

iBus Media Limited

**Department of Broadband, Communications and the
Digital Economy**

Review of the Interactive Gambling Act

October 2011

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1. Executive Summary

- 1.1 Online poker has experienced considerable growth recently due to the increase globally in participation in the game of poker, both terrestrially and online. This was recognised by the Productivity Commission in its Report on Gambling released in July 2010. Online poker can be distinguished from other forms of gambling due to the significant level of skill involved in the game, its recreational and entertainment value and the social aspect of peer-to-peer online games.
- 1.2 In Australia prohibition has been used as the means to address the social harm of online gaming. It is clearly ineffective with research showing that a significant and increasing number of Australians engage in online gaming, despite the prohibition contained in the *Interactive Gambling Act 2001* (Cth) (**IGA**). Furthermore, the IGA creates an illogical distinction by permitting online wagering and lotteries whilst banning other online games including online games involving skill.
- 1.3 Rather than prohibition, a managed, regulated system relating to the licensing of online poker is the most appropriate method of harm minimisation. The ability for online poker to be regulated already exists under Australian law.
- 1.4 The Productivity Commission found that the IGA has had limited effectiveness in reducing demand for online gaming services and its effectiveness is likely to decline over time. Accordingly, it concluded that the most appropriate form of regulation is gradual managed liberalisation of online gaming with strict licensing criteria and harm minimisation requirements and that the liberalisation should commence with the liberalisation of online poker which is likely the safest form of online gambling.
- 1.5 If online poker were to be liberalised, as recommended by the Productivity Commission, then consideration would need to be given to the type of regulatory framework which would be appropriate for the licensing and regulation of online poker operators licensed in Australia.
- 1.6 iBus Media submits that any regulatory framework should address, at a minimum, the market model which should be adopted; the conditions which must be met for market entry; the requirements for the protection of player funds; strict probity standards; high standards of harm minimisation including mechanisms which facilitate pre-commitment and self-exclusion; strict know your customer requirements; procedures for addressing suspicious matters; game security issues; game testing requirements and the appropriate rate of taxation. Regulatory frameworks including these measures already exist in various Australian jurisdictions and are summarised in this submission.
- 1.7 iBus Media strongly supports the liberalisation and regulation of online poker so as to enable the licensing of online poker operators in Australia. Any regulatory regime which enables the licensing of online poker operators should incorporate stringent licensing conditions, including various harm minimisation controls and strict know your customer requirements. In iBus Media's view, it is clear that a licensing system of this nature would be far more preferable (and achieve greater harm minimisation controls) than the IGA which, despite the prohibitions it contains, has been ineffective in preventing increasing numbers of Australians using the services of offshore operators.



2. Background

- 2.1 PokerNews is the main trading name of iBus Media Limited (**iBus Media**), the world's largest poker media company. iBus Media has been registered in the Isle of Man since November 2008. iBus Media previously traded as PokerNews Limited (Cyprus) from July 2006 to October 2008.
- 2.2 PokerNews' primary business is promoting online poker rooms via a number of poker-related websites, the principal one being www.pokernews.com. Income is generated via a combination of affiliate agreements with the operators of online poker rooms as well as via media deals with operators of offline poker tours. In the case of affiliate marketing, players who visit websites in the PokerNews Media network are directed to online gambling sites through banner placements. For this, PokerNews receives revenue from the gambling company for each player who plays for real money at their site. In some circumstances, PokerNews accepts fixed advertising deals, where a fixed amount is paid upfront for a banner placement. However, fixed deals are a small percentage of the overall business.
- 2.3 The flagship website, PokerNews.com, is translated into 31 different languages other than English and receives 11 million visits per month worldwide during peak times. iBus Media is the official internet provider of coverage for major poker tours and tournaments around the world including the World Series of Poker (**WSOP**), European Poker Tour (**EPT**), the Asian Pacific Poker Tour (**APPT**) and the Aussie Millions held at Crown Casino.

3. Introduction

- 3.1 Over the last decade and, in particular, since the review of the IGA was conducted in 2004 by the Department¹, there has been an explosion in the popularity and growth of online gaming in general and, in particular, online poker. There is no doubt that poker is a popular form of entertainment and that there is great consumer demand for poker services, both online and terrestrial.
- 3.2 According to Global Betting and Gaming Consultants (**GBGC**), which is the world's preeminent source for global online gaming data, the global Gross Gaming Yield (**GGY**) (net online poker operator revenue) grew to USD\$4.356 billion by the end of 2009, which was up from USD\$33.3 million in 2001. The number of global active online poker player accounts grew by an even greater percentage from 45,480 in 2001 to 8,551,790 in 2009.² However, iBus Media acknowledges that given this data is largely held and provided by privately owned companies, which do not have an obligation to disclose this information, the precise figures are unable to be verified.
- 3.3 The social networking website www.facebook.com (**Facebook**) currently has over 800 million registered users. Software developers are able to create applications

¹ Then the Department of Communications, Information Technology and the Arts (**DCITA**).

² Global Betting & Gaming Consultants, "Interactive Gambling Report - Assessment of the interactive gambling market", April 2010 (**GBGC Report**).

which interact with Facebook features. As of October 2011, Zynga Poker's Facebook application, Texas HoldEm Poker, was reported to have 30 million active members per month with approximately 7 million members playing per day.³ Facebook reports that the Facebook fanpage for this application is the most popular fanpage on Facebook, with over 43 million fans, a number which is growing by over 500,000 fans each week.⁴

- 3.4 The popularity of poker in Australia has grown significantly in the last decade. Increasing numbers of Australians are playing poker either:
 - (a) by participating in tournaments or private games; or
 - (b) online, by accessing the websites of offshore operators to Australian-based consumers.
- 3.5 The growth in popularity in poker in Australia is illustrated by the success of the "Aussie Millions" tournament, which is one of the world's largest poker tournaments and is held each January at Crown Casino in Melbourne. When the first "Aussie Millions" tournament was staged in 1998, the prize pool was \$74,000 and there were ten participants from overseas, mainly from New Zealand.⁵ This can be contrasted with the 2011 "Aussie Millions" event where more than \$7.21 million in prize money was awarded, with the winner collecting \$2 million and 721 players (including many from overseas) participating in the main event of the tournament.⁶
- 3.6 The "Aussie Millions" tournament is by no means the only major poker tournament conducted in Australia. Australia also hosts an event in the "Asia Pacific Poker Tour" (APPT), which has been held each December in Sydney. The "Grand Final" event held during the 2010 Sydney APPT tournament involved 289 players.⁷
- 3.7 The growth of terrestrial poker is illustrated by the expansion of poker-related television programming and an increase in ratings for poker television programs, partly as a result of the use of hole-card cameras, which enable viewers to see the cards of individual players while the hand is still in progress.
- 3.8 When the television series "Joker Poker" was screened on Network Ten in 2007, an estimated 218,000 viewers watched the program. When the series was repeated, an estimated 224,000 viewers watched the program.

³ <http://www.facebook.com/TexasHoldEmPoker?v=info>. Accessed 14 October 2011.

⁴ <http://www.facebook.com/pages/Top-100-Most-Popular-Fac%E1%BA%BBbook-Pages-In-The-World-2011/165408200173753#!/TexasHoldEm>. Accessed 14 October 2011.

⁵ <http://www.aussiemillions.com/aussiemillions/>. Accessed 6 June 2011.

⁶ <http://www.aussiemillions.com/Page.aspx?ID=1752>. Accessed 6 June 2011.

⁷ <http://www.onlinepoker.net/poker-news/poker-tournaments-news/appt-sydney-2010-won-jonathan-karamalikis/8684>. Accessed 6 June 2011.

- 3.9 During 2007, thirty different series of poker tournaments and poker-related shows were broadcast on Australian cable television. The series were broadcast on a variety of channels, including Fox Sports 1, Fox Sports 2, Fox Sports 3, ESPN, Fox 8, Lifestyle, Discovery Travel & Learning and the History Channel. Tens of thousands of viewers watched these programs. The series "Premier League Poker" had 98,969 viewers alone.
- 3.10 During 2008, poker-related programs included various poker tournaments broadcast on a variety of cable television stations, which attracted thousands of viewers. Programs of this nature have continued to be broadcast to the present date. By way of example, the program "2010 World Series of Poker" is currently being broadcast by ESPN on Foxtel and Austar.
- 3.11 The Australian Poker League and the National Poker League have historically been the two leading organisers of poker events, which are held in hotels and clubs throughout Australia. It is estimated that these leagues have had more than 1 million people play an event during the past three years.
- 3.12 Over the past year, there has been considerable consolidation in the poker league industry with the Australian Poker League and the National Poker Leagues merging. Prior to the merger, Australian Poker League had over 600,000 members, while the National Poker League had over 280,000 members.
- 3.13 In addition to the Australian Poker League and the National Poker League, many new leagues have begun, particularly in Sydney and Melbourne, where participants in pub poker play for cash prizes similar to a regular casino. The National Pub Poker League is an example of an organisation that has grown recently by offering cash prizes. Every four weeks each region holds its own monthly cash final which is made up of venue winners and top point earners.
- 3.14 The increase in the number of poker tables at casinos also illustrates the growth of terrestrial poker.⁸ The number of poker tables at Melbourne's Crown Casino has increased from 12 in 2001 to over 50 in 2011.⁹ Sydney's The Star operated 12 poker tables in 2006, with the number having increased to 25 in 2011.¹⁰
- 3.15 iBus Media's websites, including pokernews.com and pokernetwork.com, have received over 4.3 million Australian visitors since records began in 2006. The number of absolute unique visitors from Australia, as determined by Google Analytics, is over 1.2 million during the same period.
- 3.16 In respect of the growth of the online poker industry, GBGC found that, despite the prohibition on online gaming contained in the IGA, the online poker industry has experienced exponential growth in Australia. In 2009 there were 400,160 active online poker accounts in Australia. This is estimated to increase to 657,650 active

⁸ First Submission, pages 12-14.

⁹ <http://www.crownpoker.com.au/about/>. Accessed 14 October 2011.

¹⁰ <http://star.com.au/play/poker.html> . Accessed 14 October 2011.

accounts by 2013. In 2004, GGY from online poker in Australia was US\$78,750,000. By 2009, GGY from online poker in Australia was US\$248,870,000 and it is estimated to increase to US\$413,980,000 by 2013.¹¹

- 3.17 The above illustrates that online poker's increasing popularity is demonstrative of the increase in popularity of poker generally. Interest in poker is very high and the level of participation is increasing too.
- 3.18 The popularity of poker has been recognised in Australia by various State regulators who have issued guidelines in respect of the conduct of poker tournaments. This recognises the "special case" status of poker. The New South Wales Office of Liquor, Gaming and Racing has issued guidelines recognising that poker tournaments can be legally played in Australia.¹² The July 2011 version states:
- (a) It is possible to charge an entry fee to participate in a poker tournament played in a club, but no money can be gambled on the outcome;
 - (b) Poker chips without any monetary value may be used; and
 - (c) Prizes can be awarded to the winner of the tournament.
- 3.19 Victoria¹³, Tasmania¹⁴, Western Australia¹⁵ and South Australia¹⁶ have also published guidelines relating to the conduct of poker.

4. The Nature of Poker

Poker may be easily distinguished from other forms of gambling on the basis that it is characterised readily as a game of skill, which is played peer-to-peer in a social setting. These characteristics, which distinguish poker from many other terrestrial and online casino-type games, are discussed below.

¹¹ GBGC Report.

¹² "Poker Tournaments in NSW": Guidelines. Available at: http://www.olgr.nsw.gov.au/pdfs/FS_poker_tournament.pdf. Accessed 14 October 2011.

¹³ Poker FAQs. Available at: <http://www.vcgr.vic.gov.au/CA256F800017E8D4/LicInfo/11CD0ED463266F3FCA2577B30006092D?Open>. Accessed 14 October 2011.

¹⁴ Tasmanian Gaming Commission "Poker Rules" January 2009. Available at: [http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/GamingRules-Poker.pdf/\\$file/GamingRules-Poker.pdf](http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/GamingRules-Poker.pdf/$file/GamingRules-Poker.pdf). Accessed 14 October 2011.

¹⁵ WA Department of Racing, Gaming & Liquor "Rules for the Conduct of Poker with Cards". Available at: http://www.rgl.wa.gov.au/ResourceFiles/Gaming/rules_poker_played_with_cards.pdf. Accessed 14 October 2011.

¹⁶ In South Australia, the rules for all games played at a casino (including poker) must be approved by the Liquor and Gambling Commissioner and authorised by the Independent Gambling Authority. The casino and patrons must abide by the approved rules. The Office of the Liquor and Gambling Commissioner also provided guidance concerning poker tournaments, see http://www.olgc.sa.gov.au/general/latest_news/poker_tournaments_in_licensed_venues.pdf. Accessed 14 October 2011.

4.1 Game of Skill

Poker is an activity in which the skill of the participants predominantly determines the outcome. This causes poker to be different from other online games. Games of chance, such as electronic gaming machines (EGMs), roulette and craps, involve little or no skill in the outcome, which is generally dependent on factors outside the participant's control. Poker can be distinguished from these types of games because participants play a meaningful role through their use of psychological, mathematical and other skills.¹⁷

4.2 How is poker played?

- (a) In most forms of poker, the first round of betting begins with some form of forced bet (known as a blind or ante). The action then proceeds to the left. Each player in turn must either match the maximum previous bet or fold, losing the amount bet so far and all further interest in the hand. A player who matches the bet may also raise, increasing the bet. The betting round ends when all players have either matched the last bet or folded. If all but one player fold on any round, the remaining player collects the pot without showing his hand. If more than one player remains in contention after the final betting round, the hands are shown and the winning hand takes the pot.
- (b) With the exception of initial forced bets, what is being played with (for example chips, money, tokens) are placed into the pot voluntarily by a player who, at least in theory, rationally believes the bet has positive expected value. Thus, while the outcome of any particular hand does feature an element of chance, the long run returns to the players are determined by their chosen actions based on probability and psychology and are not simply a random outcome.
- (c) Poker games such as Texas Hold'Em, Omaha and 7-Card Stud, for example, require a degree of skill. These games have more betting rounds and are games of partial information as some cards are known to all players and some remain concealed from opponents. Using information on your own hand, how your opponents acted in each betting round and information revealed by the cards that are dealt face up, means that these poker games require the deployment of analytical skills and strategy to perform well.
- (d) Poker strategy is a well discussed topic both in books and online on popular forums. The world's largest poker forum, www.twoplustwo.com, as of 5 October 2011, had more than 5.288 million posts from its users relating to the strategy of No-Limit Hold'Em, the most popular form of poker. There are also a number of strategy related websites that specialise in providing video content on how to play poker (see for example, www.cardrunners.com and

¹⁷ Professor Dr. Bernd Holznagel "Poker – A Game of Chance or a Game of Skill". Available at <http://media.intellipoker.com/downloads/skillgame/holznagel-english.pdf>.

www.deucescracked.com). These sites have thousands of members that pay a monthly subscription fee, highlighting the considerable consumer interest in poker strategy.

- (e) The above illustrates that poker is a game with a considerable skill component. Whilst there are short-term variants, players who consistently make better decisions relevant to their opponents come out ahead in the long run. This attribute is present when playing poker for free or for money. The challenge of applying one's skills to consistently perform well at the game is another attractive feature of poker not present in casino games such as roulette. In this respect, poker is no different to bridge and chess which are both irrefutably games of skill.

4.3 Judicial Consideration

- (a) In *Police v Jones, Police v Ravesi* [2008] SAMC6 62, charges were brought that the conduct of, and participation by players in, a Texas Hold'Em Poker tournament constituted unlawful gaming under the laws of South Australia.
- (b) Expert evidence concerning the nature of poker and other games was given during the hearing. The evidence accepted by the Court was similar to the evidence given in *R v Kelly* (2008) 2 All ER 840 (the **Gutshot case**) in the UK, namely that the game of Texas Hold'Em Poker is a game where skill prevails and is not merely a game of chance. Further, the Court appeared to accept the expert evidence that, despite an element of chance existing in respect of the manner in which cards are dealt, skill was a determinant element in the outcome in the game over time. This finding disposed of the case because the offence under the South Australian legislation could only be established if poker were found to be wholly a game of chance.
- (c) Similar findings that poker is a game of skill rather than chance have been made overseas. In a 2009 case heard in South Carolina, the Court determined that "...*Texas Hold-em is a game of skill. The evidence and the studies are overwhelming that this is so. On January 14, 2009, the State of Pennsylvania in a fact situation very similar to this one determined that Texas Hold-em poker is not unlawful gambling as defined by their gaming statutes because it is a game of skill, (Commonwealth of Pennsylvania vs Dent Case No. 733 of 2008)*".¹⁸
- (d) In early July 2010, a Dutch court ruled that poker is a game of skill¹⁹. Dutch gambling laws specifically state that games reliant on luck or chance may only be played at state operated casinos and that casino-type games are games of chance. The defence successfully argued that poker was able to be

¹⁸ *Town of Mt Pleasant v Chimento*, Case No. 98045DB, Mt Pleasant Municipal Court, South Carolina (rendered 19 February 2009).

¹⁹ <http://gamingintelligence.com/index.php/newsbites/4122-poker-a-game-of-skill-not-illegal-under-dutch-law> visited on 18 August 2010.

distinguished from games of chance because the outcome depended on tactics, experience and psychology.

- (e) In mid-2011, a court in Toulouse, France ruled that poker is a game of skill after hearing a case against a defendant who had been charged with organising and running poker events without proper licensing. The defendant's evidence included expert testimony from a mathematics professor, a professional poker player and highly-ranked chess and bridge players.²⁰ The decision is currently the subject of an appeal to the Conseil d'Etat, which is the administrative court of last resort in France.
- (f) The District Court of New Zealand was also recently required to determine whether poker is a game of skill and a form of gambling.²¹ The prosecution commenced by the Department of Internal Affairs (**DIA**) concerned the broadcast of various television advertisements, among other matters, for an overseas operator of a live terrestrial poker tournament and an online "play for free" poker site (**.Net Site**).
- (g) Judge Harvey determined that the advertisements did not constitute contraventions of the New Zealand *Gambling Act*. The principal basis of the Court's findings was that the advertisements did not promote gambling or a gambling operator. In reaching this decision, the Court determined, among other things, that:
 - (i) Conducting a poker tournament does not constitute gambling per se because the tournament's structure "*does not involve the payment of consideration based upon the outcome of the game. It involves the splitting of a sum of money derived from payment of entry fees between the players*". Thus the necessary element of gambling is absent. Accordingly, the operators are not conducting a gambling operation, but rather a competition involving the game and play of poker.²² Therefore the advertisement promoting the poker tournament did not breach the relevant provision of the *Gambling Act*. The DIA successfully appealed this determination. The broadcaster has subsequently appealed this decision to the High Court with the appeal due to be heard in March 2012.
 - (ii) Internet users are able to readily distinguish between play for free websites and play for money websites. The DIA did not appeal Judge Harvey's finding that the advertisements for the play for free website did not contravene the *Gambling Act*.

²⁰ <http://www.onlinecasinoarchives.com/law/2011/09/04/poker-is-a-game-of-skill-rules-toulouse-court/>.

Accessed on 18 October 2011.

²¹ *Department of Internal Affairs v TV Works Ltd*, CR 08004505568-620, District Court (Auckland), Harvey J, 23 June 2010 (**TV Works Case**).

²² *TV Works Case*, [117]-[118].

- (h) These New Zealand and Dutch rulings followed on from a Swedish decision in May 2009 whereby a Swedish appeal court substantially reduced various charges and sentences and, in some cases, exonerated men who had been convicted of arranging a land-based Texas Hold' Em poker tournament. The charges of serious illegal gambling were downgraded to regular illegal gambling on the basis that during the main game of a poker tournament, where a player could be dealt as many as 40 "hands" or sets of card, as opposed to side games played by those once eliminated from the main game, a player's skill plays a greater role than chance in the outcome of the game.²³
- (i) Many commentators in the US also suggest that poker is a game of skill.²⁴ For example:

"The question at the start of this study was Is poker a game of luck or skill? The unequivocal finding is that poker is a game of skill. In both studies, participants who were instructed outperformed those who were not instructed. Given that poker is a complex skill, it is somewhat surprising that even elementary instructions and limited practice had an effect.

The reason that poker appears to be a game of luck is that the reliability of any short session is low. In a casino game of poker, about 25 hands are dealt per hour. In study 2, participants played 720 hands equivalent to about 30 hours of casino play. Study 2 met the psychometric qualification for moderate reliability of a psychometric task. What this suggests is that obtaining accurate estimates of poker ability may not be easy. Luck (random factors) disguises the fact that poker is a game of skill. However, as these studies show, skill is the determining factor in long-term outcome."²⁵

- (j) An April 2011 study conducted by Steve Levitt (Department of Economics at the University of Chicago) and Thomas Miles (University of Chicago Law School) considered whether or not poker is a game of skill. The performance of players in the 2010 World Series of Poker was analysed. Those players who were identified as being highly skilled before the event commenced, on average had a return of investment of over 30 per cent compared to all other players, who had a return of investment of -15 per cent. The study concluded that the large gap in returns was strong evidence that poker is a game of skill.²⁶

²³ <http://www.thelocal.se/19454/20090514/> visited on 18 August 2010.

²⁴ Rotstein, G "Legal status of poker: Is it a game of skill or chance?" *Pittsburgh Post-Gazette* 1 March 2009. Available at: <http://www.post-gazette.com/pg/09060/952256-455.stm>.

Polson S "Bluefire pros challenge perception of poker" *PokerListings.com* 10 March 2009. Available at: <http://www.pokerlistings.com/bluefire-pros-challenge-perception-of-poker-37767>.

²⁵ DeDonno M A & Detterman D K "Poker Is A Skill", *Gaming Law Review*, Vol 12, No 1 (February 2008). Available at <http://www.liebertonline.com/doi/abs/10.1089/blr.2008.12105>.

²⁶ Levitt, Stephen D & Miles, Thomas J, "The Role of Skill versus Luck in Poker: Evidence from the World Series of Poker", April 2011

- (k) In an attempt to highlight to authorities and the community the unique position that poker occupies in the gambling industry, Harvard Law Professor Charles Nesson has founded an organisation known as The Global Poker Strategic Thinking Society.²⁷ In response to a Massachusetts bill to criminalise online poker playing, Professor Nesson recently made the following comments:

“I believe education will prove to be the internet's highest and best use. I speak for the potential use in online education of learning and teaching through mastery of strategic games, from tic tac toe through checkers and chess to poker with lessons along the way about logic and life. Instead of criminalizing online poker, I ask the legislature to recognize poker as among the most sophisticated of strategic games, and to acknowledge its potential power as a teaching tool, and to open to the possibility of embracing online poker with facilitating regulation.”²⁸

4.4 Peer-to-Peer

- (a) Poker can also be distinguished from most other forms of casino gambling and wagering because participants playing poker compete against one another on a peer-to-peer basis (**P2P**). This means that the poker operator (whether terrestrial or online) has no stake in the final outcome. As such, poker truly constitutes an activity wherein the individual participants match wits and skills against one another. Therefore, poker can also be distinguished from other gaming activities because it includes these social and competitive dynamics.
- (b) Players find these dynamics to be an appealing aspect of poker, which has helped fuel the game's popularity. This is in contrast with other forms of games such as casino games and lotteries, which are primarily designed to attract those who wish to play for financial gain.
- (c) Online poker operators do not participate in games and have no interest in their outcome, nor are players able to stake money or gamble on the outcome of the games. The conduct of online poker in this manner reflects the guidelines in place in various States for the conduct of terrestrial poker games. The New South Wales and Victorian guidelines for the playing of poker legally in those States allow poker to be played provided that no person derives a percentage or share of the "buy-in", which is the total amount a person plays to participate in the game and that money is unable to be gambled or staked on the outcome of the poker game²⁹.
- (d) Where poker is a peer to peer game, the outcome of the game is irrelevant for the organiser. It is therefore in the operator's interest that individual players do

²⁷ <http://gpsts.org/>, <http://cyber.law.harvard.edu/people/cnesson> . Accessed 10 October 2011.

²⁸ “Prof. Nesson Testifies Against Poker Criminalization” Available at: <http://gpsts.org/prof-nesson-testifies-against-poker-criminalization>. Also available at: <http://blogs.law.harvard.edu/nesson/2008/03/19/deval-backs-off-criminalizing-online-poker-throws-the-ball-to-coakl/>. Accessed 10 October 2011.

²⁹ PC Report:15.22.

not lose quickly but rather have a pleasant experience and maintain funds to play again.

- (e) In stark contrast, other online games and wagering activities are "house banked". In most of these types of games, participants compete directly against the house (ie the operator), with the odds often being fixed. The house or operator takes a share or percentage of the amounts wagered.
- (f) Given these features, online poker presents a special case and should be regulated as such, irrespective of how other online casino games are treated. It is submitted that, at the very least, the IGA should provide for an exemption to permit all online poker games played in a P2P format.

5. The IGA

- 5.1 Despite the obvious demand for online poker services by Australian-based consumers, as detailed above, the IGA prohibits Australian-based operators from providing and advertising prohibited gambling services to Australian-based consumers.³⁰ In this regard, the IGA targets the supply of services rather than the demand for the services.
- 5.2 "Gambling service" is defined in the IGA to include a service for the conduct of a game where the game is played for money or for anything else of value and the game is a game of chance or of mixed chance and skill and a customer of the service gives consideration or agrees to give consideration to play or enter the game.³¹
- 5.3 However, some forms of online gambling are exempt from the IGA. In particular, a range of online wagering and lottery services are not prohibited.³²
- 5.4 The IGA does not distinguish online poker from:
 - (a) other casino-type games, such as roulette and blackjack; and
 - (b) online versions of EGMs;
- 5.5 In iBus Media's view, given the distinguishing features of online poker (as a game of skill, which is played P2P in a social setting), online poker should be treated differently to the other forms of casino-type games identified above. In this regard, we note that the Minister for Broadband, Communications and the Digital Economy is able to exclude any service from the provisions of the IGA at his discretion.³³

³⁰ IGA, section 6.

³¹ IGA, section 4.

³² IGA, sections 8A and 8B.

³³ IGA, section 10.

6. The Productivity Commission 2010 Report

- 6.1 The Productivity Commission's Report on Gambling (**PC Report**) was released in June 2010. The Productivity Commission had been requested by the Australian Government to report on various matters relating to the gambling industry including:
- (a) the implications of new technologies (such as the Internet), including the effect on traditional government controls on gambling industries; and
 - (b) the effectiveness and success of harm minimisation measures.
- 6.2 The Productivity Commission recognised the increased interest in poker, both terrestrial and online, and recommended that a gradual process of liberalisation be adopted in respect of the regulation of online gaming.³⁴
- 6.3 The Productivity Commission's key findings and recommendations were:
- (a) Research suggests that, although online gaming has benefits, the potential impact of consumption of online gaming services by problem gamblers poses a significant social cost. Accordingly, online gaming should be subject to appropriate regulation.
 - (b) The IGA, which currently prohibits online gaming, has had limited effectiveness in reducing demand for online gaming services and its effectiveness is likely to decline over time.
 - (c) The IGA discriminates against potential online gaming providers by effectively ensuring that the Australian market (which is growing) for online gaming is catered for by offshore providers who operate under different regulatory regimes.
 - (d) The most appropriate form of regulation is gradual managed liberalisation of online gaming with strict licensing criteria and harm minimisation requirements.
 - (e) Such liberalisation should commence with the liberalisation of online poker which is likely the safest form of online gambling and, subject to the success of such liberalisation, extend to other forms of online gambling.³⁵
- 6.4 The Productivity Commission recognised that there is a clear demand for online poker which suggests that its liberalisation and regulation could deliver considerable consumer benefits.³⁶

³⁴ PC Report 15.17.

³⁵ PC Report, 15.1.

³⁶ PC Report 15.31.

- 6.5 Furthermore, the Productivity Commission considered online poker to be the form of online gaming which involves the least risks because:
- (a) *“It is a game of skill without the speed of play or continuous nature of other games.*
 - (b) *It is unlikely to elicit the ‘trance like’ states commonly seen among players of EGMs or EGM-like games.*
 - (c) *It is a social game (played potentially at home alone, but with others globally in a virtual social setting).*
 - (d) *It is often played in tournament setting with an upfront entry fee. This provides ‘play’ times at a known, fixed cost to players limiting their losses.*
 - (e) *There is evidence to suggest that the typical spend of frequent online poker players is relatively small”.*³⁷

6.6 Accordingly, the Productivity Commission considered that, although managed liberalisation is not without risk, the licensing of online poker would be a good starting point to enable the regulator to build capacity and fine tune its operations. Lessons learned could be applied to the possible future liberalisation of other gaming products.³⁸

7. **Appropriate Regulatory Framework**

- 7.1 If online poker were to be liberalised, as recommended by the Productivity Commission, then consideration would need to be given to the type of regulatory framework which would be appropriate for the licensing and regulation of online poker operators in Australia.
- 7.2 In concluding that online poker should be liberalised, the Productivity Commission recommended that any online poker regulatory regime should mandate the following:
- *“strict probity standards;*
 - *high standards of harm minimisation, including:*
 - *prominently displayed information on account activity, as well as information on problem gambling and links to problem gambling support*
 - *automated warnings of potentially harmful patterns of play*
 - *the ability to pre-commit to a certain level of gambling expenditure, with default settings applied to new accounts, and the ability for gamblers to set*

³⁷ PC Report, 15:31.

³⁸ PC Report, 15:31.

no limit on their spending as one of the system options (with periodic checking that this remains their preference)

- *the ability to self-exclude."*

7.3 iBus Media has considered the Productivity Commission's recommendations and the manner in which online poker is regulated in various overseas jurisdictions. In respect of the structure of any proposed regulatory system, while certain principles might be determined at a Federal level (such as entry to market and harm minimisation requirements), licences should be granted at a State / Territory level in the same manner that online wagering licences have been issued to date. State / Territory gambling regulators have a wealth of experience in dealing with gambling services provided in an online environment. Should any State or Territory not wish to license online poker operators, then that jurisdiction could simply choose not to do so.

7.4 iBus Media is firmly of the view that any regulatory framework should address, at a minimum, the following matters:

- (a) harm minimisation measures;
- (b) the market model to be adopted;
- (c) the conditions which must be met for market entry;
- (d) the protection of players' funds;
- (e) know your customer requirements;
- (f) procedures for addressing suspicious matters;
- (g) game security issues; and
- (h) game testing requirements.

7.5 Each of the above matters is addressed in further detail below.

7.6 **Harm Minimisation**

Any Australian licensee must be required to meet all applicable harm minimisation standards which are developed in a manner appropriate to address specific problem gambling concerns in an Australian context. This is covered in more detail in section 8 below.

7.7 **Market Model**

- (a) If the provision of online poker services by Australian-licensed operators were to be liberalised, then iBus Media considers the objective of any Australian regulatory system should be to provide for the licensing of all suitable

applicants (and not just one provider) satisfying general licence conditions so that Australian consumers are able to choose services provided by a range of Australian-licensed service providers. Accordingly, the operators might be, for example, existing Australian gambling licensees (such as online wagering operators or casino operators) or international online wagering or online poker operators. Such an approach is consistent with other jurisdictions which have recently liberalised their online gaming regulatory frameworks such as Spain, Italy, Denmark, France and Estonia.

- (b) No form of monopoly should be permitted as it may result in consumers paying more to access the online services. Furthermore, in European jurisdictions where there is only one locally licensed State-owned operator providing online services (so that the market is not liberalised and regulated), the State-owned entities in these jurisdictions continue to lose market share to offshore operators. For example, Svenska Spel is a gambling services provider owned by the Swedish Government. Whilst, broadly speaking, gambling is illegal in Sweden, there are a few exemptions to this rule and, as a result, Svenska Spel has a monopoly to conduct legal gambling activities, including online poker. Despite its monopoly, Svenska Spel has acknowledged that its market share is in decline, from 58% to 51% in the past six years, and it identifies rising competition from offshore gambling operators as one of the causes of this decline.³⁹ Although under Swedish law it is illegal to gamble for monetary gain unless an exemption applies, in practice there is little to stop Swedish residents from using offshore gambling providers.
- (c) iBus Media also strongly believes that any regulatory model should permit Australian customers of Australian-licensed online poker operators to play online poker on that site (in a manner that is subject to Australian regulations) with players from other countries so that the product offered by any Australian-licensed operator would not be less attractive than the offerings of operators of offshore sites. The key reason is that liquidity, in terms of numbers playing at a particular site, is one of the key attractions that players look for when choosing a specific online poker site. Liquidity ensures there is a sufficient diversity of games operating to enable users to play in a game format and limit with which they are comfortable.
- (d) If the regulations were to “ring fence” Australian players, then Australian operators would be considerably worse off than their international competitors as Australia does not have a sufficient population to provide sufficient liquidity by itself. (This would mean that the overseas licensed sites would remain more attractive in terms of liquidity to Australian users than the Australian licensed sites.) Furthermore, international liquidity of players provides greater opportunities for players to measure skills against and chat with people from all over the world and for players to participate for a low

³⁹ Svenska Spel Annual Report 2010. Available here: http://svenskaspel.se/img/omsvs/Annual_Report_2010.pdf. Accessed 17 October 2011.

cost in tournaments with many participants and which offer large prizes for winners. International liquidity recognises the important social and entertainment aspects of this P2P game.

- (e) Accordingly, it is important that any licensing regime be structured to attract both existing Australian gambling operators, as well as global operators. This will ensure competition to make the Australian regulated sites attractive to Australian customers (and ensure that overseas sites are not perceived as being more attractive).

7.8 Conditions to Market Entry

(a) Local Presence

- (i) There are a number of major online poker companies that operate global businesses. If a licensing regime were introduced in Australia, it is probable that those operators would wish to be licensed in Australia given the benefits identified above. However, any regulation would need to recognise that these businesses are global and, while these operators would comply with all Australian licensing requirements, for example, establishing an office in Australia, and locating and maintaining servers in Australia, the regulators would need to recognise that those operators are unlikely to move their headquarters to Australia.
- (ii) A local company should be required to be incorporated to hold an Australian licence. This would ensure all locally licensed operators are subject to the jurisdiction of the Australian Courts and subject to Australian laws. This would place both Australian-based gambling operators and Australian subsidiaries of global gambling operators on an equal footing.
- (iii) That being said, the issue of whether a local presence is required is not specifically dealt with in Australian online wagering and gaming legislation. Among the Northern Territory conditions of a sports bookmaker licence, for example, is a condition that the operator conduct their business from approved local premises.⁴⁰

(b) Satisfactory Probity Checks

- (i) Probity checks investigating the background of a company applying for a licence, other companies which are part of the same corporate group as the applicant company (e.g. the holding company and/or the parent company) and the individuals associated with the companies should be required to be undertaken to determine their fitness to provide online poker services. This would be consistent with the

⁴⁰ NT Licence to Conduct Business of Sports Bookmaker, Standard Conditions dated 13 July 2011, Condition 1.

approach adopted in jurisdictions which license the provision of online poker services, including those that have recently liberalised the provision of online poker services, including Spain, France, Denmark, Estonia and Italy. Investigations should be conducted into the previous history and activities of the company (as well as associated companies and associated individuals) seeking authorisation in the same manner in which investigations are currently conducted in respect of applicants for online wagering licences in Australia. Investigations should cover and not be limited to financial records and involvement in legal matters.

- (ii) Specific considerations as to probity should include:
 - (A) whether the person/company is of good repute with regard to character, honesty and integrity;
 - (B) whether the person/company is of sound and stable financial background;
 - (C) where the applicant is a company, regard should be had to shareholder and subsidiary information;
 - (D) whether adequate financial resources are available to ensure the financial viability of the business;
 - (E) whether the applicant has engaged people with sufficient experience to operate and maintain the business;
 - (F) whether the applicant has any association with a person, body or association which, in the regulator's opinion, is not of good repute when regard is had to character, honesty and integrity;
 - (G) whether any proposed officeholder of the applicant is a suitable person to act in that capacity; and
 - (H) whether the applicant has a satisfactory ownership, trust or corporate structure.⁴¹

(c) Gaming Servers

- (i) Any regulatory framework should not necessarily require gaming servers to be located in Australia. Tasmanian legislation in respect of betting exchanges, for example, includes a provision allowing a betting exchange operator, with the written approval of the regulator, to use

⁴¹: http://www.nt.gov.au/justice/licenreg/documents/gaming/fs_ig_applicants_guide.pdf
<http://www.nt.gov.au/justice/licenreg/racinglicenses.shtml>. Both accessed 14 October 2011.

offshore computer equipment for Tasmanian betting exchange operations.⁴²

- (ii) However, if gaming servers, for example, are located offshore, the licence-holder should be required to maintain locally a mirror server, which would be an exact replica of the server located offshore. There would be requirements to update the mirror server regularly (e.g. on a weekly/daily basis as is the case in the Isle of Man) so that it continually reflects the content of the original server and to ensure that it is readily available for inspection by a regulator.

(d) Protection of Player Funds

- (i) In Australia, there are already legislative requirements in respect of licensed online wagering and betting exchange operators concerning the handling of players' funds which could be equally applicable to online poker operators if they were to be licensed locally, including that:

- (A) all funds in players' accounts must be ring-fenced;
- (B) the accounts used by the licensee to hold players' funds must be approved by the regulator⁴³;
- (C) the accounts used by the licensee to hold players' funds must not be used for any other purpose⁴⁴; and
- (D) a licensee's recourse to a player's funds is limited to debiting the amount a player wants to wager from their funds, remitting the player's funds at the player's request and any other purpose authorised by the legislation.⁴⁵

- (ii) It would also be possible to include further requirements as conditions of an online poker licence. For example, Northern Territory sports bookmakers' licence includes the following conditions:

- (A) a security of \$500,000 to be held by regulator;⁴⁶ and
- (B) the licensee shall maintain a bank account(s) which at all times shall have sufficient funds to cover all monies owed by the

⁴² Section 76ZDG of the *Gaming Control Act 1993* (Tas).

⁴³ Section 144 of the *Interactive Gambling (Player Protection) Act 1998* (Qld). Section 96A(1) of the *Interactive Gambling Act 1998* (ACT). Regulation 38 of the *Gaming Control (Internet Gaming) Regulations 2006* (NT).

⁴⁴ Section 145 of the *Interactive Gambling (Player Protection) Act 1998* (Qld). Section 96A(3) of the *Interactive Gambling Act 1998* (ACT). Regulation 39 of the *Gaming Control (Internet Gaming) Regulations 2006* (NT) (nb: no requirement for trust accounts in NT, legislation only talks about "accounts")

⁴⁵ Section 7.4.10 of the *Gambling Regulation Act 2003* (Vic). Section 76ZQ of the *Gaming Control Act 1993* (Tas).

⁴⁶ NT Licence to Conduct Business of Sports Bookmaker, Standard Conditions dated 13 July 2011, Condition 6.



licensee to all its betting clients. The bank account shall always be in credit with the bank and shall not be less than the total of all clients' credit balances with the licensee⁴⁷.

- (iii) Clearly, if the provision of online poker services were to be permitted under Australian law, the protection of fund measures already in place in respect of Australian-licensed online wagering operators and betting exchanges could also be adopted for online poker operators.

7.9 Know Your Customer (KYC) Requirements

- (a) The *Anti-Money Laundering /Counter Terrorism Financing Act 2006* and *Rules (AML/CTF Act and Rules)* cover the financial sector, gambling sector, bullion dealers and other professionals or businesses ('reporting entities') that provide particular 'designated services'.
- (b) Australian-licensed online wagering operators and other licensed gambling service providers are required to comply with the AML/CFT Act and Rules. If the provision of online poker were to be licensed in Australia, then online poker would fall readily within the ambit of "gambling services", as a "designated service" and any licensed online poker operators would be required to comply with the AML/CTF Act and Rules.
- (c) Among the obligations imposed by the AML/CTF Act and Rules on reporting entities (which would include licensed poker operators) are:
 - (i) customer identification and verification of identity obligations;
 - (ii) record-keeping obligations;
 - (iii) establishing and maintaining an AML/CTF program; and
 - (iv) ongoing customer due diligence and reporting obligations in respect of suspicious matters, threshold transactions and international funds transfer instructions.
- (d) Like Australian-licensed online wagering operators, Australian-licensed online poker operators could be recognised as "reporting entities" for the purposes of the AML/CTF Act and Rules. Other AML/CTF requirements and obligations with which they would be required to comply are:
 - (i) Services are not to be provided to a customer unless the operator has in place an anti-money laundering and counter-terrorism financing program. Section 84(1) of the AML/CTF Act requires that the standard anti-money laundering and counter-terrorism financing program is a

⁴⁷As above, Condition 14.

written program consisting of a Part A⁴⁸ and a Part B. Part B relates specifically to customer identification.

- (ii) The collection of information relating to new customers as set out in Part 4.2 of the AML/CTF Rules, namely collecting the customer's full name, date of birth and residential address, at a minimum, to comply with KYC requirements. Where the customer is considered medium or lower risk, this includes particular verification processes which depend on whether hard copy identification documents are submitted or verification is completed electronically. For example:
 - (A) Where verification is of hard copy documents, verifying is required of original or certified copies of primary photographic identification documents or from both an original or certified copy of a primary non-photographic identification document and secondary identification document. Documents must not have expired (unless an Australian passport which has expired within the preceding two years).
 - (B) Where verification is electronic, verification of the customer name and address should be conducted from at least two independent electronic sources and either (i) by verifying the customer's date of birth using one reliable and independent electronic data source or by (ii) verifying the customer has had a transaction history for at least the last 3 years. The processes used by electronic verification service providers are discussed at paragraph 8.5 below.
- (iii) The verification of customer information as set out in Part 4.2 of the AML/CTF Rules, pursuant to which licensed online poker operators would be required:
 - (A) to produce a written procedure for verifying the collected customer information which is based on:
 - (I) reliable and independent documentation;
 - (II) reliable and independent electronic data; or
 - (III) a combination of (i) and (ii) above.
 - (B) to develop appropriate risk-based systems and controls to determine whether any other additional information collected from the customer is also required to be verified.

⁴⁸ The primary purpose of Part A of a standard AML/CTF program is to identify, manage and mitigate money laundering or terrorism financing (ML/TF) risk a reporting entity may reasonably face in relation to the provision by the reporting entity of designated services at or through a permanent establishment in Australia.

- (e) Licensed online poker operators would also be required to put in place appropriate risk-based systems and controls to respond to any discrepancy which arises while verifying the KYC information so the operator can determine whether they are reasonably satisfied that the customer is the person they claim to be.
- (f) Licensed online poker operators would also be prohibited from providing services to a new customer prior to the completion of the customer identification process unless, in accordance with Part 10.4 of the AML/CTF Rules:
 - (i) the verification process is completed within 90 days; and
 - (ii) the customer is not permitted to withdraw any funds prior to the completion of the verification process.
- (g) If the identification process is not completed within 90 days, licensed online poker operators would be required to close the account.⁴⁹

7.10 Suspicious Matters

- (a) If the provision of online poker were to be regulated, Australian-licensed operators, as providers of a designated service, would be required to comply with the AML/CTF Act and Rules requirements in respect of suspicious matters.
- (b) Licensed online poker operators would be required to conduct verification of information within 14 days if a suspicious matter arises. Examples of suspicious matters include if the operator:⁵⁰
 - (i) were to suspect the customer is not who they say they are;
 - (ii) were to have information which the operator suspects on reasonable grounds:
 - (A) may be relevant in respect of an evasion or attempted evasion of a taxation law; or
 - (B) may be relevant to an investigation of, or prosecution of a person for, an offence against a law of the Commonwealth or of a State or Territory; or

⁴⁹ Section 34(1) of the AML/CTF Act requires that, if services have commenced pursuant to section 33 and the customer identification procedure has not been completed within the period specified in the Rules for “designated services” (ie 90 days), then the provision of the service is to cease within the period specified in the [Rules](#).

⁵⁰ Section 31(1) of the AML/CTF Act.

- (C) may be of assistance in the enforcement of the *Proceeds of Crime Act 2002* or regulations under that Act (or a corresponding State or Territory law); or
 - (D) considers that the provision (or prospective provision) of the service is preparatory to the commission of an offence in connection with the financing of terrorism or money laundering (or relevant to the investigation or prosecution of a person for such offences).
- (c) Accordingly, given the AML/CTF Act and Rules, there is already a legislative regime in place to regulate KYC and suspicious matters if the provision of online poker were to be regulated in Australia.

7.11 Game Security and Testing

- (a) In respect of game testing, iBus Media submits that, if online poker were to be liberalised, any proposed regulatory regime should include a requirement that online poker games be certified by a testing house which has been approved by the regulator. Certification requirements should be technical and stringent.
- (b) To ensure continual integrity, certified games should be checked a specified number of times during the term of the licence. Licences should not be issued until a certificate for each game the operator intends to offer has been provided to the regulator.
- (c) Whenever an operator wishes to add a new game to their portfolio, a regulatory requirement should be that a test certificate is required unless the operator can prove (usually via a software company) that the new game is simply an existing, approved game (where the random card generator and the game logic have been tested) with a new cosmetic appearance (a re-skinned game).
- (d) Indeed, the interactive gaming legislation which was in force in Queensland, the Australian Capital Territory and the Northern Territory prior to the IGA, required that gaming equipment, including equipment which records or checks authentication of players, could only be used by a licensee if the equipment had been approved by the regulator (or, in some jurisdictions, evaluated by an entity approved by the regulator).⁵¹ This legislation remains on the statute books (see below).
- (e) Australia has a long history of providing services in connection with the testing of gaming technology to ensure the technology's compliance with legislative requirements. The testing has addressed the issues of integrity and

⁵¹ Section 163 of the *Interactive Gambling (Player Protection) Act 1998* (Qld). Section 7.4.4 (d) of the *Gambling Regulation Act 2003* (Vic). Section 126 of the *Interactive Gambling Act 1998* (ACT). Section 41 of the *Authorised Betting Operations Act 2000* (SA) (wagering). Regulation 7 of the *Gaming Control (Internet Gaming) Regulations 2006* (NT).

various responsible gambling measures. Indeed, two of the world's largest gaming systems testing laboratories (which have licences in multiple jurisdictions throughout the world), BMM⁵² and Technical Systems Testing Pty Ltd (TST)⁵³, originated in Australia.

- (f) BMM and TST, as well as a number of other Australian testing laboratories, are members of the National Association of Testing Authorities (NATA), which is the Commonwealth government-endorsed provider of accreditation for laboratories. These operators have acquired considerable expertise since the late 1990s in providing testing services to operators in Australia and overseas. There are currently five facilities in Australia which have been accredited by NATA to test interactive gaming systems.⁵⁴
- (g) In addition to the above, for security and integrity reasons, it should be a condition of a licence that no employee of an online poker licensee take part in licensed games. It is noted that, under the laws applicable to online gaming in various States and Territories, this constitutes an offence.⁵⁵

8. Responsible Gaming Matters

8.1 As stated above, Australia already has in place a legislative regime which contemplates a licensing system for interactive gaming operators. This has the potential to regulate and grant licences in respect of interactive poker provided by Australian-based operators to Australian-based customers.

8.2 Existing regulatory and licensing frameworks in Queensland, Victoria, Tasmania, South Australia and the Northern Territory, in particular, mandate that licensees comply with numerous harm minimisation obligations. Such obligations include the provision of pre-commitment options, the ability to self-exclude and various responsible gambling and problem gambling assistance measures, each of which is discussed below.

8.3 Pre-commitment

- (a) Pre-commitment broadly refers to the ability of players to place limits on the amounts that they can deposit per day, week, month or year. It also includes the ability to request adjustments to reduce limits at any time by phone, email or live chat. However, requests to increase limits are subject to a cooling off period, usually of seven days.

⁵² See www.bmm.com.au.

⁵³ See www.tstglobal.com. TST is a member of the Gaming Laboratories International (GLI) group of companies.

⁵⁴ <http://www.nata.asn.au/index.php/facilitiesandlabs/?c=Interactive+gaming+systems&f=field4&parent=information+technology&k=22.2.1>. Accessed 9 October 2011.

⁵⁵ Section 173 of the *Interactive Gambling (Player Protection) Act 1998* (Qld). Section 7.4.6 (2) of the *Gambling Regulation Act 2003* (Vic). Section 133 of the *Interactive Gambling Act 1998* (ACT).

- (b) South Australia has the most prescriptive pre-commitment requirements in Australia.⁵⁶ If the provision of online poker services were to be permitted in Australia, the pre-commitment measures which apply to licensed interstate wagering operators in respect of providing services to consumers based in South Australia should apply to Australian-licensed online poker operators.
- (c) Indeed, South Australian pre-commitment requirements could serve as the benchmark which Australian-licensed online poker operators would be required to meet. South Australian pre-commitment requirements include the following:
- (i) Accounts cannot be used until the account holder has set a pre-commitment limit or chosen not to set a pre-commitment limit. There is no mandatory Government-imposed deposit limit.⁵⁷
 - (ii) Account holders must be able to set a pre-commitment limit for a fixed period of a minimum of 7 days.⁵⁸
 - (iii) The pre-commitment level must apply to net betting losses, deposits made or a combination of both.⁵⁹
 - (iv) Player requests to lower pre-commitment deposit levels must be immediately activated.⁶⁰ However, requests to increase pre-commitment deposit levels must be written and do not take immediate effect as they are subject to a delay of seven days.⁶¹ An obvious effect of this delay is that online poker players would not be likely (or able to) “chase losses”.
 - (v) An online poker operator would be required, at intervals of no less than 2 years, to contact each account holder who has chosen not to set a pre-commitment limit to offer the choice to set a pre-commitment limit.⁶²
 - (vi) Online poker operators would be required to provide account holders with the following information:

⁵⁶ Clause 7 of the South Australian *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice* http://www.iga.sa.gov.au/pdf/rules_forms_codes/AIBO-RGCode-r03.pdf.

⁵⁷ Clause 7(3)(c) of the South Australian *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice* http://www.iga.sa.gov.au/pdf/rules_forms_codes/AIBO-RGCode-r03.pdf.

⁵⁸ Clause 7(3)(a) of the South Australian *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice* http://www.iga.sa.gov.au/pdf/rules_forms_codes/AIBO-RGCode-r03.pdf.

⁵⁹ Clause 7(3)(b) of the South Australian *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice* http://www.iga.sa.gov.au/pdf/rules_forms_codes/AIBO-RGCode-r03.pdf.

⁶⁰ ⁶⁰ Clause 7(3)(f) of the South Australian *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice* http://www.iga.sa.gov.au/pdf/rules_forms_codes/AIBO-RGCode-r03.pdf.

⁶¹ Section 136 of the *Interactive Gambling (Player Protection) Act 1998* (Qld). Section 7.4.16 of the *Gambling Regulation Act 2003* (Vic). Section 76ZK of the *Gambling Control Act 1993* (Tas). Clause 7(3)(e) of the South Australian *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice*.

⁶² Clause 7(3)(d) of the South Australian *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice* http://www.iga.sa.gov.au/pdf/rules_forms_codes/AIBO-RGCode-r03.pdf.

- (A) an account balance:
 - (I) whenever money is withdrawn (other than to place a bet);
 - (II) whenever money is deposited into an account via an online transaction;
 - (III) whenever an online cash game is played or a tournament entered using the account; and
 - (IV) upon request from the account holder; and
- (B) an activity statement (which includes the details of each transaction since the last issued statement, including the amount, date, time and a description of the transaction⁶³):
 - (I) for each calendar month there are 25 or more transactions in respect of the one account;
 - (II) for each period of consecutive calendar months (up to 3) in which more than one transaction is conducted on a gambling account;
 - (III) at least once in each 12 month period following the provision of an activity statement;⁶⁴ and
 - (IV) where requested by a customer for the period nominated by the customer.⁶⁵
- (d) iBus Media notes that, given that all transactions are conducted electronically, players should be able to access their account and hand history for the life of their online poker account. Indeed, major offshore poker operators already provide this service.
- (e) In addition to the above prescriptive requirements in South Australia, both Queensland and Tasmania's regulatory regimes make provisions for operators to incur a penalty if they permit a player to make a deposit in excess of the player's own pre-commitment level.⁶⁶

⁶³ Clause 7(5) of the South Australian *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice* http://www.iga.sa.gov.au/pdf/rules_forms_codes/AIBO-RGCode-r03.pdf.

⁶⁴ Clause 7(4) of the South Australian *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice* http://www.iga.sa.gov.au/pdf/rules_forms_codes/AIBO-RGCode-r03.pdf.

⁶⁵ Clause 7(4A) of the South Australian *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice* http://www.iga.sa.gov.au/pdf/rules_forms_codes/AIBO-RGCode-r03.pdf.

⁶⁶ Section 136 of the *Interactive Gambling (Player Protection) Act 1998* (Qld). Section 76ZK of the *Gambling Control Act 1993* (Tas).

- (f) Furthermore, licensed interstate online wagering operators are required under the South Australian requirements to promote the availability of the pre-commitment scheme to customers and prospective customers in the following ways (which could be applicable equally to licensed online poker operators):
 - (i) on brochures, pamphlets and marketing information (other than advertising) that provides information on how an account may be established; and
 - (ii) as part of the welcome pack (however described) provided to an account holder upon account establishment; and
 - (iii) on the operator's website – both on the homepage and any point-of-sale page; and
 - (iv) on account balances (when provided in writing) and activity statements.⁶⁷
- (g) When increases to limits are requested, operators could also be required to send a communication to the player to the effect that increased limits give rise to increased risks.
- (h) Broadly speaking in the context of online cash poker games which are provided by offshore operators, when players take a "seat" at a virtual poker table, the operator provides the player with their account balance. The player then receives a prompt to state the maximum amount they want to stake for that game which, in any event, cannot exceed their pre-commitment level. The amount players bring to the table also cannot exceed a pre-determined table limit. When participating in online poker tournaments, in contrast, players will have already paid a one-off entry fee to take their place in the tournament, (which covers the costs of their participation in the tournament.) In other words, the controls referred to above can be utilised prior to any participation in the tournament.
- (i) While there does not appear to be any Australian regulatory requirement for player history to be analysed prior to processing requests to increase limits, the larger offshore poker operators conduct a security examination. The examination includes an analysis of past deposits (to confirm that there are no chargebacks), further identification checks and a review of the account holder's player history to ascertain whether there are any obvious signs of problem activity.
- (j) iBus Media supports the pre-commitment requirements in South Australia, which enable customers to set their own limits and contain appropriate controls. Such requirements would enable limits to be set at levels which

⁶⁷ of the South Australian *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice* http://www.iga.sa.gov.au/pdf/rules_forms_codes/AIBO-RGCode-r03.pdf.

allow players to build a bankroll (which is essentially the money a player has to play poker cash games or enter poker tournaments), which is a fundamental part of poker. Setting limits in this manner would acknowledge the objective of regulation, which is to ensure that Australian-based players use the sites of Australian-licensed operators.

8.4 Self-exclusion

- (a) Self-exclusion refers to the ability for players to exclude themselves from a website in the online context for a period of time.⁶⁸ Players should be able to request self-exclusion at any time day or night. Each State and Territory has presently a raft of self-exclusion requirements with which licensed online wagering operators are required to comply. If the licensing of online poker operators were to be permitted, it should be a requirement that licensees have in play appropriate measures enabling self-exclusion.
- (b) As with pre-commitment, South Australia also has the most prescriptive requirements in respect of self-exclusion.
- (c) South Australian online wagering account holders may request that they be excluded from playing on an operator's site by providing notice to the operator (**self-exclusion notice**).⁶⁹
 - (i) Notice is able to be given by email, fax, post, online or over the phone. Self-exclusion requests made over the phone are required to be actioned immediately by the operator. If lodged online, South Australia requires the operator to deal with the request within 24 hours of receiving the request.⁷⁰
 - (ii) Customers must be able to voluntarily exclude themselves for a fixed period or indefinitely.⁷¹
- (d) Self-exclusion facilities for South Australian customers must include the following:
 - (i) in the case of a gambling telephone line – the provision of a translation service (if requested);
 - (ii) provision for immediate referral to, or liaison with, a gambling health service;
 - (iii) in the case of indefinite exclusion – the provision for the review of self-exclusion notices with customers before notices are rescinded; and

⁶⁹ Section 137 of the *Interactive Gambling (Player Protection) Act 1998* (Qld).

⁷⁰ Clause 9(2) of the *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice*.

⁷¹ Clause 9(1) of the *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice*.

- (iv) the removal of excluded people from loyalty mailing databases.⁷²
- (e) iBus Media submits that self-exclusion measures of this type should form a condition of any licensing regime which provides for the licensing of online poker operators in Australia.
- (f) In addition to these South Australian requirements, Queensland legislation, for example, made the provision of self-exclusion features a requirement for the licensing of interactive gaming operators under the *Interactive Gambling (Player Protection) Act 1998* (Qld) (**Qld Player Protection Act**).
- (g) In Queensland, upon receipt of the self-exclusion notice, the online gaming operator was required to send a self-exclusion order to the player which prohibits the person from participating as a player in games and tournaments conducted by the operator and includes the name and address of at least 1 entity which provides counselling services for problem gamblers. An operator breaching this provision was liable to a penalty of 50 units.⁷³
- (h) In Queensland, a self-exclusion order took effect from the date the operator provided the order to the player and ended either 5 years later or on revocation.⁷⁴ Players had the ability to revoke self-exclusion orders, either within 24 hours of receiving the self-exclusion order or, otherwise, at least 1 year after receiving the self-exclusion order. In other words, players had a brief 24 hour cooling-off period in which to revoke a self-exclusion order or, otherwise, it would apply for at least 1 year.⁷⁵
- (i) Queensland also required operators who, on reasonable grounds, suspected that a player was problem gambling to issue an exclusion direction which prohibited the player from playing any games on the operator's site. The exclusion direction was required to contain information about the decision to exclude.⁷⁶ The exclusion direction was for a period of 5 years unless otherwise revoked (as a result of a review of the decision or the player's application to have it set aside at least one year after it was issued).⁷⁷
- (j) Both the Qld Player Protection Act and similar legislation in Victoria and the Australian Capital Territory⁷⁸ contemplate the licensing of online poker operators provided they provide self-exclusion and pre-commitment facilities.
- (k) Other common features of any self-exclusion regime are requirements that the user's account is blocked during the period of self-exclusion and that any

⁷² Clause 9(3) of the *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice*.

⁷³ Section 137A of the *Interactive Gambling (Player Protection) Act 1998* (Qld).

⁷⁴ Section 137A of the *Interactive Gambling (Player Protection) Act 1998* (Qld).

⁷⁵ Section 137B of the *Interactive Gambling (Player Protection) Act 1998* (Qld).

⁷⁶ Section 137C of the *Interactive Gambling (Player Protection) Act 1998* (Qld).

⁷⁷ Section 137E of the *Interactive Gambling (Player Protection) Act 1998* (Qld).

⁷⁸ Chapter 7 of the *Gambling Regulation Act* (Vic). *Interactive Gambling Act 1998* (ACT).

attempts by the user to open any new accounts are blocked. Any self-exclusion is irrevocable for at least a minimum period. Once a period of self-exclusion has ended, a player is required to request that their account be reactivated as reactivation is not automatic.

- (l) Operators could also be required to maintain a register of self-excluded and excluded players.⁷⁹
- (m) The regulator could also be required to maintain a self-exclusion or "black" list, similar to that managed by ARJEL (the online poker regulator) in France. Any player is permitted to add his/her name to the blacklist. Operators would be required to check the names on the black list prior to opening an account for any new player and to ensure that an account is not opened if that person appears on the black list. Operators are also required to perform checks of existing account holders against the blacklist at regular intervals.

8.5 Minors

- (a) Players must be at least 18 years of age to open a wagering account with an Australian-licensed wagering operator. As stated above, Australian wagering operators have KYC systems in place which prevent minors from opening accounts. These KYC systems are required so that wagering operators may comply with their obligations under the AML/CTF Act.
- (b) In addition to the above, the terms and conditions of Australian online wagering operators' websites require new account holders to agree that they are at least 18 years of age. Among the terms and conditions are conditions that the account holder will not allow a minor to use their account and will not disclose their account details and/or PIN or password to a minor. It is usual for the terms and conditions to also state that, should the operator become aware that a minor has used the account of another person, the operator may close the account. Most operators also have a complaint management policy which may be followed if a person wishes to raise a complaint about a minor.
- (c) iBus Media notes that there are many services providers globally who are able to provide electronic real time verification services as part of their KYC checks. Third party verification service providers can be engaged to verify the age of players. Age verification can be completed with reference to databases of records which verifiers can access and do not require players to provide a credit card number as proof of their age.
- (d) Verification can take place in real-time after the player enters the required data for verification. This is often a simple and quick process. For example, Aristotle International (**Aristotle**)⁸⁰, one such age verification service

⁷⁹ Section 76ZNE of the *Gaming Control Act 1993* (Tas).

⁸⁰ <http://integrity.aristotle.com/>. Accessed on 4 October 2011.

provider, allows online-based businesses to complete age verification using Aristotle's "Integrity" age verification software, in the following way:

- (i) The user clicks their country from a drop-down menu.
- (ii) The user enters information including their name, address and birth-date.
- (iii) The user then provides the number of one official government-issued ID. In order to do this, the user is required to:
 - (A) select the country which issued the ID from a drop down menu;
 - (B) select the type of ID from a drop down menu, for example, social security number, tax file number and passport number; and
 - (C) enter the number of the ID itself.
- (iv) The user then authorises the information they have entered to be checked against records of government issued IDs. The user gives this authorisation by clicking a box, in the same way they would agree to website terms and conditions – real time verification takes place once this box is ticked. In respect of Australia, for example, Aristotle has been able to access the Australian electoral rolls for a number of years.⁸¹
- (v) The user is then directed to another page, which sets out all the information they have provided and places a green tick against each item of information as it is verified. These ticks appear one after another as the service verifies each piece of information provided.
- (vi) The following information is also listed on this page:
 - (A) the “transaction ID” (the transaction is the verification itself);
 - (B) the sources/records used to complete the verification, for example, electoral roll and motor vehicle department records; and
 - (C) the user’s IP address and their ISP.
- (vii) There are a range of approaches that age verification service providers, such as Aristotle, use to analyse submitted information and validate age. This enables a risk-based approach that provides the proper level

⁸¹ In respect of Australia, Aristotle is already providing verification services to at least one Australian-licensed online wagering operator.

of compliance while protecting the privacy requirements of consumers. Aristotle, for example, also utilises video technology such as Skype, for example, to take photos of consumers and then verify these photos against photos on drivers' licences and in passports. The submitted financial information is also required to match this submitted and verified personal information (given names and surnames as well as residential addresses). Forms of identification used, such as drivers' licences, have a unique number which, once used by one individual cannot then be relied upon by another. The result of this is that children are unable to rely on their parents' identification documents to create an online adult identity.

- (viii) As can be seen from the above, there exists means which are already widely used for verifying successfully identity and age in an online environment. These means could be utilised readily as part of the means by which licensees can demonstrate that steps are being taken to prevent participation by minors in online poker activities.

8.6 Problem Gambling Assistance

- (a) Existing regulatory and licensing frameworks in Queensland, Victoria, Tasmania, South Australia, the Australian Capital Territory and the Northern Territory, among others, have numerous problem gambling assistance measures which could be applied easily to online poker operators wishing to be licensed in Australia. Examples of such measures include but are certainly not limited to the following measures:
 - (i) Licensed operators could be required to host a Responsible Gambling webpage on their website, which might provide contact details for counselling and advisory services and/or display a list of indicators, which may point to a user having a gambling problem. As well as displaying such information on their website, operators could be required to take reasonable steps to provide information about counselling and advisory services if a customer asks about problem gambling.⁸²
 - (ii) Licensed operators could be required to have a Responsible Gambling Code of Conduct which is approved by the regulator and displayed on the website. This is a requirement for interactive gaming operators licensed under the existing regulatory framework in Victoria.⁸³
 - (iii) South Australia requires operators to provide a copy of their responsible gambling materials to new players when their accounts are

⁸² Division 1.2.2 of the Code of Practice to the *Gambling and Racing Control (Code of Practice) Regulation 2002 (ACT)*. Section 6A(3) of the *Authorised Betting Operations Act 2000 (SA)*.

⁸³ Section 7.3.5A of the *Gambling Regulation Act 2003 (Vic)*.

opened and to provide players with a responsible gambling warning statement each time they are provided with their account statement.⁸⁴

- (b) Furthermore, licensed operators could be required to donate a portion of their revenue to problem gambling initiatives. This is a requirement in a number of jurisdictions overseas which permit the licensing of online poker operators. The Isle of Man, for example, requires online poker licensees to make a mandatory donation to a central fund which is used to promote research, support and education in respect of problem gambling.⁸⁵

8.7 Other Harm Minimisation Measures

- (a) There are numerous other harm minimisation measures which could be incorporated as a condition attached to an online poker operator's licence if online poker were to be licensed in Australia. Existing legislative regimes in Australia already have requirements in respect of personnel training. The proper training of personnel in respect of responsible gambling issues should be mandatory.
- (b) Operators could be required to provide responsible gambling information in employee newsletters and magazines and provide responsible gambling materials in the workplace to remind staff of policies and their responsibilities.⁸⁶ If the operator were to use an external provider for training, that training provider could be required to be appropriately accredited in a manner acceptable to the regulator.⁸⁷
- (c) Operators could be required to send automated messages to players when the player is approaching their loss or deposit limit. However, an automated message in respect of a time limit being reached in respect of online poker play is not as feasible or desirable to address harm minimisation issues as may be the case for other interactive games. A player would not be likely to leave a table or tournament in the middle of a poker game, which may be quite lengthy (as opposed to a person playing an online casino-type game, such as roulette or blackjack, which finishes quickly). In any event, when participating in online poker tournaments, a feature of this nature may be of lesser relevance as all fees for entry are payable prior to any play.

8.8 Advertising

Any regulatory regime for online poker should also provide controls to ensure responsible advertising. iBus Media submits that the most appropriate way of

⁸⁴ Clause 2 of the *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice*.

⁸⁵ <http://www.gov.im/lib/docs/gambling/externalguidancev5.pdf>. Accessed 14 October 2011.

⁸⁶ Clause 10(1)(d) of the *South Australian Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice*.

⁸⁷ Clause 10(2) of the *South Australian Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice*.

addressing this issue is for provision to be made for an Advertising Code of Conduct, which would be consistent with standards applicable to online wagering operators. The Code should only be introduced after consultation and taking into account comments of locally-licensed operators.

9. Taxation

- 9.1 If a regulatory regime were established to enable the licensing of online poker in Australia, and the supply of online poker services to Australians in a manner consistent with the recommendations of the Productivity Commission, then operators will be entitled to apply for an Australian licence. The Productivity Commission noted that, for companies to attract business in "an uncertain online environment", they need to be able to show consumers that they are trustworthy. One way companies can do this is by creating a recognisable brand. Operators would also recognise that, if they were to be licensed in Australia, this would also signal to consumers that the operator has met Australian regulatory requirements. However, any overseas operators considering whether to apply for an online poker license in Australia would consider all costs of doing business in Australia. One relevant factor would be the taxation likely to be payable. Other costs would include the cost of an application fee and any annual licence fee as well as the establishment and ongoing costs of doing business.
- 9.2 iBus Media considers that there are real dangers in setting a taxation rate which is too high. A tax rate which is too high would deter overseas operators from applying for an Australian licence and would result in Australian players continuing to use the sites of offshore operators for a better return. The taxation rates which apply to online poker operators in other jurisdictions should be considered when determining an appropriate rate of taxation.⁸⁸
- 9.3 The significance of setting an appropriate taxation rate may be illustrated by reference to the online wagering sector in the United Kingdom. The United Kingdom tax rate

⁸⁸ Tasmania has a taxation regime which was to apply to any online casino operators licensed in that State. The rate of taxation, which was to apply to operators with a Simulated Gaming (Internet Gaming) Endorsement in Tasmania, is based on a sliding scale determined by reference to gross profit. In respect of services provided to Australian customers, where gross profit:

- (a) is less than \$10 million, the tax rate is a flat rate of 20% (on the first \$10 million);
- (b) is between \$10 million and \$20 million, a tax rate of 17.5% is applied to the amount exceeding \$10 million; and
- (c) exceeds \$20 million, a tax rate of 15% is applied to the amount exceeding \$20 million.

In respect of gross profit derived from customers outside Australia, the tax rate is a flat rate of 4% of total gross profits derived from those customers.

applicable to online wagering operators is 15% of gross profits. Taxation at this rate does not appear to be sustainable. William Hill and Ladbrokes have moved part of their operations offshore for taxation purposes, although still maintaining their head offices in the United Kingdom, employing staff in the United Kingdom and remaining listed on the London Stock Exchange.

- 9.4 While iBus Media considers that determining an appropriate rate of taxation is an issue which should be considered in due course, iBus Media recognises that taxation would be a key factor of any licensing regime.

10. **Conclusion**

- 10.1 The popularity of online poker has grown enormously over the last decade. Australian consumers are playing poker online despite the prohibition on the provision of online poker services contained in the IGA.
- 10.2 The nature of poker enables it to be distinguished readily from other online casino-type games. Online poker may be characterised as a game of skill, as opposed to a game of chance.
- 10.3 Indeed, the PC Report recognised that online poker is readily distinguished from other forms of online casino-type games and presents the least risk to consumers of all online games. iBus Media strongly supports the Productivity Commission's findings in this regard.
- 10.4 The Productivity Commission ultimately recommended that the provision of online poker services by Australian-based operators to Australian-based consumers be permitted in a regulated environment. This is consistent with the regulatory position in a number of other industrialised countries and there appears to be a trend in other countries, such as the US, that this is the more appropriate regulatory structure to put in place.
- 10.5 If online poker were to be liberalised, as recommended by the Productivity Commission, then consideration would need to be given to the type of regulatory framework which would be appropriate for the licensing and regulation of online poker operators licensed in Australia.
- 10.6 iBus Media submits that any regulatory framework should address, at a minimum, the market model which should be adopted; the conditions which must be met for market entry; the requirements for the protection of player funds; strict probity standards; high standards of harm minimisation including mechanisms which facilitate pre-commitment and self-exclusion; strict know your customer requirements; procedures for addressing suspicious matters; game security issues; game testing requirements and the appropriate rate of taxation.
- 10.7 Despite the IGA, iBus Media acknowledges that many States and Territories already have legislative regimes which contemplate licensing systems suitable for regulating online poker services provided by Australian-based operators to Australian-based



consumers. These existing regulatory and licensing regimes, which have been imposed on online wagering and lottery operators, address the essential matters identified above and could be adapted easily to regulate the provision of online poker.

- 10.8 iBus Media looks forward to the Review's findings. If you have any questions in relation to this submission, please do not hesitate to contact Damon Rasheed at damon@pokernews.com.
- 10.9 In any event, iBus Media would be pleased to meet representatives of the Department of Broadband, Communications and the Digital Economy (whether or not as part of a public hearing) to answer any questions relating to this submission which the Department may have.

24 October 2011