Williams, Independent Consultant, Betway Limited, *Committee Hansard*, 17 August 2017, p. 3.

68 Clubs Australia, *Submission 7*, p. 6.

69 Clubs Australia, *Submission 7*, pp. 6–7.

70 Clubs Australia, *Submission 7*, p. 8.

71 Clubs Australia, *Submission 7*, p. 7.

3.71 Clubs Australia also submitted that clubs would provide an efficient means for the government to tax the provision of online poker. It stated that licensing clubs to provide online poker would ensure that the taxation of online poker is consistent with the taxation of land-based poker. This would prevent the erosion of revenue if players switched from land-based poker to online poker, and further it would avoid tax competition between state and territory governments. Clubs Australia noted that where online poker licences are not linked to land-based venues, operators seek jurisdictions with favourable tax rates. It submitted that:

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.⁷²

Concerns with allowing access to online poker

3.72 The committee also received evidence that access to online poker, even in a regulated environment, may lead to harmful outcomes, particularly in relation to changes in consumer behaviour. A further issue related to the types of poker played by consumers.

Changes in consumer behaviour and gambling-related harms

3.73 In considering the impact of legalisation, Dr Gainsbury and Professor Blaszczynski stated that research would suggest that 'many online poker players would not modify their online participation in this activity. However, it is likely that legalisation of online poker would likely increase overall participation'. Dr Gainsbury and Professor Blaszczynski stated that 'there is little evidence to suggest that legalisation of online gambling has any impact on the prevalence of gambling problems'.⁷³

3.74 Dr Gainsbury and Professor Blaszczynski however noted that with legalisation, there is likely to be an increase in advertising related to online poker and a subsequent increase in the number of online poker players. This increase would include those vulnerable to developing gambling problems, including young adults. Further:

One of the most significant risk factors for the experience of gambling problems among online gamblers is the number of different gambling activities engaged in...It is likely that individuals with existing gambling problems would play online poker if this became legally available. Subsequently, if online poker were legalized it would be likely that poker

72 Clubs Australia, *Submission 7*, p. 8.

73 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 6.

would be involved in the experience of gambling-related harms to a greater extent.⁷⁴

3.75 Dr Gainsbury and Professor Blaszczynski went on to caution that research is required 'to evaluate the impact of legalization on gambling problems'. In particular, they noted that existing prevention and treatment programs may not be able to cater to harms associated with online poker. They submitted that:

As such, prevention and education campaigns specifically related to online poker should be developed and treatment options updated to ensure that clinicians are able to offer appropriate support. This includes specific programs to target adolescents and young adults due to the propensity for risk taking, excessive Internet use, and gambling problems among these cohorts.⁷⁵

3.76 It was also noted that though gambling with offshore sites may provide fewer consumer protections, and thus have worse outcomes in terms of gambling-related harms, legalised gambling would make it more accessible which could increase participation rates.⁷⁶

3.77 Dr Gainsbury and Professor Blaszczynski particularly noted the experience of legalising online sports wagering and related advertising. Dr Gainsbury and Professor Blaszczynski cautioned that any legalisation of online would also need to consider the regulation of associated advertising. They noted that there is a perception that extensive advertising normalises the activity and may cause harm to children and those vulnerable to gambling-related harms. Dr Gainsbury and Professor Blaszczynski stated that controls around advertising could include:

...restrictions on signup bonuses and other promotional offers that represent an inducement to gamble, particularly involving offers of credit or 'free' bets, 'risk-free' bets, and time limited offers.⁷⁷

3.78 Mr Gerard Byrne, Operations Manager, The Salvation Army Australia, also noted the impact that legalising sports betting has had on the behaviour of children. Mr Byrne told the committee:

When there's a doorway open—and the doorway that I can point to in relation to this for behavioural change and attitudinal change amongst young people is in relation to sports betting. You've got teenagers now who talk about a particular team being \$1.65 or eight at the margin, rather than about them having got this player back or that player back or scoring so

74 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, pp. 3–4.

75 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 6.

76 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, pp. 5–6.

77 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 6.

many tries or their goal kicker's kicking at 80 per cent. So they're actually talking the odds in terms of winning. That's a change in the psyche...⁷⁸

3.79 Concern was also raised in relation to the proliferation of free-to-play, 'freemium' and social casino games that simulate gambling activities. As noted in Chapter 2, there is a concern that such free-to-play games encourage the transition to pay-to-play online gambling activities.⁷⁹

3.80 Dr Gainsbury and Professor Blaszczynski submitted that if online poker were to become legally available in Australia, the potential for consumers to transition from free-to-play to pay-to-play games may increase. They noted that many free-to-play sites link directly to pay-to-play sites through advertising. Dr Gainsbury and Professor Blaszczynski recommended that should online poker be legalised, operators should be restricted from branding, advertising or linking to pay-to-play sites from free-to-play sites, particularly where children or adolescents may view it.⁸⁰

3.81 Dr Jasmine Loo, Research Analyst, The Salvation Army Australia, also expressed concern that 'free-to-play games are pretty much a way in which the industry providers ease gamblers or pre-gamblers into engaging into paid gambling'. Dr Loo also recommended restrictions on advertising in the event of legalisation. Dr Loo stated that 'one thing that's really important to get right is the nets and the boundaries. As we've seen with sports betting, there are lots of advertisements out there, bombarding everyone that watches TV'.⁸¹

Types of poker

3.82 Dr Gainsbury and Professor Blaszczynski also highlighted that in considering the possibility of legalising online poker it is also important to consider the differences between the types of online poker—namely, tournament poker and cash peer-to-peer games. They noted that during previous reviews of the *Interactive Gambling Act 2001* (the IGA) they had expressed support for the legalisation of tournament poker but not cash peer-to-peer games. Dr Gainsbury and Professor Blaszczynski stated that this support was based on the fact that:

...tournament poker reduces bet speed, as there is a single, set cost for participation and limited opportunities for buy-in after the tournament has begun. This is likely to limit loss chasing and excessive expenditure as opposed to cash-games that allow high-frequency betting. As such, it is possible that tournament poker may be less likely to be played by individuals vulnerable to the experience of gambling-related harms and

78 Mr Gerard Byrne, The Salvation Army Australia, *Committee Hansard*, 1 August 2017, p. 7.

79 See Chapter 2.

80 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 8.

81 Dr Jasmine Loo, The Salvation Army Australia, *Committee Hansard*, 1 August 2017, p. 7.

may contribute to gambling problems to a lower extent than cash poker games.⁸²

3.83 Dr Gainsbury and Professor Blaszczynski also noted that a recent study found considerable differences in consumer perceptions of tournament and cash peer-to-peer poker. For example, tournament poker was assessed by consumers as being most closely aligned with casino table games, followed by casino card games, and then poker cash games. In contrast, cash poker was deemed to be more closely aligned with virtual slot machines, followed by casino card games, and then tournament poker. The study determined that poker tournaments were perceived to be more closely aligned with games of strategy and patience while cash poker was perceived to be more closely aligned with less strategic games that still have a skill component, and other casino gambling activities. Dr Gainsbury and Professor Blaszczynski concluded that:

These results suggest important differences in consumer perspective between tournament and cash poker. It is relevant for regulators to consider specific features of types of poker including the role of luck vs. skill, the frequency of betting and immediacy of outcomes, the ability to play multiple hands simultaneously, game length, and the ability to chase losses and re-gamble wins.⁸³

Implementation of the National Consumer Protection Framework

3.84 The Department of Social Services noted that the O'Farrell Review recommended that in Australia, a national consumer protection framework is required before considering any expansion of products available in the online gambling market. The Department stated that 'though interactive gaming services, like online poker, may not expose consumers to a greater risk of harm as other prohibited services', in the absence of effective measures for consumer protection, 'any attempts to further liberalise the onshore gambling market would be at considerable risk of undermining existing protections'.⁸⁴

3.85 The Department also submitted that 'it is worth noting that putting in place robust protections as a pre-requisite to considering these matters, is consistent with the approach taken in overseas jurisdictions'.⁸⁵

82 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 7.

83 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, p. 7.

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

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

3.86 The implementation of the National Consumer Protection Framework⁸⁶ was supported by submitters in favour of the legalisation of online poker in Australia. For example, Clubs Australia stated that:

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.⁸⁷

3.87 Similarly, Mr Gevisser, Betway Limited, told the committee that:

Betway group supports and looks forward to a strong national consumer protection framework and, with that in place, if there is recognition of the value of account-based protections, there should be an opportunity for popular products like online poker, which is the subject of this inquiry, to be safely offered in the Australian market.⁸⁸

86 See Chapter 1.

87 Clubs Australia, *Submission 7*, p. 4. See also Betway Limited, *Submission 8*, p. 1; Sportsbet, *Submission 26*, p. 1.

88 Mr Antony Gevisser, Betway Limited, *Committee Hansard*, 17 August 2017, p. 2.