

The Senate

Environment and Communications
References Committee

Participation of Australians in online poker

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Table of contents

Committee membership	iii
Abbreviations	vii
Chapter 1: Introduction	1
Conduct of the inquiry	1
Acknowledgement	1
Structure of the report	2
Overview of regulatory framework	2
Participation of Australians in online poker	5
Prosecution of offences	7
Chapter 2: Features and impact of poker	9
Features of poker	9
Benefits of online poker	14
Gambling related harms	18
Chapter 3: Regulatory approaches	25
Evidence received on the negative outcomes of the prohibition of online poker	25
Evidence received on the positive outcomes of regulated access to online poker	34
Issues related to the regulation of online poker	39
Chapter 4: Committee view	47
Labor Senators' Additional Comments	51
Senator Bernardi's and Senator Leyonhjelm's Additional Comments	53
Appendix 1: Submissions, tabled documents and answers to questions on notice	57
Appendix 2: Public hearings	63

Abbreviations

ACMA	Australian Communications and Media Authority
AOPA	Australian Online Poker Alliance
DSM	Diagnostic and Statistical Manual of Mental Disorders
IGA	<i>Interactive Gambling Act 2001</i>
ISP	Internet Service Provider
KYC	Know Your Customer
PC	Productivity Commission
PGSI	Problem Gambling Severity Index
RANZCP	Royal Australian and New Zealand College of Psychiatrists
VPN	Virtual Private Network

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).

Chapter 2

Features and impact of poker

2.1 Evidence in favour of the liberalisation of online gambling regulation provided to the committee during the course of this inquiry centred on three key premises: first, that online poker differs from other forms of online gambling and should therefore be regulated differently; secondly, that prohibition does not prevent Australian consumers from accessing offshore services and rather, regulation offers important protection to consumers; and thirdly, prohibition of online poker in Australia represents an unjust restriction on the right of individuals to participate in a widely recognised and accepted leisure activity. It was also argued that prohibition rather than regulation removes the opportunity for government to collect substantial revenues from the activity.

2.2 Those who provided evidence in support of the current regulatory approach argued that prohibiting online poker, along with other online gambling activities, provides a consistent regulatory approach. Further, it was argued that there is insufficient evidence to suggest that online poker differs from other forms of online gambling in its potential to cause gambling-related harms. Online poker was also seen to be a 'gateway' activity which could lead to participation in other forms of gambling.

2.3 This chapter will explore the evidence presented in relation to whether poker is different to other forms of online gambling, and the benefits and harms that may be associated with the playing of online poker.

2.4 Chapter 3 will then examine the benefits and weaknesses of differing regulatory approaches, including both prohibition and the liberalisation of regulation to allow for a licensed industry.

Features of poker

2.5 It was widely argued by those in favour of allowing the provision of online poker services in Australia that poker is different to other forms of gambling and should be regulated accordingly. In particular, many submitters argued that poker is a game of skill rather than chance, or at least a mixed game of skill and chance. Submitters also highlighted the impact of the 'peer-to-peer' nature of poker where participants play against each other rather than a casino ('the house').

Peer-to-peer

2.6 The role of the house in poker was highlighted by submitters who argued that poker differs from other forms of gambling. For example, the Australian Online Poker Alliance (AOPA) submitted that 'not all gambling is equal and as a nation we cannot take a "one size fits all" legislative approach when looking at different forms of gambling'. AOPA noted that in poker, players compete against each other rather than the house. As such, the house does not have a 'vested interest' in the outcome of

games. Rather, 'the house is remunerated by taking a small percentage of the pot the players are playing for, a small percentage of the entry fee for a tournament or a set charge for using the table'. This is in contrast to other casino games such as roulette and blackjack where the casino is remunerated by taking the money lost by players. AOPA described this as 'a key difference that needs to be understood when legislating in relation to poker'.¹

2.7 This view was also put to the committee by many online poker players. Mr James Devine, for example, stated that:

Put simply, poker is fundamentally different to other forms of gambling due to the one difference that poker players do not play against the house or the casino—they play against other players. This may seem like a simple difference, yet, for those who understand, this changes the game entirely.²

2.8 AOPA submitted that poker players are able to clearly identify, prior to beginning a game, how much they will be charged by the house to participate. This amount is not dependent on the results of their game and all players pay the same amount regardless of whether they win or lose. AOPA described this as 'a consumption tax' applied to players depending on how much they use the service provided by the house (i.e. how many games they play).³

2.9 AOPA concluded that for other casino games where players compete against the house, the player has 'no chance of winning' over the long term. It stated that the rules of these games are such that the house has a 'mathematical advantage which is impossible to overcome'. AOPA submitted that 'no length of time and no amount of skill will ever overcome the fact that the rules of the game are against you'.⁴

Skill

2.10 A number of submitters argued that poker, as a game of strategy and skill, should be regulated differently to other forms of gambling. For example, AOPA submitted that due to poker involving a mixture of luck and skill, a more skilful player will always beat a less skilful player over a period of time. That is, 'the ratio of luck to skill in poker is inverse to the length of time that somebody plays'. AOPA stated that:

If you were to play one hand against somebody, there is a good chance that either player will win depending on the cards they are dealt. However, once these players play a larger amount of hands/sessions against each other the

1 The Australian Online Poker Alliance, *Submission 2*, p. 2. See also iBus Media Limited, *Submission 17*, p. 2.

2 Mr James Devine, *Committee Hansard*, 1 August 2017, p. 30.

3 The Australian Online Poker Alliance, *Submission 2*, p. 3.

4 The Australian Online Poker Alliance, *Submission 2*, p. 3.

luck between two players will even out making it neutral. This allows the more skilled opponent to win.⁵

2.11 The impact of peer-to-peer dynamics on the likelihood of skill overcoming chance was also highlighted by iBus Media Limited. It submitted that:

The skill and strategy component is evidenced by the fact that, in the long run, all players are equally likely to receive the same amount of "good" and "bad" cards and will have to use skills like strategy and mathematics to improve their chances of winning against their opponents (being other players).⁶

2.12 Mr Luke Brabin similarly submitted that due to the peer-to-peer nature of poker, successful poker players who demonstrate a skill with mathematics are not excluded for performing consistently well. Mr Brabin stated:

Whilst in the online sports betting and horse racing markets, a player who tends to be successful is quickly excluded from being able to place bets with corporate bookmakers, that course is not followed in poker because the structure of the game means the host is not prejudiced by the success of a particular player.⁷

2.13 The same point was highlighted by the Australian Taxpayers' Alliance and MyChoice Australia which stated that:

Poker is a game of mathematical skill and strategy whereby the intellectual challenge and honing of the players' intellectual capacities and abilities are rewards of the game. Though the element of chance remains, multiple studies have conclusively established that the primary element of poker is skill which can be honed over time and is crucial to long-term success.⁸

2.14 Further, it was noted that a number of studies have been conducted on the role that skill plays in poker success and it was found that 'the influence of luck decreases sharply when longer-term periods of play are observed'. The Australian Taxpayers' Alliance and MyChoice Australia stated that one of these studies concluded that:

...the unequivocal finding is that poker is a game of skill...given that poker is a complex skill, it is somewhat surprising that even elementary instructions and limited practice had an effect [on successful outcomes]. The reason that poker appears to be a game of luck is that the reliability of any short session is low...Luck [random factors] disguises the fact that

5 The Australian Online Poker Alliance, *Submission 2*, p. 3.

6 iBus Media Limited, *Submission 17*, p. 2.

7 Mr Luke Brabin, *Submission 16*, p. 4.

8 The Australian Taxpayers' Alliance and MyChoice Australia, *Submission 12*, p. 5.

poker is a game of skill. However, as these studies show, skill is the determining factor in long-term outcome.⁹

2.15 Another study, conducted by the University of Rotterdam in conjunction with the University of Amsterdam and VU University (Amsterdam), examined 456 million player-hand observations over a year's worth of online games. This study concluded that skill is 'a highly predictable indicator of success and that the role of skill dominated chance after 1,500 hands of play—a point reached within just 19–25 hours'.¹⁰

2.16 The Australian Taxpayers' Alliance and MyChoice Australia also noted that some other jurisdictions have determined that poker is a game of skill rather than luck. For example, the Federal District Court of Brooklyn issued a ruling to this effect in 2012.¹¹ However, Ms Jenny Williams, former Chief Executive Officer of the UK Gambling Commission, told the committee that in the UK, poker is recognised as a game of both skill and chance, but due to the element of chance it is regulated along with other gambling products. Ms Williams stated:

Basically, the UK position is to start from the position that, if there is any chance consideration and prize, it's gambling and that would need a licence. We don't start from the product base at all; we start from the characteristics of gambling. Is this a thing that's gambling? If it's gambling, it needs specialist regulation, and so poker is covered by that. It's recognised in the UK that it is both skill and chance but, because it has the element of chance, that makes it subject to gambling regulation.¹²

2.17 A number of individuals who play online poker made submissions to the committee which emphasised the role of skill in the game. Mr Crispin Rovere submitted that 'the notion that poker is primarily a game of luck is entirely spurious'. Mr Rovere explained that:

On any given hand luck plays a role as players cannot choose what cards they are dealt or what cards come out on the felt. Hands that are played optimally can lose and often do. However, over the course of many hands players of higher skill level will always beat players of lower skill level. There is no person who plays poker regularly, regardless of skill level, who

9 The Australian Taxpayers' Alliance and MyChoice Australia, *Submission 12*, pp. 5–6. See also DeDonno, M.A and Detterman D.K, (2008), 'Poker is a skill', *Gaming Law Review*, 12(1), p. 36, https://www.researchgate.net/publication/233757178_Poker_Is_a_Skill, (accessed 22 August 2017).

10 The Australian Taxpayers Alliance and MyChoice Australia, *Submission 12*, p. 6. See also van Loon, R.J.P, van den Assem, M.J, and van Dolder, D, (2005), 'Beyond chance? The persistence of performance in online poker', *Plos one*, 10(3), e0115479, <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0115479>, (accessed 22 August 2017).

11 The Australian Taxpayers Alliance and MyChoice Australia, *Submission 12*, p. 6.

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

would argue that a player's long-term results are primarily a matter of luck.¹³

2.18 Submitters also provided the committee with personal anecdotes regarding the development of a variety of skills and the contribution these skills make in achieving success as a poker player. For example, Mr James Devine submitted that:

Unlike most casino games or forms of gambling, poker is an immensely complicated game that is a mixture of skill and chance. For me, learning poker has been a beautiful learning curve that never ceases to amaze me. The more that you learn and study the game, the more you realise just how complex it really is. The game requires a strong understanding of probability, which means that you actually get to put into practice what you learnt in 10th grade maths. If you really want to learn the game you need to understand odds and ratios, be able to quickly calculate combinations of hands and study the probabilities of different scenarios occurring in different card run outs. The maths alone is great for keeping your brain active.¹⁴

2.19 Similarly, another submitter stated:

Poker, like many other games is one that is easy to learn but challenging to master. It requires a lot of analytical skill. Improving these skills is the challenge. One benefit of poker is improving logical thought processes, mathematical ability and general clarity. Like many card games, the participants must think about what they are doing, study and practice to get better. Poker keeps you learning as the game and its theory evolves.¹⁵

2.20 The committee also received a number of submissions which emphasised the range of beneficial skills required for, and developed during, online poker including: mathematical skills, 'relationship skills' or the ability to engage with a variety of people, 'reading bluffers' or the ability to detect when another player is bluffing, networking, and resilience.¹⁶

2.21 Dr Sally Gainsbury and Professor Alex Blaszczynski offered a more cautious approach to describing poker as a skills-based game. They noted in their submission that 'arguably a skilled player can use bet size, implied odds, bluffing and 'reading' the response of other players, in a way to increase chances of a positive winning/winning outcomes'. Further, studies have demonstrated that 'skilled players achieve higher average rates of return. However, they noted that 'there is a tendency among some poker players to view this as a skill game rather than gambling'.¹⁷

13 Mr Crispin Rovere, *Submission 210*, p. 3.

14 Mr James Devine, *Submission 13*, p. 2.

15 Name Withheld, *Submission 127*, p. 1.

16 See for example, Mr Ian Kerry, *Submission 15*, pp. 1–2; Name Withheld, *Submission 133*, p. 1; Mr Dylan Martin, *Submission 153*, p. 1.

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

2.22 Dr Gainsbury and Professor Blaszczynski submitted that if poker players overestimate the role of skill, and therefore their chances of winning, it can lead to excessive expenditure and negative consequences. They stated that:

When there is a skill element included in gambling, gamblers are more likely to develop irrational beliefs which can lead to problematic behaviours, particularly when players over exaggerate their skill, or the role of skill in determining outcomes (MacKay et al., 2014). Online poker players may also be more resistant to seeking assistance with gambling-related problems, including self-imposed limits, self-exclusion, or treatment (S. Gainsbury, Suhonen, & Saastamoinen, 2014; Wohl, Young, & Hart, 2005).¹⁸

2.23 This was echoed by The Salvation Army Australia which noted that although there is evidence to support that an element of skill is involved in long-term success, the 'illusion of control' or a belief that skill can determine the outcome of a game creates cognitive distortion. This can result in:

...problem gamblers overestimating their probability of winning or attributing their wins to skill, but then attributing their loss to bad luck or the need to further develop their skills.¹⁹

2.24 The Salvation Army Australia also expressed concern that online poker sites emphasise the element of skill involved in poker in order to encourage the illusion of control. It concluded that:

...the skill component of poker is not a protective factor against harm from gambling disorder, but can instead instil cognitive distortions which play a central role in the development and maintenance of gambling disorder.²⁰

Benefits of online poker

2.25 It was argued that online poker should be exempt from legislative prohibitions not only because it differs from other forms of gambling but also because it offers benefits to players as a result of these differences. Some of these benefits include lower costs in comparison to other forms of gambling such as land-based poker, the ability to derive an income from poker, and personal and social enjoyment associated with engagement in leisure activities.

18 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 3*, pp. 6–7.

19 The Salvation Army Australia, *Submission 6*, p. 4.

20 The Salvation Army Australia, *Submission 6*, p. 4. Gambling related harms will be discussed further in this chapter.

2.26 Much of the evidence provided to the committee was anecdotal and Dr Gainsbury and Professor Blaszczynski noted that the benefits to individuals arising from involvement in online poker have not been widely researched. They noted that this is a limitation of current gambling research and recommended that further research be undertaken in the context of identifying gambling-related harms. Dr Gainsbury and Professor Blaszczynski acknowledged that a proportion of online poker players reported that online gambling contributes to their income, which would likely be perceived as a benefit.²¹ Dr Gainsbury stated that:

Our research suggests that the majority of people don't have any problems relating to gambling and poker, so we expect the reason that they're playing is that they're receiving some sort of benefit from it.²²

2.27 Professor Blaszczynski also told the committee that, broadly speaking, there are some benefits of gambling. These benefits include socialising and entertainment. Professor Blaszczynski went on to comment that:

Poker is a social game. It's a competitive game, and people obviously derive some benefit from it. In my view, it's similar to alcohol. The majority of people consume alcohol in a responsible way, with occasional lapses in judgement. It doesn't mean that they require treatment or that significant harms occur, although there is potential for those significant harms...With gambling, the difficulty is in trying to assess the direct costs and then putting a cost onto the indirect costs, which are emotional distress, stresses, loss of savings, depression et cetera...my view would be that if there were no benefits to be derived from these behaviours then people wouldn't engage in them on such a large scale.²³

Lower costs and more control over spending

2.28 Submitters argued that in comparison, the costs associated with playing online poker are significantly lower than those associated with playing land-based poker in gambling venues.

2.29 AOPA submitted that one of the benefits of online poker is that players are able to 'manage how much they spend playing poker. For the majority of players the cost of online poker is extremely low when compared to playing poker in a club or casino'.²⁴ Similarly, Mr Oliver Gill Gaber commented that 'online poker provides access to an average of over an hour of entertaining game play per buy-in for a poker tournament with games available with a minimum buy-in of less than a dollar'.²⁵

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

22 Dr Sally Gainsbury, *Committee Hansard*, 1 August 2017, p. 58.

23 Professor Alex Blaszczynski, *Committee Hansard*, 1 August 2017, pp. 58–59.

24 Australian Online Poker Alliance, *Submission 2*, p. 7.

25 Mr Oliver Gill Gaber, *Submission 10*, p. 4.

2.30 AOPA submitted that information compiled from the world's largest poker site indicated that 75 per cent of online tournaments are played for a buy-in²⁶ of \$10 or less. In addition, many sites offer free tournaments and the lowest buy in cost for a tournament is 11 cents. AOPA stated that 80 per cent of online ring games²⁷ are played for a Big Blind²⁸ of 50 cents or less and the lowest ring games available have a Big Blind of two cents (players can sit at the table with one dollar).²⁹

2.31 A number of submitters provided the committee with anecdotal evidence of their average online poker spending. For example, Ms Carol Ford stated that:

I am not a big time player. I play 1 and 2 cent blinds. I tried playing the free chip version but people do not play sensibly. As they have nothing to lose they just gamble big and often with no thought. I want to be able to think about what is going on. I would quite happily spend \$20 a week playing but I have not needed to. My original stakes of US \$100 has doubled in the 3 years I have been playing. I generally play for an hour or so each day and some days I win, others I lose. I will quit if I lose \$4 on any given day.³⁰

2.32 Similarly, Mr Robert Munro submitted that his online poker playing:

...costs me from 2 to 5 dollars...and last up to 3 or 4 hours depending on how well I do. On nights that I am at home I can often play online in which case I play 45 player sit and go tournaments for a cost of 25 cents (taking up to an hour and a half). If I play a ring game I limit my buy in to \$2 playing 1 cent 2 cent games.³¹

2.33 Submitters also compared their low spends on online poker to the large amount of money spent on other forms of gambling and leisure activities. Mr Joshua Meale, for example, commented that he had watched people playing poker machines at the local club or casino and 'some of them spend \$300 to \$500 at a time sometimes more, I always say to them you should try playing poker online you could play for months with that amount of money'.³² Mr Gill Gaber also commented on the cost of online poker compared to other activities and stated that:

Online poker is an incredibly cheap form of entertainment in terms of average spend per hour for recreational gamblers compared to other gambling games. Seeing a movie at the cinema costs \$20 for 2 hours-worth of entertainment at a cost of \$10 per hour. With \$20, you could play 10 separate \$2 poker tournaments and have ten or more hours-worth of

26 A buy-in is the cost to enter a tournament, or the minimum amount needed to sit down in a cash game at a specific table.

27 A ring game is a standard poker game in which money is wagered during each hand.

28 A Big Blind is the amount of chips the second player to the left of the dealer has to bet.

29 Australian Online Poker Alliance, *Submission 2*, pp. 7–8.

30 Ms Carol Ford, *Submission 44*, p. 1.

31 Mr Robert Munro, *Submission 40*, p. 1.

32 Mr Joshua Meale, *Submission 184*, p. 1. See also Name Withheld, *Submission 251*, p. 1.

entertainment and that is assuming that you don't win any prizes at all, most players will win some prizes if they play 10 games.³³

2.34 Many submitters also noted that along with lower costs, online poker allowed them to better manage their spending on the game. Mr James Greenwood commented that:

Another factor that allowed me to gamble responsibly was the use of a mathematical concept known as bankroll management, whereby a player only risks a small fraction of his poker bankroll (money allocated for poker) at any one time and adjusts the stakes he plays according to a set percentage of their bankroll, thus largely eliminating the chance of losing their entire bankroll. Online poker also has the added benefit of being able to easily check your wins and losses history through the sites, allowing players to easily keep a realistic notion of their results.³⁴

2.35 Mr Brabin also told the committee that playing online allows professional gamblers to ensure that the 'variance' is more level, or lower, through the playing of multiple tables. Mr Brabin stated:

Online is better because, professionally, you want to get as much turnover down as possible. The speed of play is a lot faster; you can play multiple tables. I can play four tables versus one table, and the speed of play is three times faster so I can get a lot more turnover—more money down—to get my percentage up. The variance is actually lower as well. Because you are playing three or four tables, you could lose on one table but win on another two so the variance is more level—not as high—so it is not as emotionally hard to deal it.³⁵

2.36 Other submitters similarly told the committee that the ability to play multiple games without the significant charges associated with venue-based poker allowed amateur players to 'hone their skills'. Submitters also highlighted the comparatively faster speeds of online poker games. For example, Mr Richard Jessep submitted that:

For me, online poker is an excellent proving ground so to speak. This is because of the fact that online you are able to play many more hands per hour than in live games, which greatly speeds up the learning process. Also, I am able to develop my skills, learn from my mistakes, and review my play on my computer without feeling intimidated by far superior players at casino's who would beat me easily at this stage of my development.³⁶

2.37 In contrast to the evidence received about the low cost of engaging in many online poker games, submitters pointed to the high cost of playing poker at land-based

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

34 Mr James Greenwood, *Submission 185*, p. 1.

35 Mr Luke Brabin, *Committee Hansard*, 1 August 2017, p. 48.

36 Mr Richard Jessep, *Submission 229*, p. 1. See also Name Withheld, *Submission 236*, p. 1; Mr Peter Cullen, *Submission 58*, p. 1.

venues. It was submitted that the lowest cost tournament available at the Crown Casino in Melbourne costs \$60 to enter while the lowest cost tournament at Sydney's The Star is \$220 to enter. In addition, the smallest Big Blind available at the Crown Casino for a ring game is two dollars (players need \$50 to sit at the table) and the small Big Blind at the Star is \$3 (players need \$100 to sit at the table).³⁷

2.38 AOPA concluded that:

By removing online poker we are telling players that if they want to continue playing the game that they must play for a higher stake than they may be comfortable with. This is clearly not the government's intention with The Act but it is a risk that must be considered.³⁸

2.39 Similarly, Mr Brabin described the commission charged by casinos as 'extortionate' with venues able to charge as much as 10 per cent, 'which makes it almost impossible to win'.³⁹

Gambling related harms

2.40 The committee also received evidence in support of the continued prohibition of online poker in Australia. This evidence largely focused on gambling-related harms which can arise from online gambling activities more broadly, rather than online poker specifically. It was acknowledged that further research on the harms associated with online poker playing is needed. Submitters offered their support for legislative prohibition as a harm minimisation measure but encouraged further research in order to ensure the implementation of evidence-based regulatory models.

Diagnosis, treatment and contributing factors

2.41 The Royal Australian and New Zealand College of Psychiatrists (RANZCP) commended the Australian Government for its work in ensuring that legislation maintains paces with the rapid changes occurring in the gambling industry. It stated that it had offered its support for the measures included in *Interactive Gambling Amendment Act 2017* to strengthen enforcement mechanisms related to offshore gambling.⁴⁰

2.42 The RANZCP stated that problem gambling has been recognised as a mental disorder in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) as a

37 Australian Online Poker Alliance, *Submission 2*, pp. 7–8. See also Professor Brian Alspach, *Submission 9*, p. 2; Mr Oliver Gill Gaber, *Submission 10*, p. 2; Australian Taxpayers Alliance and MyChoice Australia, *Submission 12*, p. 2; Mr James Devine, *Submission 13*, p. 2; Mr Luke Brabin, *Submission 16*, p. 2; Mr Terry Roberts, *Submission 70*, p. 1; Name Withheld, *Submission 119*, p. 1; Name Withheld, *Submission 150*, p. 1.

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

39 Mr Luke Brabin, *Committee Hansard*, 1 August 2017, p. 48.

40 Royal Australian and New Zealand College of Psychiatrists, *Submission 5*, p. 1.

disorder similar in brain origin, comorbidity and treatment to substance abuse. It noted that a 'related condition of internet gaming disorder has also been considered for inclusion' and that 'online gambling and poker could be considered as a manifestation of one or both conditions'.⁴¹

2.43 The Salvation Army Australia also cited contemporary Australian research which has identified certain inherent features of online gambling that increase the risk of consumers developing gambling problems. These include:

- ease of access and constant accessibility;
- electronic money transfers;
- privacy;
- anonymity; and
- extended periods of engagement without interruption.⁴²

2.44 The RANZCP similarly warned that 'the rise of interactive and online gambling is having devastating consequences' with young people who are heavily involved in web-based activities being readily recruited online as new gamblers. Further, the difficulties suffered by existing problem gamblers are being exacerbated by engagement with online gambling. In particular, online gambling sites are accessible 24 hours a day, and do not require a person to leave their house in order to access their services.⁴³

2.45 The Salvation Army Australia also expressed concern regarding the ease of accessibility that 'allows people to gamble 24 hours a day, 7 days a week through online avenues'. The Salvation Army Australia expressed particular concern in relation to the impact that online gambling has on children. It stated that 'the availability of online 'free-to-play' casino and other betting games are already acting to normalise gambling to children'. Further, there may be a correlation between children engaged in free-to-play casino-based games transitioning to pay-to-play online gambling.⁴⁴

2.46 The RANZCP warned that 'despite promising research, there is a dearth of evidence-based treatments for problem gambling which makes other harm minimisation measures, such as legislation, all the more important'. The RANZCP recommended that an increase in research into 'evidence-based screening, assessment, treatment, prevention and early intervention is required' in order to develop an

41 Royal Australian and New Zealand College of Psychiatrists, *Submission 5*, p. 1.

42 The Salvation Army Australia, *Submission 6*, p.3.

43 Royal Australian and New Zealand College of Psychiatrists, *Submission 5*, p. 1.

44 The Salvation Army Australia, *Submission 6*, p. 4. The risks associated with free-to-play games will also be discussed further in the Chapter 3 in the context of liberalisation of regulation.

'evidence-based model of regulation which incorporates consumer-protection and harm-minimisation features'.⁴⁵

2.47 Dr Gainsbury and Professor Blaszczynski explained that definitions of harm in gambling research are relatively imprecise and refer to 'adverse consequences' or 'exacerbations of harms associated with gambling behaviours'. Further, 'research tends to use scores on problem gambling screens as a proxy measure for harm'. As such, the use of threshold scores to define a gambling problem 'results in harms to low risk subpopulations being overlooked'. Dr Gainsbury and Professor Blaszczynski stated that recent findings indicate that '48 per cent of total harms resulting from gambling are accounted for by this category'. As a result, 'assessing harms associated with, and those causally related to online poker is difficult with data interpreted as indicative rather than conclusive'.⁴⁶

Harm associated with online gambling

2.48 The Department of Social Services noted the findings of the O'Farrell Review which identified that the rate of problem gambling for online gamblers is three times higher than that of problem gambling across all other platforms including land-based gambling. The O'Farrell Review found that 41 per cent of online gamblers were considered to be 'at risk' gamblers, while less than 20 per cent of land-based gamblers were considered to be 'at risk'. The Department of Social Services explained that this means that these gamblers experience harms to physical and mental health, financial problems, and are also more likely to be betting across other gambling platforms.⁴⁷

2.49 The O'Farrell Review also found that gambling harms not only affect the individual engaged in gambling, but often extend to their family and friends, with intergenerational harm likely to be seen. Research by the Problem Gambling Treatment and Research Centre found that the children of problem gamblers are ten times more likely to develop problematic gambling behaviours as those with non-gambling parents.⁴⁸

2.50 The Department of Social Services also noted the findings of the Productivity Commission's 2010 report into gambling which found that the social costs of problem gambling are estimated to be at least \$4.7 billion a year.⁴⁹

2.51 Dr Gainsbury and Professor Blaszczynski submitted that one-third of past-month online poker players surveyed in their 2017 study were classified as experiencing moderate or serious gambling problems based on the Problem Gambling

45 Royal Australian and New Zealand College of Psychiatrists, *Submission 5*, p. 2.

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

47 Department of Social Services, *Submission 4*, p. 2.

48 Department of Social Services, *Submission 4*, p. 2.

49 Department of Social Services, *Submission 4*, p. 2.

Severity Index (PGSI). This was lower than amongst the broader online gambling cohort. When surveyed as to which form of gambling had contributed the most to any gambling-related harms, only 4 per cent of the broader cohort reported poker, and amongst the past-month online poker players, only 9 per cent reported poker. Dr Gainsbury and Professor Blaszczynski concluded that this:

...suggests that among the respondents in our sample, poker made a relatively small contribution to the harms arising from gambling in comparison to other gambling activities, including among those who played online poker. The relatively low levels of problems related to poker in this research are not indicative of the broader population of poker players.⁵⁰

2.52 Dr Gainsbury told the committee that this research 'does suggest that it [online poker] is one of the least common in terms of problematic forms of gambling'.⁵¹

2.53 Mr Rovere attributed the lower number of online poker-players experiencing gambling-related harms to a lack of irrational beliefs. Mr Rovere stated:

Online poker contributes a very small proportion to the overall level of problem gambling in Australia...the reason is probably that few poker players hold fundamentally irrational beliefs about the nature of gambling. Poker players inherently seek to beat the odds, not win despite them. Accordingly, most poker players attribute long-term losses to the same thing they would attribute long-term successes – skill.⁵²

2.54 However, previous research has also identified that online poker players can experience gambling-related harms. Dr Gainsbury and Professor Blaszczynski noted that a 'nationally-representative Australian telephone prevalence survey' found that:

- amongst past-year online gamblers, those classified as moderate-risk or problem gamblers were significantly more likely to have played poker as compared to low-risk gamblers;
- low-risk gamblers were significantly more likely to have played poker than non-problem gamblers;
- poker was stated as the main activity related to gambling problems by 12 per cent of online moderate-risk or problem gamblers; and
- poker was attributed to be the source of gambling problems by 6 per cent of non-internet gamblers.⁵³

2.55 Dr Gainsbury and Professor Blaszczynski commented that these results are 'somewhat consistent' with the results of their research in that 'poker was one of the least commonly-stated forms of gambling contributing to problems'. However, they

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

51 Dr Sally Gainsbury, *Committee Hansard*, 1 August 2017, p. 55.

52 Mr Crispin Rovere, *Submission 210*, p. 4.

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

noted that 'it does suggest that individuals with gambling-related problems may engage in online poker, which may contribute to, and exacerbate the experiences of harm'.⁵⁴

2.56 The Salvation Army Australia submitted that studies have demonstrated that predictive factors of excessive online poker playing include:

- negative emotional states such as depression, anxiety and stress; and
- disassociation where a player becomes less informed and attentive in decision-making, which causes them to exceed time and money limits.⁵⁵

2.57 Professor Blaszczynski highlighted that problem gamblers often engage in a number of forms of gambling and that not all forms may be contributing to the problems they are experiencing. Professor Blaszczynski stated:

The more forms of gambling they engage in, the more likely they are to increase their expenditure overall and exceed affordable levels. Quite often what happens is that people will ask what form of gambling to engage in, and it may well be electronic gaming machines. That may be the cause of the problem, but they might identify themselves also as online poker players or online wagering. So it becomes important to try to tease out which are ancillary forms of gambling that people engage in and which are the ones that actually contribute to the significant problems. Many people purchase lottery tickets, but that rarely contributes to significant problems.⁵⁶

2.58 The Salvation Army Australia also noted that a 2016 report had identified that there may be a higher proportion of problem gamblers amongst online poker players than other forms of gambling. And further, studies have identified that online poker has the potential to be an addictive game that may lead to a gambling disorder.⁵⁷

2.59 Dr Gainsbury and Professor Blaszczynski submitted that commonly used measures such as the PGSI may not accurately capture the problems experienced by poker players. For example, poker players may neglect important life activities when spending long periods of time engaged in the game. Similarly, skilled players may not experience significant financial difficulties related to gambling or irrational perceptions and loss of control, however this activity may still be having a detrimental impact on their lives. Dr Gainsbury and Professor Blaszczynski stated that 'the negative impacts related to the time spent gambling may not be detected using measures that focus to a greater extent on financial difficulties'.⁵⁸

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

55 The Salvation Army Australia, *Submission 6*, p. 4.

56 Professor Alex Blaszczynski, *Committee Hansard*, 1 August 2017, p. 55.

57 The Salvation Army Australia, *Submission 6*, p.4.

58 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 03*, p. 4.

2.60 Dr Gainsbury and Professor Blaszczynski concluded that 'it is recommended that further research examine the experience of gambling-related harms among online poker players, using measure of harm that are appropriate for this population'.⁵⁹

Types of problem gamblers

2.61 Professor Blaszczynski told the committee that in the course of his research, he has identified at least three subgroups of problem gamblers.

2.62 First, those who believe that gambling is a source of income and that they can make money out of it. This includes both professional gamblers and ordinary individuals who believe that gambling is a way to make money. Professor Blaszczynski told the committee that this group 'presents without any sort of psychopathology. There's nothing intrinsically wrong with them, except that they have these particularly erroneous beliefs'.⁶⁰

2.63 Secondly, those who gamble due to emotional vulnerability factors. Professor Blaszczynski stated that these people gamble to 'self-medicate or to escape emotional problems' and that gambling appears to be a secondary issue to other mental health issues.⁶¹

2.64 Thirdly, individuals who 'engage in sensation-seeking, stimulating-type behaviours' and who are highly impulsive. Professor Blaszczynski stated that these people may have 'some degree of neurotransmitter dysregulation—different reward-punishment regions in the brain'.⁶²

2.65 Professor Blaszczynski concluded that all three groups have 'commonalities in terms of irrational or erroneous beliefs about gambling and conditioning factors' however, 'you ought not to consider gamblers as a homogenous group of individuals'.⁶³

2.66 Professor Blaszczynski concluded that those who play poker problematically are likely to be those:

...who like to have some degree of competition, like to engage in some skill related games and like that particular milieu. They're not necessarily gambling to escape as compared to someone who has a preference for electronic gaming machines where they just, as they say, get into the zone.⁶⁴

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

60 Professor Alex Blaszczynski, *Committee Hansard*, 1 August 2017, p. 57.

61 Professor Alex Blaszczynski, *Committee Hansard*, 1 August 2017, p. 57.

62 Professor Alex Blaszczynski, *Committee Hansard*, 1 August 2017, p. 58.

63 Professor Alex Blaszczynski, *Committee Hansard*, 1 August 2017, p. 58.

64 Professor Alex Blaszczynski, *Committee Hansard*, 1 August 2017, p. 58.

2.67 Professor Blaszczyński also noted that these problem gamblers may also engage in 'impulsive-type bets or chasing money' and 'making poor decisions'.⁶⁵

65 Professor Alex Blaszczyński, *Committee Hansard*, 1 August 2017, p. 58.

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 Blaszczynski 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 Blaszczynski, *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.

Chapter 4

Committee view

Online gambling

4.1 Online gambling is a popular entertainment pastime for many thousands of Australians, and the committee would like to thank the hundreds of Australian online poker players who made submissions to this inquiry and acknowledges their commitment to protecting their past-time. The committee also acknowledges that a number of Australians are professional and semi-professional poker players and that a prohibition on the provision of online poker services may have an impact on their capacity to earn income.

4.2 It is clear from the evidence presented to the committee that though the majority of people who engage in online gambling are able to do so safely and without experiencing gambling-related harms, tragically, this is not the case for all. The O'Farrell Review found that the rate of problem gambling for online gamblers is three times higher than that of problem gambling across all other platforms, including venue-based gambling. It found that 41 per cent of online gamblers were considered to be 'at risk' gamblers while less than 20 per cent of venue-based gamblers were considered to be 'at risk'. These 'at risk' gamblers experience harms to physical and mental health, and financial problems. Gambling-related harms also affect the friends and family of gamblers and can result in inter-generational harm. The Productivity Commission estimated that the social costs of problem gambling are \$4.7 billion per annum—a significant loss.

4.3 The committee is of the view that harm minimisation and consumer protection should be of primary importance when regulating the online gambling industry. As such, the committee supports the efforts of the Australian Government to ensure that the impacts of gambling-related harms on the community are reduced, and that Australian consumers are protected.

Online poker

4.4 It is estimated that the Australian online poker market is worth \$135 million, and though online poker has enjoyed significant popularity in the past, participation numbers have decreased over the past five years, likely in response to changes in the regulatory environment. However, despite its lack of popularity when compared to other forms of gambling, studies have shown that online poker continues to be played by a smaller, but highly engaged community.

4.5 Throughout the course of the inquiry, it was argued that online poker differs both in its features and impact on consumers. As such, it should be regulated differently to other forms of online gambling. In particular, it was highlighted that many consumers view online poker as a skills-based game, or at least, a game of

mixed skill and chance. Further, online poker was seen as offering a range of benefits to consumers including that it can be played for long periods of time without significant player expenditure, and players are able to better control their spending than when engaged in other forms of online gambling or venue-based poker. Other benefits include the development of mathematical and social skills, and important social networks. Submitters also argued that the number of people experiencing gambling-related harms as a result of online poker is small.

4.6 Evidence was also received that online poker provides an important social function for those affected by disability, geographic isolation or caring duties. It was highlighted that many of these players are unable to participate in venue-based poker, and in the absence of online poker services are likely to lose important social networks, and an enjoyable entertainment past-time.

4.7 However, it was also indicated that very little research has been conducted on the potential benefits of online poker. The committee is of the view that any claims of benefits derived from engaging in online poker should be approached with caution.

4.8 The committee acknowledges that many submitters indicated that they were able to participate in online poker without experiencing gambling-related harm. However, the committee also received evidence that there are a percentage of online poker players who are at risk of suffering, or who have suffered gambling-related harms as a result of playing online poker. It was also highlighted that online poker may be just one of many gambling activities undertaken by those who suffer-gambling related harms, and may not be the sole source of such harms.

4.9 Submitters highlighted that very little research has examined the impact of online poker on consumers, particularly in relation to gambling-related harms and treatment options. The committee is of the view that such research is critical to understanding the potentially harmful impacts of online poker on those vulnerable to gambling-related harms.

Regulatory approaches

4.10 Australia prohibits the provision of online poker services to Australians—this prohibition includes both onshore and offshore services, though efforts to combat offshore operations are of course limited by jurisdictional and technological challenges.

4.11 This regulatory approach is informed by the Australian Government's harm minimisation strategy. The Minister for Communications, Senator the Hon Mitch Fifield, has indicated that the Australian Government has no intention of liberalising the online gambling market to allow for the provision of online poker. This is despite recommendations by the Productivity Commission to liberalise online poker to prevent the expansion of the illegal offshore market.

4.12 It was argued in evidence that prohibition simply does not work and that consumers simply turn to illegal offshore operators and the black-market expands to fill the void created by the absence of regulated and licensed services.

Consumer protections

4.13 Utilising illegal offshore operations carries a range of risks for consumers including a lack of harm minimisation mechanisms and unscrupulous operators mismanaging or absconding with players' funds. However, despite these risks, a number of witnesses indicated that they would continue to access offshore operators and would utilise Virtual Private Networks (VPNs) to circumvent attempts to block access to such sites.

4.14 Supporters of the liberalisation of online poker to allow for regulated and licensed services in Australia argued that this would provide important consumer protections, and a revenue stream for the Australian Government. Evidence of the success of other jurisdictions such as the United Kingdom highlighted that since the UK Gambling Commission introduced licensing requirements, access to black market offshore services has been significantly reduced.

4.15 The Australian Government has acknowledged the need for a strong national consumer protection framework and has undertaken significant work to implement such a scheme to protect users of online gambling services. The Department of Social Services noted that the implementation of such a scheme is absolutely vital before any kind of liberalisation of the online gambling market.

Impact of legalisation

4.16 Though supporters of legalisation of online poker highlighted the important consumer protections and revenue opportunities offered by regulation and licensing, evidence was also received that the number of online poker players may increase as a result of the liberalisation of the market. There may also be a subsequent increase in the number of people experiencing gambling-related harms as a result of online poker.

4.17 The experience of legalising online sports wagering was provided as an example of the consequences of such a decision. However, it was acknowledged that again, little research has been conducted specifically on the impact of regulated and licensed poker on the prevalence of gambling-related harms, and if there has been an increase in the number of consumers.

4.18 The committee is of the view that any attempt to liberalise the market through the legalisation of online poker should be approached with caution. In particular, an increase in the number of problem gamblers, or an exacerbation of existing problems should not eventuate from any regulatory reform.

Recommendation 1

4.19 The committee commends the Australian Government's efforts to implement strong consumer protection measures, and harm minimisation strategies. The committee recommends that any future consideration of the legalisation of online poker should only occur following the complete implementation of the National Consumer Protection Framework.

Recommendation 2

4.20 The committee recommends that the Department of Social Services support research into the impact of regulatory approaches on online poker, including the relative benefits and harms associated with prohibition and legalisation.

Senator Janet Rice
Chair

Labor Senators' Additional Comments

1.1 Labor Senators take this opportunity to reiterate their strong views around online gambling and the importance of harm minimisation measures.

1.2 Labor recognises that well-regulated gambling has a place in Australian society and that the growth of illegal online gambling has been of great concern. While the majority of people who bet gamble in a responsible manner, Labor knows that gambling in our community can, in some cases, have devastating social, financial and emotional consequences.

1.3 For this reason, Labor Senators supported the first tranche of reform, the government's Interactive Gambling Bill 2016 which passed the Senate in August 2017.

1.4 With a consistent approach around supporting harm minimisation measures Labor Senators did not support an amendment to the government's bill proposed by the Liberal Democratic Party in relation to legalising online casino-style poker and blackjack services.

1.5 Labor Senators note that in November 2016 an announcement was made that agreement had been reached between Australian, state and territory governments to establish a National Consumer Protection Framework for online wagering.

1.6 We also note that the Communiqué distributed after the Ministers' meeting on Illegal Offshore Wagering Reform on 8 September 2017 stated the Ministers agreed in-principle to a range of harm minimisation measures to be included in the National Consumer Protection Framework for online wagering. We again reiterate our previous position that while Labor is supportive and welcomes progress of a National Consumer Protection Framework this important work must not be delayed.

1.7 Labor Senators note that in a 12 September 2017 media statement, Senator David Leyonhjelm states that he has received a letter from the Minister for Communications, Senator the Hon Mitch Fifield, advising that he has instructed the Department of Communications and the Arts to undertake some preliminary work examining the feasibility of Australian onshore providers obtaining licences to operate online poker. The media statement was released in the context of negotiations on the Turnbull Government's Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017.

Senator Anne Urquhart
Senator for Tasmania

Senator Anthony Chisholm
Senator for Queensland

Senator Bernardi's and Senator Leyonhjelm's Additional Comments

1.1 We support the legalisation and regulation of online poker in Australia. It does not pose the risks of harm that other forms of gambling are argued to involve.

1.2 This position was also strongly (and persuasively) supported by:

- the joint submission from the Australia Taxpayers' Alliance and MyChoice Australia;¹
- the submission from the Australian Online Poker Alliance;² and
- the 2010 inquiry report into gambling by the Productivity Commission (PC) under the fine stewardship of its then Chairman Gary Banks.³

1.3 In addition to these organisations, many of the other 266 submissions to this inquiry that were either confidential or had names withheld supported the legalisation and regulation of online poker.

1.4 We consider that the recent amendments to the *Interactive Gambling Act 2001* (the Act)—which updated and tightened the ban on gambling games—have overreached by banning games like online poker.

Online poker is very different to most forms of gambling

1.5 There are a number of aspects to poker (and its online form) that make it inherently different to other forms of gambling. These aspects help to increase benefits relative to costs (or potential harm)—to both individuals and their communities—and make the task of properly regulating the activity, including minimising harm, simpler and less risky. Pivotaly—as the 'Key Summary' in the submission from the Australian Online Poker Alliance describes so well⁴—these aspects include:

- that poker is a peer-to-peer game—not one played against the casino or 'the house';
- the activity, hosting entity and platform is therefore relatively easier to regulate as there are no 'stacked odds' by the casino/house requiring constant regulator scrutiny;

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

2 Australian Online Poker Alliance, *Submission 2*.

3 Productivity Commission, *Gambling*, Inquiry Report, No. 50, Volume 1, 26 February 2010, <https://www.pc.gov.au/inquiries/completed/gambling-2009/report/gambling-report-volume1.pdf> (accessed 3 October 2017).

4 Australian Online Poker Alliance, *Submission 2*, pp. 1–2.

- it is therefore a zero-sum game for the players, less any transparent, up-front fees that licenced hosts would have to competitively charge to cover platform provision costs and a reasonable profit margin (after regulatory fees and tax);
- it involves players pre-committing to the dollar amount they want to outlay or risk, helping to contain harm from excessive or addictive behaviour;
- it is relatively social and involves camaraderie and distinct groups (more often than not comprising males with full-time employment and above-average education and incomes);⁵
- over the medium term, poker is far more a game of skill and strategy than luck and chance; and
- it helps to develop a broad range of useful life skills, such as critical evaluative skills, numerical skills, pragmatism, problem-solving and self-awareness and self-control—as the joint submission by the Australian Taxpayers' Alliance and MyChoice Australia extensively sets out.⁶

The Productivity Commission (PC) also understands online poker

1.6 As part of the 'Key points' in its 2010 gambling report, the PC saw online poker as a ripe first step or test case in beginning the legalisation and regulation of online gaming (gambling) in Australia—bringing it onshore so that current (and prospecting) players can be properly protected from unscrupulous platform providers and lax regulatory standards.

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.

- 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.⁷

1.7 As the PC report goes on to demonstrate, with regards to the potential for deep or widespread harm, and the degree of regulatory difficulty if legalised, online poker is one of the most benign forms of gambling, posing fewer concerns relative to other more publicised forms (e.g. electronic gaming machines in pubs, clubs and casinos).

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

6 Australian Taxpayers' Alliance and MyChoice Australia, *Submission 12*, pp. 6–7.

7 Productivity Commission, *Gambling*, Inquiry Report, No. 50, Volume 1, 26 February 2010, p. 3, <https://www.pc.gov.au/inquiries/completed/gambling-2009/report/gambling-report-volume1.pdf> (accessed 3 October 2017).

1.8 The general principle here is that, rather than reflexively banning activities that include some risks and potential for harm, but:

- are not 'gateways' or well-trodden paths to further bad behaviours and destruction (as opposed to illicit drugs and crimes, even those which currently attract mild punishments, as these are so often gateways to evermore destructive attitudes, habits and behaviour); and/or
- you cannot see yourself or your friends and loved ones from ever enjoying (or wanting to partake in); and/or
- are not commonly indulged in by elites and sophisticated people;

it is generally better to legalise and regulate such activities (or at least seriously explore those avenues, particularly where participants are already numerous and their benefits of enjoyment and camaraderie are rarely offset by any harm). Moreover, any resulting regulation should be targeted and proportionate, not deliberately broad-brush and over-burdensome to curtail, vexatiously, the activity and squeeze it out of existence.

1.9 Not only does this guiding conservative principle help us to avoid becoming ever-more censorious and puritanical, it also prevents further atrophy of our personal risk-management skills, self-governance capabilities and impulse control—sparing us from a downward-spiral into ever-more moral hazard.

Conclusion

1.10 We support the legalisation and regulation of online poker in Australia. It does not pose the risks of harm that other forms of gambling are argued to involve.

1.11 Indeed, the inquiry heard no evidence suggesting anything other than coincidence between poker and problem gambling. While some problem gamblers are known to play poker, problem gamblers also gamble in other ways well known to lead some people into problem gambling.

1.12 The government needs to simply get on with implementing the recommendations in the PC's 2010 inquiry report into gambling by legalising and regulating online poker. Online poker is unique, participation and enjoyment is widespread, the risks of harm are low and it is better to have it regulated (and taxed) onshore than driven underground or offshore.

1.13 Other western countries allow it—e.g. the UK, Italy, France, Denmark, Norway and Sweden, or various states within, e.g. in the US⁸—it is time Australia's ban and aversion to online poker also ends.

8 Australian Taxpayers' Alliance and MyChoice Australia, *Submission 12*, p. 10.

1.14 In legalising online poker, the government should closely follow the model of the UK Gambling Commission. Its approach, which involves issuing licences specific to each kind of gambling, enables it to address risks to gamblers, sport and consolidated revenue in a logical and effective manner. It is relevant that the companies seeking to offer legal online gambling services to Australians favour this approach.

Senator Cory Bernardi
Australian Conservatives
Senator for South Australia

Senator David Leyonhjelm
Liberal Democratic Party
Senator for New South Wales

Appendix 1

Submissions, tabled documents and answers to questions on notice

Submission Number	Submitter
1	Australian Gambling Research Centre, Australian Institute of Family Studies
2	Australian Online Poker Alliance
3	Dr Sally Gainsbury and Professor Alex Blaszczynski
4	Department of Social Services
5	The Royal Australian & New Zealand College of Psychiatrists
6	The Salvation Army Australia
7	Clubs Australia
8	Betway Limited
9	Prof Brian Alspach
10	Mr Oliver Gill Gaber
11	Mr Mostafa Haidar
12	Australian Taxpayers' Alliance and MyChoice Australia
13	Mr James Devine
14	Mr Daniel Laidlaw
15	Mr Ian Kerry
16	Mr Luke Brabin
17	iBus Media Limited
18	Mr Tim Head
19	Mr Philip Greenway
20	Mr Gilbert Alessandra
21	Jaymee Givotovsky
22	Lucienne Galea
23	Vivienne Alsop
24	Ms Georgia Turnham
25	Mr Gavin Baird
26	Sportsbet
27	Mr Daniel Fogl-Kulich
28	Mr Sam Leitch
29	Confidential
30	Confidential
31	Mr Ken Clarke
32	Mr Ramzi Karam
33	Ms Colleen Fish
34	Mr Barry Pittaway
35	Mr Bradley Harvey
36	Mr David Bonnichsen
37	Mr Richard Johnston
38	Mr Christopher Ryan
39	Mr Robert Wyatt
40	Mr Robert Monro
41	Mr Keith Hanson
42	Mr Nicholas Porta
43	Mr Mark Edwards
44	Ms Carol Ford
45	Mr John Noy

46 Mr Travis William Blight
47 Name Withheld
48 Mr Michael Robertson
49 Mr Mike Subacius
50 Mr Nick Williams
51 Mr Nathan Hill
52 Mr Paul Drake
53 Mr Paul Hocking
54 Mr Serge Allison
55 Mr Daniel Cannon
56 Mr Paul Millbrook
57 Mr Petar Benjamin
58 Mr Peter Cullen
59 Mr Ricky Kroesen
60 Mr Rodney Bryant
61 Mr Scott Smith
62 Mr Ross Murray
63 Mr Shane Turner
64 Mr Simon Giacobbe
65 Mr Stuart West
66 Mr Toby Nash
67 Mr Wayne Symons
68 Mr Daniel Coleman
69 Mrs Jennifer Henderson
70 Mr Terry Roberts
71 Mrs Maureen Fortune
72 Mr Herbert Thompson
73 Ms Patricia O'Keeffe
74 Mr Max Preston
75 Ms Angela Wright
76 Mr Chester Swords
77 Mr Chris Morosini
78 Mr Ilavenil Arumugam
79 Mr Darren Leng
80 Name Withheld
81 Name Withheld
82 Mr Hari Varma
83 Mr Greg Hocking
84 Mr Grant Layton
85 Mr Glenn Smethurst
86 Mr George Byrne
87 Mr Gary Ryan
88 Mr Matthew Lewis
89 Mr Matthew Land
90 Mr Luke Robinson
91 Mr Matthew Moate
92 Mr Michael Evans
93 Mr Michael Klieber
94 Name Withheld
95 Name Withheld
96 Name Withheld
97 Name Withheld
98 Name Withheld
99 Name Withheld
100 Name Withheld
101 Name Withheld
102 Name Withheld
103 Name Withheld

104	Name Withheld
105	Name Withheld
106	Name Withheld
107	Name Withheld
108	Name Withheld
109	Name Withheld
110	Name Withheld
111	Confidential
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113	Confidential
114	Confidential
115	Confidential
116	Name Withheld
117	Confidential
118	Name Withheld
119	Name Withheld
120	Name Withheld
121	Name Withheld
122	Name Withheld
123	Name Withheld
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138	Name Withheld
139	Name Withheld
140	Name Withheld
141	Name Withheld
142	Name Withheld
143	Name Withheld
144	Name Withheld
145	Name Withheld
146	Mr Chey Powell
147	Mr Christoph Fluhler
148	Mr David Crawford
149	Name Withheld
150	Name Withheld
151	Name Withheld
152	Name Withheld
153	Mr Dylan Martin
154	Name Withheld
155	Mr Dylan Parker
156	Mr Zoran Punosevac
157	Mr David Cochrane
158	Name Withheld
159	Mr Daniel Peiris
160	Name Withheld
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169 Name Withheld
170 Name Withheld
171 Name Withheld
172 Name Withheld
173 Mr Jonathan Bredin
174 Mr Jared Brown
175 Mr Benjamin Baxter
176 Mr Ben Whitby
177 Mr Andy Hardwick
178 Mr Caspar Deman
179 Mr Charles Bucar
180 Mr Josh Wrathall
181 Mr Dale Johnstone
182 Dr Todd Rockoff
183 Mr Brent Row
184 Mr Joshua Meale
185 Mr James Greenwood
186 Mrs Jenny Carlaw
187 Mr Barclay Smith
188 Mr Jason Smith
189 Mr Jim Langford
190 Mr Jonathan Karamalikis
191 Mr Jason Blyth
192 Mr Christian Borromeo
193 Mr Brandon Gardiner
194 Mr Garth Bailo
195 Mr Jarred Grimshaw
196 Mr Brian Manners
197 Mr Jason Jeans
198 Miss Robyn Evans
199 Mr James Smith
200 Mr Andrew Hitchen
201 Mr Travis Grogan
202 Mr Eddie Tredrea
203 Mr Peter Booth
204 Mr Grant Thomas
205 Mr Lucas Carr
206 Mr Gustavo Castro
207 Stars Group
208 Mr Jarrod Baimbridge
209 Mr Jordan Wallace
210 Mr Crispin Rovere
211 Mr Josh Mitchell
212 Ms Adryen Willis
213 Mr Julian Rowberry
214 Mr Luke Merrett
215 Mr Jack March
216 Mr Peter Newton
217 Mr Chris McLoughlin
218 Mr Josh McCully
219 Name Withheld

220	Name Withheld
221	Name Withheld
222	Name Withheld
223	Name Withheld
224	Mr Tristan Pietsch
225	Mr Alex Dimasi
226	Mr Rowan de Haas
227	Mr Damian McKellar
228	Mr Jackson Lemon
229	Mr Richard Jessep
230	Mr Ben Pockett
231	Mr Joseph Ritchie
232	Mr Sam Johnson
233	Mr Christopher Stocks
234	Mr Michael Stanmore
234.1	Supplementary to Submission 234
235	Name Withheld
236	Name Withheld
237	Name Withheld
238	Name Withheld
239	Name Withheld
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250	Name Withheld
251	Name Withheld
252	Name Withheld
253	Name Withheld
254	Name Withheld
255	Confidential
256	Confidential
257	Confidential
258	Name Withheld
259	Name Withheld
260	Mr Josh Watson
261	Mr Nicholas Bray
262	Name Withheld
263	Name Withheld
264	Name Withheld
265	Name Withheld
266	Name Withheld

Tabled documents

Mr Luke Brabin – Analysis of gambling losses, tabled at public hearing, Sydney, 1 August 2017

Mr Luke Brabin – Notes from opening statement, tabled at public hearing, Sydney, 1 August 2017

Answers to questions on notice

The Salvation Army Australia – Answers to questions on notice following public hearing, Sydney, 1 August 2017

MyChoice and the Australian Taxpayers' Alliance – Answers to questions on notice following public hearing, Sydney, 1 August 2017

Ms Jenny Williams, Independent Consultant, Betway Limited – Answers to questions on notice following public hearing, Canberra, 17 August 2017

Appendix 2

Public hearings

Tuesday, 1 August 2017, Sydney

The Salvation Army Australia

Mr Gerard Byrne, Operations Manager
Dr Jasmine Loo, Research Analyst

Australian Online Poker Alliance

Mr Joseph Del Duca, Founder

Department of Communications and the Arts – via teleconference

Ms Helen Owens, Assistant Secretary, Content and Copyright
Mr Andrew Verdon, Assistant Director, Online Gambling

Department of Social Services – via teleconference

Dr Roslyn Baxter, Group Manager, Families
Mr Tristan Reed, Branch Manager, Welfare Quarantining and Gambling

Mr Oliver Gill Gaber – Private capacity – via teleconference

Mr James Devine – Private capacity

Mr Daniel Laidlaw – Private capacity

Australian Taxpayers' Alliance and MyChoice Australia

Mr Satyajeet Marar, Director, MyChoice Australia
Mr Tim Andrews, Executive Director, Australian Taxpayers' Alliance

Mr Luke Brabin – Private capacity

Professor Brian Alspach – Private capacity

Dr Sally Gainsbury – Private capacity

Professor Alex Blaszczynski – Private capacity

Thursday, 17 August 2017, Canberra

Betway Limited

Ms Jenny Williams, Independent Consultant

Mr Roger Parkes, Head of Compliance

Mr Steve Maxwell, Consultant

Mr Antony Gevisser, Legal and Regulatory Consultant