

iBus Media Limited

Senate Community Affairs Committee

**The Prevalence of Interactive and Online Gambling
in Australia**

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1. Executive Summary

- 1.1 Over the last decade, there has been an enormous increase in the popularity of poker, both terrestrial and online. It is clear that poker is a popular form of entertainment and that there is great consumer demand for poker services. There can be no doubt that increasing numbers of Australians are playing poker online.
- 1.2 Online poker can be clearly distinguished from other forms of interactive gambling and wagering activities. Online poker is a game of skill, which is conducted peer-to-peer in a social setting.
- 1.3 The Productivity Commission's Inquiry Report: Gambling (**PC Report**) released on 23 June 2010 recognised that online poker may be readily distinguished from other online casino-type games. The Productivity Commission considered that online poker presented the least risk to consumers of all online games and recommended that the provision of online poker services by Australian-based operators to Australian-based consumers in a regulated environment be permitted expressly.
- 1.4 The experience in numerous overseas jurisdictions is that online poker can be effectively regulated and the most appropriate regulatory outcome is for a local licensing regime (incorporating effective harm minimisation measures) to be developed. Indeed, effective harm minimisation measures are easily and widely utilised by online poker operators, both voluntarily and as a requirement of licence conditions.
- 1.5 Furthermore, Australia already has numerous regulatory frameworks in place, which consist of State and Territory-based legislation, licensing systems and Codes of Conduct. Online poker could be regulated with minimal adaptation of these frameworks.
- 1.6 Given the clear demand for online poker, the implementation of legislation in Australia to enable the regulation of online poker would deliver considerable consumer benefits on the basis that mandatory effective harm minimisation measures would constitute an essential feature of any regulatory framework.

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. The majority of income is derived through affiliate agreements with the operators of these poker rooms. 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 27 different languages other than English and receives 11 million visits per month worldwide. iBus Media is the official internet provider of coverage for the major poker tours and tournaments around the world including the World Series of Poker (**WSOP**), European Poker Tour (**EPT**) and the Asian Pacific Poker Tour (**APPT**) and the Aussie Millions held at Crown Casino.

3. Introduction

- 3.1 Over the last decade, 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 active online poker player accounts grew by an even greater percentage from 45,480 in 2001 to 8,551,790 in 2009.¹

- 3.3 The social networking website www.facebook.com (**Facebook**) currently has over 500 million registered users. Software developers are able to create applications which interact with Facebook features. Facebook reports that poker applications are the most popular of all the applications available on Facebook.² Zynga Poker, for example, which has a Texas Hold'Em poker application available on Facebook, has 83.761 million active users per month.³

- 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 (given that, under the IGA, Australian-based operators are prohibited from offering online poker services) 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

¹ Global Betting & Gaming Consultants, "Interactive Gambling Report - Assessment of the interactive gambling market", April 2010 (**GBGC Report**).

² <http://www.ft.com/cms/s/2/7503cade-2222-11de-8380-00144feabdc0.html>

³ <http://www.facebook.com/TexasHoldEmPoker?v=info>.

Millions" tournament was staged in 1998, the prize pool was \$74,000 and there were ten participants from overseas, mainly New Zealand.⁴ This can be contrasted with the 2010 "Aussie Millions" event where more than \$15 million in prize money was awarded, with the winner collecting \$2 million and 746 players participating in the main event of the tournament.⁵

- 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 is held each December in Sydney. The "Grand Final" event held during the 2009 Sydney APPT tournament involved 396 players playing for a prize pool of \$2.376 million.⁶
- 3.7 Further information on the growth of both terrestrial and online poker in Australia can be found in iBus Media's April 2009 submissions (**First Submissions**) to the Productivity Commission's Gambling Inquiry, which was conducted during 2009.⁷ A copy of the First Submissions is enclosed and marked "A". The First Submissions refer to the growth of terrestrial poker in terms of:

- (a) 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.

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.

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, Fox8, Discovery Travel & Learning and the History Channel. Tens of thousands of viewers watched these programs. The series "Poker Premier League Poker" had 98,969 viewers alone.

During 2008, poker-related programs included various poker tournaments broadcast on a variety of cable television stations, which attracted thousands of viewers.

These have continued to be broadcast in 2009/2010.

- (b) The increase in membership of poker leagues, which organise poker events in clubs and pubs nationwide.

There are several independent poker leagues that operate around Australia, the largest ones being the Australian Poker League, the 888 Poker League and the

⁴ <http://www.aussiemillions.com/aussiemillions/>.

⁵ <http://www.aussiemillions.com/Page.aspx?ID=1455>.

⁶ <http://www.appt.com/news/index2.html>.

⁷ iBus Media Limited, *Submission to Productivity Commission: Gambling Inquiry*, April 2009 (**First Submissions**) at http://www.pc.gov.au/__data/assets/pdf_file/0005/87773/sub178.pdf.

National Poker League. It is estimated that the Australian Poker League currently has over 500,000. iBus estimates that, in total, more than 1 million people have played pub poker with one of these organisations over the last two years. members while the Australian Poker League currently has 300,000 members.

- (c) The increase in poker tables at casinos.⁸

The number of poker tables at Melbourne's Crown Casino has increased from 12 in 2001 to 64. Sydney's Star City Casino operated 12 poker tables in 2006, with the number having increased to 25 in 2010.

- 3.8 iBus Media website's, including pokernews.com and pokernetwork.com, have received a total number of Australian visitors of 2.9 million since records began in 2006. The number of absolute unique visitors from Australia, as determined by Google Analytics is 660,000 over the same period.
- 3.9 In respect of the growth of the online poker industry, GBGC found that, despite the prohibition on online gaming contained in the Interactive Gambling Act 2001 ("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 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 2013⁹.
- 3.10 The above demonstrates 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.
- 3.11 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. The New South Wales Office of Liquor, Gaming and Racing has issued guidelines recognising that poker tournaments can be legally played in Australia.¹⁰ Victoria¹¹, Tasmania¹², Western Australia¹³ and South Australia¹⁴ have similar guidelines.

⁸ First Submission, pages 12-14.

⁹ GBGC Report.

¹⁰ "Poker Tournaments in NSW": Guidelines. Available at:
http://www.olgr.nsw.gov.au/pdfs/Poker_Tournament_Info_0308.pdf.

¹¹ FAQ: "How do I play poker legally". Available at
<http://www.vcgr.vic.gov.au/CA256F800017E8D4/FAQ/2F8EB774B6BFA76ECA25706E002986E3?Open>.

¹² Tasmanian Gaming Commission "Poker Rules" January 2009. Available at:
[http://www.treasury.tas.gov.au/domino/df/df.nsf/LookupFiles/GamingRules-Poker.pdf/\\$file/GamingRules-Poker.pdf](http://www.treasury.tas.gov.au/domino/df/df.nsf/LookupFiles/GamingRules-Poker.pdf/$file/GamingRules-Poker.pdf).

¹³ 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.

¹⁴ 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

4. The Nature of Poker

4.1 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.

4.2 Game of Skill

(a) Poker involves an element of skill which enables poker to be treated differently 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.¹⁵

(b) How is poker played?

- (i) 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.
- (ii) 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.
- (iii) 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

guidance concerning poker tournaments in its Licensee Update – Spring 2007, see http://www.olgc.sa.gov.au/general/latest_news/Licensee_Updates/Sep07LU.pdf and http://www.olgc.sa.gov.au/general/Latest_News/LicenseesRePoker.pdf.

¹⁵ 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>.

up, these poker games require the deployment of analytical skills and strategy to perform well.

- (iv) 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 9 August 2010, had more than 4.184 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 [poker strategy](#) related websites that specialise in providing video content on how to play poker (see for example, www.cardrunners.com and www.deucesracket.com, strategy.pokernews.com). These sites have thousands of members that pay a monthly subscription fee, highlighting the considerable consumer interest in poker strategy.
- (v) 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.

(c) **Judicial Consideration**

- (i) 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.
- (ii) 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.
- (iii) Similar findings that poker is a game of skill rather than chance have been made overseas. Most recently in early July 2010, a Dutch court ruled that poker is a game of skill¹⁶. Dutch gambling laws specifically state that games reliant on luck or chance may only be played at state

¹⁶ <http://gamingintelligence.com/index.php/newsbites/4122-poker-a-game-of-skill-not-illegal-under-dutch-law> visited on 18 August 2010.

operated casinos and that casino-type games are games of chance. The defence successfully argued that poker was able to be distinguished from games of chance because the outcome depended on tactics, experience and psychology.

- (iv) The District Court of New Zealand was also recently required to determine whether poker is a game of skill and a form of gambling.¹⁷ 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**).
- (v) 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:
 - (A) 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.¹⁸ Therefore the advertisement promoting the poker tournament did not breach the relevant provision of the *Gambling Act*. The DIA is currently appealing this determination.
 - (B) Internet users are able to readily distinguish between play for free websites and play for money websites.
- (vi) 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.¹⁹

¹⁷ *Department of Internal Affairs v TV Works Ltd*, CR 08004505568-620, District Court (Auckland), Harvey J, 23 June 2010 (**TV Works Case**).

¹⁸ TV Works Case, [117]-[118].

¹⁹ <http://www.thelocal.se/19454/20090514/> visited on 18 August 2010.

- (vii) Many in the US are also promoting poker as a game of skill.²⁰ A recent study conducted in the US concluded that poker is a game of skill rather than luck:

"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."*²¹

- (d) 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.²² 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."*²³

4.3 Peer-to-Peer

²⁰ 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>.

²¹ 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/qlr.2008.12105>.

²² <http://gpsts.org/>.

²³ "Prof. Nesson Testifies Against Poker Criminalization" Available at: <http://gpsts.org/prof-nesson-testifies-against-poker-criminalization>.

- (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**). Therefore, poker can be distinguished from other gaming activities because it includes social and competitive dynamics and involves individual participants matching wits and skills against one another.
- (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) Because the game is played P2P, the poker operator has no stake in the final outcome of the game, regardless of whether they are a terrestrial or online operator. 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 game²⁴.
- (d) 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.

4.4 The IGA

- (a) 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.²⁵ In this regard, the IGA targets the supply of services rather than demand for the services.
- (b) "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.²⁶ It is arguable that, as a game of skill, poker and other skill-based games, like chess, bridge and backgammon, do not fall within the IGA prohibition. Accordingly, the extent to which this definition captures any online poker services is unclear, particularly as online poker was not contemplated when the IGA was introduced. Certainly, free-to-play websites which allow users to participate in tournaments at no cost would not be

²⁴ PC Report:15.22.

²⁵ IGA, section 6.

²⁶ IGA, section 4.

captured by the prohibition. Users do not provide or agree to provide any consideration before playing on such websites.

- (c) However, some forms of online gambling are exempted from the IGA. In particular, a range of online wagering and lottery services are not prohibited. The IGA does not distinguish online poker from:
 - (i) other casino-type games, such as roulette, blackjack;
 - (ii) online versions of EGMs; and/or
 - (iii) online bingo.
- (d) In our 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 (**DBCDE**) is able to exclude any service from the provisions of the IGA at his discretion.²⁷
- (e) The PC Report released on 23 June 2010 recognised that online poker can be clearly distinguished from other online casino-type games and that the provision of online poker services by Australian-based operators to Australian-based consumers should be permitted. The PC Report is discussed in detail below at [#].

5. Harm Minimization Measures

5.1 iBus Media's First Submission to the Productivity Commission outlined a number of harm minimisation measures, which could easily be used by Australian-based online poker operators, if the provision of online poker services were to be permitted in Australia under the IGA²⁸. These harm minimisation measures included:

- (a) undertaking verification checks of new players (such as 100 point checks) to prevent under-age access and reduce the risk of money laundering;
- (b) placing limits on the amounts that can be deposited by players per day, week, month or year;
- (c) imposing deposit limits on players relative to their incomes;
- (d) allowing players to self-impose betting limits and self-exclude themselves from a site for a period of time;
- (e) clearly and prominently advertising problem gambling help lines and warnings about the risks associated with gambling on their websites;
- (f) donating a portion of their revenue to problem gambling initiatives;

²⁷ IGA, section 10.

²⁸ First Submissions, page 23.

- (g) clearly showing a player's betting history so each player can monitor his or her wins and losses;
- (h) identifying problem gamblers with reference to an agreed standard and policy for identifying problem gamblers; and
- (i) employing strict measures to protect the privacy of players by ensuring that confidential or sensitive data is maintained securely at all times.

5.2 Furthermore, many of the measures listed above, which are routinely used by Australian online wagering operators, are not available to offline or terrestrial operators because offline operators are not able to access the same level of individual user data, which is collected by online operators.

5.3 The PC Report recognised that providing services online enables online operators to *"actively and cheaply provide a range of preventative and rehabilitative support to people at risk of developing a gambling problem. Similarly, the internet can be used to extend current treatment and counseling services for those seeking help"*.²⁹

5.4 In response to the Productivity Commission's Draft Report on Gambling, which was released in October 2009, iBus Media lodged further submissions with the Productivity Commission in December 2009 (**Second Submissions**). A copy of the Second Submissions is enclosed and marked "**B**". The Second Submissions identify and discuss numerous commonplace harm minimisation measures which have been adopted by off-shore online poker operators. In preparing the Second Submissions, a number of the major offshore online poker operators' websites (the **Poker Sites**)³⁰ were reviewed in late 2009 and the following harm minimisation measures were identified at that time as standard practice³¹:

- (a) Measures to restrict access by minors, including:
 - (i) When agreeing to the terms and conditions on the Poker Sites, users are required to acknowledge that they are at least 18 years of age at the time their account is created.
 - (ii) Name, address and birth date data is collected to confirm personal details. Fulltiltpoker.com (**FTP**), for example, uses Integrity Age Verification Services (**Integrity**) to ensure that players are at least the minimum legal age. Integrity's software verifies standard issue driver licence details or other government issued ID in respect of citizens of 157 countries. 888.com (**888**) also uses verification software as does Pokerstars.com (**PokerStars**). PokerStars initially restricts new players to low deposit limits and verification may be required where a player wishes to increase their deposit limit, transfer funds to other accounts or makes a request to withdraw over a certain value.

²⁹ PC Report: 15.22.

³⁰ www.partypoker.com; www.fulltiltpoker.com, www.pokerstars.com & www.888.com.

³¹ iBus Media Limited, *Second Submissions to the Productivity Commission: Gambling Industry (Second Submissions)*, December 2009, page 5 to 12 at http://www.pc.gov.au/_data/assets/pdf_file/0007/93796/subdr375.pdf.

- (iii) Users with minors in their households are encouraged to keep their password details secure and not activate the "save password" function on any gaming sign-in screen, nor to leave their computers unattended. Users are encouraged to create separate profiles for each user of their computer so that nobody else can access the user's information.
 - (iv) Users are also encouraged to keep their credit card and bank account details secured.
 - (v) If a user is aware of a minor accessing the online gaming software, each Poker Site provides an email address so that the relevant details can be emailed to the operator, including the user's player name.
 - (vi) Each Poker Site also encourages users with minors in their households to consider voluntarily using protection or filter software on their computer to limit access to specific websites and programs for underage users, for example netnanny.com or safekids.com.
 - (vii) The 888 Site provides parents with tips to prevent underage gambling and displays a link to an associated site, which focuses on responsible gaming and harm minimisation, www.888responsible.com. Online poker cannot be played on the site, which displays information about the possible causes of underage gambling; the identification and prevention of teen gambling problems; and how to support and communicate with teens with gambling problems.
- (b) Automated monitoring of player behaviour and targeted intervention, including:
- (i) The use of indicators, which are monitored by the customer service or security departments of online operators. Indicators include whether a person has lost a much larger amount than usual in a short time or is otherwise demonstrating an adverse and noticeable departure from past levels of activity. Should players on the PokerStars Site, for example, wish to increase their maximum deposit amount to participate in the highest level of games, they are first subjected to a stringent security examination during which, for example, their playing history is reviewed among other matters.
 - (ii) Monitoring of player behaviour is also required to ensure compliance with the anti-money laundering and funding of terrorism laws of the jurisdictions in which the online operators are licensed.
 - (iii) In instances where there is a marked departure from past behaviour, or where unusual patterns occur, the system will flag that activity and it is standard practice to refer the players to the responsible gambling departments of the operators for further investigation and/or intervention.

- (iv) Intervention activities may include a responsible gaming department staff member contacting the player and asking the player a series of questions to determine whether the player may be developing a gambling problem and/or to refer the player to assistance services.
 - (v) If not already doing so, it is certainly feasible that online operators would be able to send players an automated message when the player is approaching their loss or deposit limit. An automated message in respect of a time limit being reached is not so feasible or desirable for online poker operators (as opposed to operators of other interactive games). A player would not be likely to leave a table or tournament in the middle of a game, which may be quite lengthy (as opposed to a person playing an online casino-type game, such as roulette or black jack, which finish quickly).
 - (vi) Most online operators have automatic deposit limits which apply to all new players. Requests for increases are considered only after a security examination which includes an analysis of past deposits (no chargebacks), further ID checks and a review of the playing history to ascertain that there are no obvious signs of problem activity.
 - (vii) "Spelkoll" is an example of Swedish automated technology which monitors players' behaviour and is referred to in the PC Report.³² "Spelkoll" translates into "player or gambling control" and is designed to identify gambling patterns that may indicate a gambling problem surfacing in an individual. Svenske Spel, the Swedish company behind the technology, has made Spelkoll available as a voluntary aid, which players can use to monitor their playing activity and let them know of any indication of a developing problem.
 - (viii) Spelkoll checks over a hundred different parameters, such as rate of recurrence in play, habits, wagering levels and all indications of loss chasing. Users are divided into three different levels: green, orange and red. Each of the three levels has a corresponding response that will occur as someone moves through the ranks. The mid-range category of players, or orange players, are excluded from promotional activities and advertising. Those players who reach the red level will likely be invited to withdraw themselves from the site. The tool is a first in the industry and is proficient at exposing, at an early stage, gamblers with a propensity to develop a problem.³³
- (c) Effective self-exclusion, with measures including:
- (i) On the 888 and PokerStars Sites, users may request, for example, a cooling off period of 12 or 24 hours or 7 days; or self-exclusion periods of 30, 60 or 180 days or 6 months. During the period of self-

³² PC Report 15.23.

³³ Svenske Spel 2009, *Weekly Budget for Internet and Mobile Gambling*
<https://svenskaspel.se/p4.aspx?pageid=518#pinfo=526%2CnewsID%3D121815>.

exclusion, users' accounts are blocked. The self-exclusion period is irrevocable. On the PokerStars Site, once a six month period of self-exclusion has ended, a player is required to request that their account be reactivated as reactivation is not automatic. However, reactivation occurs automatically at the end of self-exclusion periods of less than six months.

- (ii) Users may request a period of self-exclusion by email, live chat or by phone at any time, day or night, seven days a week.
 - (iii) List of questions which would indicate that a user may have a gambling problem are provided for self assessment purposes on the Poker Sites. If a user's response is "yes" to a certain number of questions, it is recommended that they exclude themselves and obtain professional help.
 - (iv) During the period of self-exclusion, the opening of any new accounts by the user is also blocked as soon as detected.
 - (v) Operators also take steps to ensure that users who have self-excluded do not receive promotional materials and offers during the self-exclusion period.
 - (vi) Self-exclusion may exclude a user not only from real money games, but also from play money games.
- (e) User-specific exclusion software, which is readily available for users to download from the internet and activate thereby preventing themselves from accessing online gaming websites.
- (i) Software providers such as GamBlock produce a range of self-exclusion software, which may be downloaded from www.gamblock.com (**GamBlock Site**), which block all forms of online gaming. If a player, who has installed GamBlock software on their computer, were to try to access an online gaming website, a pop-up box appears which displays a 60-second countdown and, if the gambling site is not exited by the end of the countdown, the computer automatically shuts down. PokerStars, for example, provides a link to the GamBlock Site.
- (f) Pre-commitment examples include the following:
- (i) Each of the 888, Partypoker.com (**PartyPoker**) and PokerStars Sites allows users to set their own maximum limits over a period of time (usually daily, weekly and monthly deposit limits) adjustments to which can be requested at any time by phone, email or live chat. Usually the deposit limits vary according to the payment type. Some deposit limits are operator imposed, while others are mandated by the payment solution provider.

- (ii) New accounts on the PokerStars Site are set at a default limit. Player requests to lower pre-commitment deposit levels are immediately activated. However, requests to increase pre-commitment deposit levels do not always take immediate effect and may be subject to a delay. An obvious effect of this delay is that online poker players are not likely (or able to) “chase losses”.
- (iii) When players are taking a "seat" at a virtual poker table, the PokerStars Site provides them with their account balance and the player receives a prompt to state the maximum amount they want to play for that game which, in any event, cannot exceed their pre-commitment level.
- (g) The availability of online counseling.
 - (i) All of the Poker Sites display a list of indicators, which may point to a user having a gambling problem.
 - (ii) The Poker Sites display links to organisations in various jurisdictions providing counseling services to those with gambling problems, for example, Gamblers Anonymous, Gambleaware.co.uk, GamCare.org.uk, and Gamblingtherapy.org. The 888 Site, for example, displays a link to a webpage on the Gambler's Anonymous website, which features a 20 question self-assessment test for users to determine whether they might have a gambling problem.³⁴
 - (iii) In addition to the above, the Poker Sites provide other information which may assist users to keep out of debt and play poker responsibly. The 888 Site provides users with tips to keep out of debt, for example, not to play when depressed and not to borrow money to gamble. The PokerStars Site displays tips on how to play poker responsibly, for example, set deposit limits and not to play for higher stakes to try and recoup any losses.
 - (iv) The various Poker Sites have specific webpages dedicated to responsible gaming and many display a Responsible Gaming Mission statement.³⁵
- (h) Accreditation by independent testing bodies, such as e-Commerce Online Gaming Regulation & Assurance (**eCOGRA**), a non-profit organisation based in the United Kingdom, which is considered to be the independent standards authority of the online gaming industry.

³⁴ See

<http://www.888.com/new888/home.htm?page=fgrgambling&lang=en&S=581977649067469564&OS=581977649067469564&SR=104099&OSR=104099&flag=No&un=true&l=&ic=18&st=287&bc=123&anid=gai888eni888zzpoker&se=104099&isus=false&istur=false&isau=true¤cy=USD&osadcampaign=&iframe=no>, which displays a link to <http://www.gamblersanonymous.org/20questions.html>.

³⁵ See <http://www.pokerstars.com/about/responsible-gaming/>.

- (i) eCOGRA has set a number of operational and player practice standards, which when met by an operator, enable the operator to display eCOGRA's "Safe and Fair" seal on the operator's website (and be listed on eCOGRA's website www.ecogra.org as an approved site), which is indicative that the operator's website is a quality and safe site.
- (ii) eCOGRA's list of "Generally Accepted Practices" (**eGAP**)³⁶, with which operators' websites must comply to obtain a seal, include many practices which are of relevance to harm minimisation and which focus on minors and problem gambling. Some of the practices are considered minimum requirements, adherence to which is mandatory, whilst others are considered suggested practices (many of which are complied with by the Poker Sites) which, while contributing to the security of the environment, are not required to obtain a seal. Examples of these practices include but are not limited to the following:
 - (A) Payments to and receipts from players:
 - (I) mandatory requirement: players must be able to access their account history for at least the last month³⁷; and
 - (II) suggested practice: player account statements to be made available to players when requested³⁸.
 - (B) Minimum information requirements:
 - (I) mandatory requirements: complete transaction history affecting players' balances must be maintained for 12 months³⁹; player transaction records in respect of transactions exceeding €10,000 (individually or cumulatively) must be kept for at least 5 years⁴⁰ and all changes to game parameters must be reported⁴¹; and
 - (II) suggested practice: the system should generate the following information for all players: player details including verification method, account details, maximum bet levels, exclusion status, prior accounts and reasons for de-activation and session information.⁴²
 - (C) Underage and illegal gambling: homepages are required to display a "no under 18's (or 21's) sign, which provides a link to a message regarding underage play⁴³, the responsible gaming

³⁶ See http://www.ecogra.org/docs/eCOGRA_GAP_-_Approved_14_September_2009.doc.

³⁷ eGAP 100.R.5.

³⁸ eGAP 100.P5.

³⁹ eGAP 101.R.1.

⁴⁰ eGAP 101.R.2.

⁴¹ eGAP 101.3.

⁴² eGAP 101.P.4.

⁴³ eGAP 103.R.1.

page is required to provide a link to a filtering program which is recognised to allow players to prevent minors accessing the site⁴⁴, a disclaimer must be displayed stating that no players under the legal age are legally permitted to gamble online⁴⁵, a policy dealing with processes when underage gamblers are identified must be included⁴⁶, there must be controls and technology which will prevent players from excluded jurisdictions registering to play⁴⁷, a disclaimer must be displayed stating that only players who are legally permitted in their home jurisdictions may participate in online gambling⁴⁸, all of which are mandatory requirements;

- (D) Personnel training: the proper training of personnel in respect of problem gambling issues is a mandatory requirement;⁴⁹
- (E) Self-exclusion requirements: procedures for self-exclusion must be clearly communicated on the operator's site for a minimum period of six months, a cooling off option of at least 24 hours must be in place, and reasonable steps shall be taken to ensure players do not receive promotional material during the exclusion period, all of which are mandatory requirements;⁵⁰ and
- (F) Responsible gambling: operators' homepages must contain a clear link to a responsible gambling and player protection webpage which, at a minimum, displays a warning that gambling can be harmful, advice on responsible gambling and links to sources of assistance, a simple and accepted self-assessment procedure to determine if at risk, the player protection measures (self-exclusion and deposits) which are available, the responsible gambling policy or a link to the policy⁵¹, that players must be able to decrease their deposit limits on a daily, weekly or monthly basis with the decreases to be processed quickly whereas increases are only to be effective after 24 hours⁵², and a clock on the screen at all times⁵³, all of which are mandatory requirements.
- (G) eGAP also sets out stringent minimum requirements and suggested practices in respect of player and game funds, player information, software development and maintenance, total

⁴⁴ eGAP 103.R.3.

⁴⁵ eGAP 103.R.4.

⁴⁶ eGAP 103.R.5.

⁴⁷ eGAP 103.R.6.

⁴⁸ eGAP 103.R.7.

⁴⁹ eGAP 103.R.9.

⁵⁰ eGAP 103

⁵¹ eGAP 103.R.11.

⁵² eGAP 103.R.14.

⁵³ eGAP 103.R.14 .

gaming transaction review, server connectivity requirements, general gaming requirements, disaster recovery, system malfunctions; anti-money laundering, responsible advertising and promotions and probity checks.

- (iii) In addition to eCOGRA, other organisations, such as GamCare, provide a range of services in respect of harm minimisation. GamCare (www.gamcare.org.uk) is a United Kingdom-based registered charity, links to which are provided on, for example, PokerStars and PartyPoker. GamCare provides free online and face to face support, information and advice to anyone with a gambling problem. GamCare also provides a help line, a forum and a chatroom.
- (iv) GamCare also provides services to online gaming operators, for example, social responsibility training sessions for staff. A one day course provides staff with an insight into understanding problem gamblers and the sort of help that they should be expected to provide. Training is conducted on the basis that all working within the online gaming industry should be equipped to respond to any customer requesting help.
- (v) GamCare also works with online operators, licensing bodies and the United Kingdom government to ensure that online gaming is conducted in a proper, fair and responsible manner and that online operators take steps to minimise the likelihood of harm.
- (vi) GamCare proactively encourages online operators to engage in self-regulation and, in particular, encourages online operators to show their commitment to social responsibility by complying with a certification scheme, whereby operators are required to implement robust policies and practices relevant to their platform and gaming services. In this regard, GamCare provides assistance to operators to implement a range of systems, including age verification systems, responsive self-exclusion tools, and pro-active customer-led pre-commitment measures (session and deposit limits). The PokerStars, PartyPoker and 888 Sites have all been certified by GamCare.

5.5 Given the above harm minimisation measures are widely used by offshore online poker operators, it may be concluded that online poker operators are very conscious of having sufficient responsible gaming policies, harm minimisation strategies and procedures in place to ensure the integrity of the services they provide. Should online poker services be permitted in Australia subject to a strict regulatory regime, any or all of these widely used harm minimisation features identified above could become mandatory measures required to be used by Australian-based online poker operators,.

6. The Productivity Commission Report

6.1 As stated above, the PC report was released on 23 June 2010.⁵⁴ 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 the 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.⁵⁵

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.⁵⁶

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.⁵⁷ Furthermore, the Productivity Commission considered online poker to be the form of online gaming which involves the least risks because:

⁵⁴ <http://www.pc.gov.au/projects/inquiry/gambling-2009/report>.

⁵⁵ PC Report 15.17.

⁵⁶ PC Report, 15.1.

⁵⁷ PC Report 15.31.

- (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”.*⁵⁸

6.5 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.⁵⁹

6.6 Among other matters, the Productivity Commission recommended that, in respect of online poker⁶⁰:

- (a) The Australian Government should amend the IGA to permit the supply of online poker games. Online poker, along with other gambling forms currently exempted from the IGA, should be subject to a regulatory regime that mandates:
 - (i) strict probity standards; and
 - (ii) high standards of harm minimisation including:
 - (A) the prominent display of information on account activity and information on problem gambling and links to problem gambling resources;
 - (B) the ability of players to pre-commit to a certain level of gambling expenditure;
 - (C) the ability of players to self-exclude; and
 - (D) the display of automated self warnings arising from potentially harmful patterns of play.
- (b) The Australian Government should monitor the effectiveness of:

⁵⁸ PC Report, 15:31.

⁵⁹ PC Report, 15.31.

⁶⁰ PC Report, 15.34 to 15.35.

- (i) such harm minimisation standards; and
 - (ii) the performance of the regulator in overseeing a national regulatory regime.
- (c) The Australian Government should also evaluate whether:
- (i) the provision of online poker should continue to be permitted; and
 - (ii) liberalisation should be extended to other online gambling forms.

6.7 The PC Report also identified numerous harm minimisation measures referred to in iBus Media's First and Second Submissions.⁶¹

7. Australian Regulatory Framework

- 7.1 While online gaming operators are prohibited from providing gaming services to Australian-based customers by virtue of the IGA, in many States and Territories there are legislative regimes which contemplate licensing systems suitable for online operators. The legislative regimes are capable of regulating online gaming services provided by Australian-based operators to Australian-based customers.
- 7.2 Legislation specifically dealing with internet gambling exists in substantially similar terms in the Australian Capital Territory (ACT), Queensland and Victoria, which is largely based on the "Draft Regulatory Control Model for New Forms of Interactive Home Gambling" (**National Model**⁶²). The Gaming Ministers from all States and Territories agreed to a set of policy principles, which were reflected in the National Model, which was released in 1997. The policy principles included the regulation of licensing, various audit and inspection requirements, technical operations, and player protection requirements, including harm minimisation requirements, such as the ability to self-exclude and set limits.
- 7.3 This ACT, Queensland and Victorian legislation generally provides that a person must conduct or participate in an interactive game, knowing the game is not an authorised game, unless licensed.⁶³ In addition, Tasmania and the Northern Territory both have existing gambling legislation which contains provisions which clearly contemplate the licensing of interactive gaming operators in those jurisdictions.⁶⁴
- 7.4 The regulatory framework applicable to online gambling in Australia, in general terms, consists of the legislation identified above; the system of licensing which is in place in those States and Territories and Codes of Practice. Each of these have been imposed on online gambling operators and requires those operators to utilise various harm minimisation measures.

⁶¹ PC Report 15.22 to 15.28.

⁶² See http://www.aph.gov.au/Senate/Committee/it_ctte/completed_inquiries/1999-02/gambling/report/e06.pdf.

⁶³ *Interactive Gambling (Player Protection) Act 1998* (Qld), sections 16 and 164; *Interactive Gambling Act 1998* (ACT), sections 14 and 127; and *Gambling Regulation Act 2003* (Vic), section 7.2.2.

⁶⁴ *Gaming Control Act 1993* (Tas), sections 5A and 76B; *Gaming Control Act 1993* (NT), Part 4, Division 5.

- 7.5 In addition, testing laboratories based in Australia have the expertise to ensure that systems comply with regulatory and harm minimisation requirements
- 7.6 This regulatory framework (comprising legislation, a licensing system, and Codes of Practice) was in place before the enactment of the IGA in 2001.
- 7.7 Furthermore, various Australian-based operators were awarded licences to conduct online gaming activities prior to the 2001 enactment of the IGA, including but not limited to the following licences, which were issued before 2001:
- (a) GOCORP Limited (ACN 083 201 923), which was licensed by the Queensland government;
 - (b) Lasseters Casino Pty Ltd (ACN 080 397 306), which was licensed by the Northern Territory government; and
 - (c) Tattersall's, which was licensed by the Tasmanian government and then in the Australian Capital Territory.
- 7.8 The existing regulatory and licensing regimes in Queensland, Victoria, Tasmania, South Australia, the ACT and the Northern Territory, which have the ability to regulate and grant licences in respect of online gaming services provided by Australian-based operators to Australian-based customers, are described in further detail in iBus Media's Second Submissions.⁶⁵ In particular, legislation in Queensland, Victoria, Tasmania, the ACT and Northern Territory specifically permits the licensing of online gaming operators, while the South Australian legislation has a framework for online bookmakers, which could be adapted for online gaming operators. Each of these frameworks has specific provisions dealing with, for example, minors; pre-commitment; exclusion options (by self or operator).
- 7.9 The existing regulatory and licensing regimes referred to above and discussed in greater detail in the Second Submissions demand operators have many harm minimization measures in place as a condition of their license and reflect those measures identified in the PC Report.⁶⁶

8. Overseas Regulation of Online Poker

- 8.1 The Productivity Commission has acknowledged in the PC Report that the prohibition on online gaming has resulted in Australians only being able to use offshore sites⁶⁷.
- 8.2 As pointed out in the Second Submissions, when making any determination as to the appropriate regulatory framework for the regulation of Australian-based online gaming, the manner in which various licensing schemes in overseas jurisdictions operate should also be considered. In particular, the Second Submissions focused in detail on the harm minimisation measures required to be implemented by operators licensed in the United Kingdom, Alderney and the Isle of Man, each having

⁶⁵ Second Submissions page 25 to 36.

⁶⁶ PC Report 15.22 to 15.28.

⁶⁷ PC Report, 15.18.

liberalised the provision of online gaming services which are subject to a stringent regulatory framework.⁶⁸

8.3 United Kingdom, Alderney & the Isle of Man

- (a) The United Kingdom, Alderney and the Isle of Man each have particular requirements in respect of player protection, including restricted access by minors; responsible gambling information; exclusion procedures as well as anti-money laundering measures.⁶⁹ Many of the harm minimisation features identified in the PC Report are a requirement of the licence conditions of online poker operators licensed in the United Kingdom, Alderney and the Isle of Man.

8.4 Italy

- (a) The regulatory system which permits the licensing of online poker operators in Italy was also discussed at length in the Second Submissions.⁷⁰ In addition to the legislation referred to in the Second Submissions, we note that the conduct of online poker by Italian operators was first introduced in March 2008 when the Remote Skill Gaming Rules were implemented. Under these Rules, poker is defined as a game of skill, on the basis that any monetary winnings are largely dependent on the skills of the players.

8.5 In addition to the regulatory regimes referred to in the Second Submissions, the following jurisdictions among others, also permit the licensing of online poker operators:

8.6 Malta

- (a) In 2004, Malta became the first European Union member to regulate the provision of online poker services. iBus Media's First Submissions briefly referred to the system of licensing for online poker operators in place in Malta.⁷¹
- (b) The provision of online poker in Malta is regulated by the *Remote Gaming Regulations 2004*⁷² (**RGR**), which are issued under the *Lotteries and Other Games Act 2001* (**LOGA**). The Lotteries and Gaming Authority (the **Authority**) is responsible for licensing administration matters.
- (c) There are four classes of licences available and poker, being a P2P game, is covered by a Class 3 license which is specifically for remote gaming conducted from Malta.⁷³
- (d) Malta requires online gaming operators to comply with various requirements, which are set out in the RGR. In respect of mandatory harm minimization

⁶⁸ Second Submissions, page 13 to 19.

⁶⁹ Second Submissions, pages 13 to 19.

⁷⁰ Second Submissions, page 19-20.

⁷¹ First Submission, page 29.

⁷² <http://www.lga.org.mt/lga/content.aspx?id=87374> visited on 28 July 2010.

⁷³ Schedule 1 to the *Remote Gaming Regulations 2004* (**RGR**).

measures, online poker operators licensed in Malta are required to restrict access to those over 18 and to carry out age verification checks.⁷⁴ Maltese licensees are also required to provide specific mechanisms for player protection. All registered players must be able to set limits on the following for online casino type games (except for online poker):

- (i) the amount wagered within a specific time;
 - (ii) the amount of losses incurred within a specific time; and
 - (iii) the amount of time spent playing in any one session.⁷⁵
- (e) The above are not mandatory for online poker operators because the Authority considers that poker is clearly distinguishable from other casino-type games on the basis that:
- (i) poker is not a repetitive game;
 - (ii) online poker players are not likely to lose track of time; and
 - (iii) each poker game has a start and finish point at which players are conscious of their wins, losses and account balance.⁷⁶
- (f) Players must be able to exclude themselves from playing for a definite or indefinite period of time.⁷⁷ In addition, while players are able to revoke a limit or decrease an exclusion, licensees are only able to action such a request once seven days have passed from the date of the player's request.⁷⁸ However, licensees are required to immediately action a player's request to set a limit or self-exclude.⁷⁹
- (g) It is also a mandatory requirement for online poker operators licensed in Malta to display a counter on the screen at all times during the game which automatically updates and shows the player's account balance.
- (h) In addition, licensees for other types of online casino games (not poker) are required to display an "automatic reality check" at intervals of an hour which must:
- (i) suspend play;
 - (ii) clearly indicate for how long the player has been playing;
 - (iii) display the player's winnings and losses during each time period;
 - (iv) requires player confirmation that they have read the message; and

⁷⁴ RGR 32.

⁷⁵ RGR 43.

⁷⁶ http://www.lga.org.mt/common/file_provider.aspx?id=634081501182345000 visited on 18 August 2010.

⁷⁷ RGR 43(1).

⁷⁸ RGR 43(2).

⁷⁹ RGR 43(4).

- (v) provides the player with an option to end the session or return to the game.⁸⁰
- (i) The websites of online poker operators must also display links to websites of organisations specialized in helping problem gamblers which are approved by the Authority.

8.7 France

- (a) France recently liberalised its online gaming laws. The provision of online poker services by operators licensed in France is regulated by the Online Gaming Regulatory Authority (**ARJEL**). Online poker is permitted under Law No. 2010-476, which opened up the French market to competition in the online gaming sector together with a number of decrees:
 - (i) Decree No. 2010-482: Online gaming: Conditions for granting authorisations to online gaming operators; and
 - (ii) Decree No. 2010-518: Availability of online gaming and gambling services.
- (b) The French Law and Decrees contain numerous sections dealing with the ways in which licensed operators must act to combat problem gambling. The requirements include specific information that must be prominently presented to all players on the website and in all commercial communications.
- (c) When opening an account with an online operator, operators must demand that each player set an individual deposit and playing limit. Furthermore, until the identity of each player has been verified by providing identification documentation and supporting bank account information, players are only permitted to open a temporary account. Players are unable to withdraw funds from temporary accounts, which will be closed if the player does not provide the necessary identification documentation within one month.
- (d) In addition, ARJEL manages a central blacklist. Players are permitted to add their names to the blacklist. Operators are required to check any new players against the blacklist prior to opening an account. Operators are also required to perform checks of existing accountholders against the blacklist at regular intervals.
- (e) Other online games are not currently permitted under the French regulatory framework because the French government considered that these other games were higher risk activities than online poker.

8.8 Estonia

- (a) In January 2010, the *Gambling Act 2009* came into force which permits locally-based Estonia operators to obtain a license to provide online poker services. From 2011, overseas-based online poker operators will be permitted

⁸⁰ RGR 44.

to apply for a license in Estonia provided they meet certain requirements of the Estonian government. Licensees are required to provide, for example, measures which exclude minors from participating in gaming, warnings concerning problem gambling and the contact details of organisations which provide help to problem gamblers.⁸¹

9. Other Overseas Regulatory Developments

9.1 A number of other European-based countries, including Denmark, Belgium, Greece and the Czech Republic are moving closer to creating a regulatory framework whereby it is anticipated that private operators will be permitted to obtain licenses in those jurisdictions to provide online poker. Furthermore, in other countries such as Spain and Ireland, signs are favourable that these jurisdictions will give serious consideration in the near future to permitting the provision of online poker services which are locally regulated within those jurisdictions.

9.2 Belgium

- (a) In early 2010, Belgium announced that a regulatory framework was to be established which allows for the licensing of online poker operators. The framework and licensing system will be administered by the Belgium Gaming Commission. The proposed framework, which is reportedly to be in operation by January 2011, will require any prospective online poker operator to first obtain a license for terrestrial-based gambling in Belgium before they can apply for a license to offer internet gambling. Furthermore, a cap is to be placed on the number of licenses for internet operator licenses⁸².

9.3 Denmark

- (a) In June 2010, the Danish parliament passed laws which liberalised online gambling and provided a licensing framework for online gambling operators. However, land-based operators licensed in Denmark have objected to the laws on the basis that they believe that the laws are unfair because the online operators will pay less tax than terrestrial-based operators. Accordingly, the laws are to be considered by the European Commission and their implementation in January 2011 may be delayed.⁸³

9.4 United States

- (a) iBus Media's Second Submissions referred to the position in respect of online gaming in the United States.⁸⁴ In particular, the Second Submissions referred to the *Wire Act* 18 USC § 1084 and the *Unlawful Internet Gambling Enforcement Act (UIGEA)*. Since the Second Submissions were prepared in

⁸¹ http://www.gamblingcompliance.com/files/Estonia_Reg_Report.pdf.

⁸² <http://gamingzion.com/gamblingnews/belgian-online-gambling-to-arrive-in-2011-1280> visited on 18 August 2010.

⁸³ <http://www.recentpoker.com/news/danish-gambling-law-7583.html> visited on 18 August 2010.

⁸⁴ Second Submissions, page 30 to 32.

December 2009, there have been further regulatory developments in the United States.

- (b) The UIGEA, which prohibits the transfer of funds from financial institutions to internet gambling sites, took effect on 1 June 2010.⁸⁵
- (c) On 28 July 2010, the proposed *Internet Gambling Regulation, Consumer Protection, and Enforcement Act (HR 2267)* was passed by the House of Representatives Financial Services Committee by an overwhelming, bipartisan vote of 41-22. HR 2267 authorises the US Secretary of the Treasury to create a regulatory system for the licensing of internet-based online poker, among other matters.⁸⁶ HR 2267 is now eligible for voting in the House of Representatives.⁸⁷
- (d) At a State level, both California and Florida conducted hearings earlier this year in respect of proposals to allow intrastate online poker regulation. New Jersey and Iowa are also considering proposals which would allow for online gambling.⁸⁸

10. Conclusion

- 10.1 The popularity of online poker has grown enormously over the last decade. Clearly online poker is a popular form of entertainment. Australian consumers are playing poker online despite the prohibition on the provision of online poker services contained in the IGA.
- 10.2 The PC Report recognised that online poker may be 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.
- 10.3 The nature of poker enables it to be easily distinguished from online casino-type games. Online poker may be readily characterised as a game of skill, as opposed to a game of chance. Online poker is also played P2P in a social setting in contrast to other online casino-type games. Participants in online poker games play a meaningful role because of their use of psychological, mathematical and other skills. Numerous courts in different jurisdictions, including Australia, have determined that poker is a game of skill rather than chance.
- 10.4 Furthermore, in contrast with other forms of online games, online poker operators have no stake in the final outcome of the poker games.
- 10.5 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 industrialized countries and there appears to be a trend in other

⁸⁵ http://en.wikipedia.org/wiki/SAFE_Port_Act.

⁸⁶ <http://www.govtrack.us/congress/bill.xpd?bill=h111-2267&tab=summary>.

⁸⁷ <http://www.govtrack.us/congress/bill.xpd?bill=h111-2267>.

⁸⁸ GBGC "Interactive Gambling Report: Assessment of the interactive gambling market", April 2010, page 24.

countries, such as the US, that this is the more appropriate regulatory structure to put in place.

- 10.6 While the IGA prohibits online gaming operators from providing gaming services to Australian-based consumers, 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 other types of online gambling operators, demand that the operators implement many harm minimisation measures as a condition of their licence. These harm minimisation measures reflect those measures identified in the PC Report and our First and Second Submissions to the Productivity Commission.
- 10.7 When making any determination as to the appropriate regulatory framework for the regulation of Australian-based online operators, the requirements of various overseas licensing schemes should be considered. The experience overseas is that online poker can be effectively regulated, which is illustrated in the Gambling Commission's Submissions. The major overseas Poker Sites referred to above illustrate that effective harm minimisation measures can be easily and widely implemented by online poker operators.
- 10.8 In conclusion, the experience overseas indicates that an online regulatory framework, which allows for the provision of online poker services, can both deliver considerable benefits to consumers and include effective harm minimisation measures as an essential feature.
- 10.9 iBus Media considers that a similar framework could be introduced in Australia.
- 10.10 iBus Media looks forward to the Community Affairs References Committee's (**Senate Committee**) findings.
- 10.11 In any event, iBus Media would be pleased to attend any public hearing convened by the Senate Committee to answer any questions relating to this submission which the Senate Committee may have.

25 Aug 2010