

**iBus Media Limited
Submission to Productivity
Commission**

Gambling Inquiry

April 2009

Executive Summary

Online poker has experienced tremendous growth due to the increase in participation, globally, in the game of poker. 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.

Prohibition has been used as a means to address the social harm of online gaming. It is clearly ineffective: research shows a significant and increasing number of Australians engaging in online poker, despite the prohibition under the Interactive Gambling Act 2001 (Cth)¹.

A managed, regulated system is the most appropriate method of harm-minimisation. The ability and capacity already exists for online gaming to be regulated to the same standard, if not to a greater standard, as terrestrial gambling. Also, the IG Act creates an illogical distinction by permitting online wagering and sports betting whilst banning online games involving skill, such as poker.

This paper submits that a special case exists for online poker to be regulated and its prohibition under the IG Act to be removed.

About PokerNews

PokerNews is the main trading name of iBus Media Limited - the world's largest poker media company. The company 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.

PokerNews' network's 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.

The flagship website, PokerNews.com, is translated into 26 different languages and receives 11 million visits per month worldwide. In 2007 and 2008, we were the official media outlet for internet coverage for the World Series of Poker (the industry's premier poker series).

... ¹ Referred to in this submission as the "IG Act".

A) Introduction

The current decade has witnessed an explosion in the popularity and growth of online gaming in general, and more specifically, online poker.

According to statistics provided by Global Betting and Gaming Consultants (**GBGC**),² the world's preeminent source for global online gaming data, Gross Gaming Yield (**GGY**)³ (defined as net gaming operator revenue) for the online gaming sector as a whole⁴ increased nearly six-fold from approximately \$3.430 billion (USD) in 2001 to roughly \$20.368 billion (USD) by the close of 2008. Moreover, active player accounts increased by a factor of more than eight from 4,061,000 to 33,038,000 during this same period.

As significant as the statistics above may seem, this rate of growth has been dwarfed by the growth of poker over the same period. Due, in a large part, to the development and implementation of the "hole card camera" (which allows viewers to see the hole cards of the individual players while the hand is still in progress) and the resultant impact this has had on television ratings for poker tournaments and the expansion of poker related television programming⁵, poker has experienced exponential growth during the last decade. According to GBGC, the global GGY for online poker grew to \$3.495 billion (USD) by the close of 2008, up from \$33.3 million (USD) in 2001. Active player accounts for online poker grew by an even greater percentage to 6,829,000 in 2008 from 45,480 in 2001.

As the online gaming sector is in its infancy relative to many other industries, the existence (if any) and the manner of regulation varies greatly from one jurisdiction to the next. Many jurisdictions have enacted various forms of regulation and issue licences to operators who meet stated criteria; others have attempted to enact wholesale prohibitions with respect to some or all of the individual online gaming activities. Of the markets that have opted for a prohibitionist approach, some have done so under the guise of "consumer protection", others have done so with the apparent intent of protecting state run monopolies from foreign competition. Some individual jurisdictions and their practices will be examined later in this paper.

... ² Global Betting & Gaming Consultants "Interactive Gambling Report – Assessment of the interactive gambling market" March 2009 (**GBGC Report**). GBGC was established by its Chief Executive Warwick Bartlett during 1998. Mr Bartlett has an extensive track record in the gambling industry spanning 40 years. GBGC has established itself as one of the most credible specialist international gambling consultancy in the world. The company has worked with or supplied information to over 400 clients the majority of whom are 'blue chip', ranging from leading financial institutions such as UBS and Dresdner Kleinwort to leading operators like William Hill plc.

... ³ GGY can also be defined as turnover less amounts paid out to players as winnings.

... ⁴ Includes sports betting, casino, poker (as a separate category), bingo, other skill games and lotteries.

... ⁵ Including but not limited to the World Series of Poker, World Poker Tour individual events, Aussie Millions, other regional poker tours and tournaments such as the European Poker Tour and the Asia Pacific Poker Tour and other regularly broadcast series such as Poker After Dark, Celebrity Poker Showdown and Poker Million, among many others.

Nevertheless, the principal online gaming operators who provide services globally do so under licences granted by their home jurisdictions. As previously mentioned, the qualifications do in fact vary from one licensing jurisdiction to another; however the more stringent regulatory models require operators to, and a number of operators of their own accord do, utilise programs and/or systems to:

- prevent underage play;
- identify potential problem gamblers, make those in need aware of available programs and otherwise promote responsible gaming;
- implement appropriate Know-Your-Customer (K-Y-C) procedures in an effort to prevent fraud or other systemic abuses;
- ensure fair play through regular audits of random number generators (RNGs);
- ensure system integrity (and as a result, fair play) by conducting regular, comprehensive system audits; and
- identify, prevent and/or report suspected money laundering.

This list is by no means exhaustive, but it does highlight some of the most important measures employed currently by the more responsible online gaming operators.

These operators have a keen interest in the introduction of online gaming regulations and would welcome the opportunity to apply for and receive licences in Australia as well as every other market around the world. Unfortunately, in many jurisdictions, regulations do not address appropriately the expansion of e-commerce and, with respect to online gaming and especially online poker (given the online gaming statistics set out above), the clear will of the people.

As a result, the laws relative to online gaming from one jurisdiction to the next (and even within individual jurisdictions) tend to be quite uneven, often leaving online gaming operators to conduct business in uncertain legal and regulatory climates featuring varying “shades of gray”. Throughout this paper, we hope to demonstrate the advantages of a regulatory model that attempts to regulate, rather than prohibit, online gambling. We also hope to demonstrate that harm minimisation can in fact be better achieved through a permissive approach to regulation as opposed to policies that promote outright prohibition. In this regard, it is proposed that Australia should consider amending or repealing the IG Act – which has quite clearly failed to accomplish its stated objectives – and instead, choose to implement a model whereby the most responsible online gaming operators may attain a licence to operate in Australia.

B) The Netbets Report

On 25 June 1999, the Senate Select Committee on Information Technologies (SSCIT) was convened to inquire into online gambling in Australia, in order to examine:

- the nature, extent and impact of online gambling in Australia;

- the feasibility of controlling access to online gambling, especially by minors;
- the adequacy of State and Territory regulations in relation to online gambling; and
- the need for federal legislation.⁶

After public consultation, in March 2000 the SSCIT released its report entitled “Netbets – A review of online gambling in Australia” (**Netbets Report**).

Among other things, the SSCIT concluded that regulation and managed liberalisation of the online gaming industry was preferable to prohibition. At paragraphs 3.118 and 3.119 of the Netbets Report, it was stated:

“The Committee believes that a prohibition would be difficult and expensive to implement, and is not guaranteed to prevent an increase in problem gambling. Rather than preventing access by problem gamblers to online gambling sites, it is more likely that a prohibition would steer them to overseas-based gambling sites that are only a mouse click away and fail to address problem gambling. A prohibition would also detract from the benefits associated with online gambling, such as the development and enhancement of e-commerce systems and infrastructure, and providing a legitimate entertainment outlet for responsible gamblers.

The implementation of harm minimisation policies is the favoured option as it is easier to implement and is likely to produce a more certain outcome. The policies proposed by the Committee are suited to Internet technology and could be implemented by State and Territory Governments who are skilled in the regulation of gambling. Problem gamblers would be attracted to Australian sites that are regulated and guaranteed by domestic governments, thereby minimising the risk posed by overseas-based sites.”

PokerNews submits that the findings of the Netbets Report are still valid today and regulation of the online gaming industry is preferable to prohibition.

It should also be noted that the Productivity Commission’s first inquiry into the Australian gambling industry in 1999⁷ did not recommend a policy of prohibition towards online gambling. Rather, the findings suggested a permissive approach. Two of the key findings from the Productivity Commission’s first report included:

- *“Policy approaches for the gambling industries need to be directed at reducing the costs of problem gambling — through harm minimisation and prevention measures — while retaining as much of the benefit to recreational gamblers as possible.”*

... 6 Netbets Report available at:
http://www.aph.gov.au/Senate/Committee/it_ctte/completed_inquiries/1999-02/gambling/report/contents.htm

... 7 Productivity Commission “Australia’s gambling industries” Inquiry Report, Report No. 10, 26 November 1999. Available at: <http://www.pc.gov.au/projects/inquiry/gambling/docs/finalreport>

- *“Internet gambling offers the potential for consumer benefits, as well as new risks for problem gambling. Managed liberalisation — with licensing of sites for probity, consumer protection and taxation — could meet most concerns, although its effectiveness would require the assistance of the Commonwealth Government.”*

C) The National Model

The findings of the Netbets Report were consistent with the Draft Regulatory Control Model for New Forms of Interactive Home Gambling (**National Model**). The National Model was released on 23 May 1997 by Gaming Ministers from each Australian State and Territory and formed the guiding principles of the regulation of online gaming in their respective jurisdictions.⁸

The National Model states:

“The objects of the legislation include facilitating the offering of interactive home gambling products, protect the rights of players, enable free access to the National market and to promote competition and quality of services to players. The legislation will seek to ensure the integrity of industry participants, honest conduct of interactive home gambling, minimise the incidents of harm cause by problem gambling and allow for the proper accounting of taxes.”

The National Model further states:

“Apart from the Territories Office the Federal level of government does not play an active part in the administration of the Model. Provided all States and Territories participate in the Model the assistance of Federal bodies is unnecessary to provide effective regulation of interactive home gambling products sourced from within Australia. The Model does not propose Federal action to attempt to block the entry of overseas products delivered over the internet or by foreign satellites.”

The National Model recommended a regulatory model which included reciprocal recognition of licences granted in jurisdictions participating in the National Model. Accordingly, any operator licensed in a participating jurisdiction would be free to advertise and provide services to all Australian residents subject to terms and conditions applying to the relevant licence (e.g. age limits).

Legislation was enacted by Queensland, Victoria and the ACT in accordance with the National Model.

A mutual recognition system similar to that envisaged in the National Model is now being implemented through the “white listed” countries system administered in various jurisdictions, such as the UK, Italy and possibly France.

D) Interactive Gambling Act

Despite the findings of the Netbets Report and the earlier release of the National Model, the Commonwealth passed the IG Act in 2001 which prohibited a person from providing an

... ⁸ Paragraph 1.17, Netbets Report.

Internet gambling service to Australian residents and to certain “designated countries” (subject only to limited exceptions).⁹

It is relevant to note that there was considerable opposition to the IG Act when it was introduced. Indeed, the IG Act was preceded by the Interactive Gambling Act (Moratorium) Bill 2000 which initially failed to pass the Senate in a 33 to 33 hung vote.¹⁰ The Bill only passed after an exception was provided for online wagering.¹¹

The Interactive Gambling Bill 2001 itself only passed the Senate following numerous amendments in order to obtain the approval of minor political parties such as the Greens.¹² The government’s steps to ban online gaming was strongly criticised by the opposition, being, at the time, the Australian Labour Party. In numerous media releases throughout 2000 and 2001, Senator Kate Lundy (at the time, Shadow Minister for Sport and Youth Affairs and Assisting on Information Technology) highlighted the ill-conceived and flawed nature of the legislation.¹³ In a media release dated 7 June 2000, Senator Lundy stated *“This backward-looking approach defies the recommendations of the Productivity Commission and disregards genuine efforts by some States to implement a regulated licensing regime for Internet gambling that pursues best practice and addresses a range of concerns, including under age access.”*¹⁴

On 10 August 2000, Senator Lundy stated:

“A moratorium or ban on Internet gambling will simply send on-line gamblers offshore or underground - it will not solve community apprehension about gambling in Australia.

Evidence presented to Netbets, a Senate inquiry into online gambling and the Productivity Commission report make it clear that a moratorium or ban will not adequately protect Australian citizens from dodgy Web sites that will potentially rip them off. What is needed is federal leadership to regulate gambling sites online -not blanket bans that falsely imply that the Internet itself can be effectively controlled.

... ⁹ Section 15, IG Act.

... ¹⁰ Senate Official Hansard No 14, 2000, Monday 9 October 2000, page 18145. Available at: <http://www.aph.gov.au/hansard/senate/dailys/ds091000.pdf>

... “Senator Lundy – Media Release “Opportunity for national leadership on Interactive gambling” 10 October 2000. Available at: <http://www.katelundy.com.au/oct00.htm>

... ¹¹ Senator Lundy – Media Release “Alston bank flip on Interactive gambling” 5 December 2000. Available at: <http://www.katelundy.com.au/dec2000.htm>

... ¹² Leihan R “Net gambling a “dog’s breakfast” ZDNet Australia 29 June 2001. Available at: <http://www.zdnet.com.au/news/soa/Net-gambling-a-dog-s-breakfast-/0,139023165,120235636,00.htm>

... ¹³ Media Releases by Senator Lundy on 7 June 2000, 10 August 2000, 17 August 2000, 6 October 2000, 10 October 2000, 5 December 2000, 6 December 2000, 13 March 2001, 27 March 2001 and 23 May 2001. Available via: <http://www.katelundy.com.au/current.htm>

... ¹⁴ Senator Lundy – Media Release “Ambiguous ‘moratorium’ a smokescreen for a Coalition ban on Internet Gambling” 7 June 2000. Available at: <http://www.katelundy.com.au/June2000.htm>

The Coalition is using the Internet as a scapegoat for their lack of leadership and failure to genuinely address consumer protection issues and social concerns surrounding online gambling. In contrast, the ALP supports a federal role in coordinating strict licensing and regulation of Australian online gambling sites. We recognise the policy challenges of the Internet requires leadership and responsible management of Internet policy - not just rhetoric - to arrive at a practical and workable solution.

The Coalition's online gambling moratorium is irresponsible and demonstrates that the Government lacks an understanding of the Internet.”¹⁵

The records of Parliamentary debates reveal strong opposition by Senator Mark Bishop of the ALP to the Interactive Gambling Bill. He stated:

“...With this bill, we believe that the government is intent on making a mockery of Australia's capacity to sensibly deal with the challenges that new technologies present, and a great deal of the world will be watching this legislation and perhaps will move to replicate some parts of it in due course. In fact, a number of progressive countries are seriously looking into Australia's existing regulatory arrangements with a view to adopting them in their own countries.

There are a number of reasons why the opposition considers the position taken in this bill to be inappropriate. I made a number of points in my second reading contribution. I will not discuss them in detail but I will again put several points on the record as to why the bill is flawed.

Firstly, Australians will still be able to access Internet gambling services. The bill does not achieve, prevent or discourage access, which surely is a critical step in achieving a ban. In fact, the bill does not even prohibit Australians from accessing domestic or foreign Internet gambling sites.

Secondly, the easiest sites for Australians to access will be overseas sites—some of dubious probity. It is nearly impossible to distinguish reputable sites from those of dubious probity. So Australians will easily access some of the most dangerous gambling sites on the Internet.

Thirdly, problem gamblers are likely to be the ones who will be desperate enough to circumvent restrictions on accessing Australian and foreign sites and will most likely fall prey to unscrupulous operators who will not limit expenditure. This bill, if passed in its current form, could result in worse gambling problems than if Australians were able to access strictly regulated Australian sites.

Fourthly, Australia is looking backwards while the rest of the world is trying to come up with constructive solutions. A number of countries are looking to adopt Australia's regulatory

... ¹⁵ Senator Lundy – Media Release “Internet gambling moratorium no panacea for community concerns” 10 August 2000. Available at: <http://www.katelundy.com.au/August 2000.htm>

model for Internet gambling. Meanwhile, the Australian government is looking to copy a 1961 US act which has clearly failed to prevent Americans from gambling on the Internet. Australia is seeking to adopt an approach that has proven futile in preventing interactive gambling access in the United States, as evidenced by the minister's comments that a million persons a day in the United States access and use interactive gambling services in that country.

Fifthly, we repeat our criticism that it is hypocritical to allow Australian Internet gambling service providers to receive revenue from services they offer to overseas countries when those countries will be left with the attendant social problems and no funds to deal with them. That criticism stands, notwithstanding the agreement that has been reached between the government and Senator Brown with respect to overseas countries.

Sixthly, the bill will have a negative impact on the Australian Internet gambling service providers. Their claims of being 'well regulated' will not be credible if their own government will not allow its citizens to access their services.

Seventhly, the bill still permits Australians access to Internet wagering—and, clearly, wagering is hardly immune from gambling problems. On the contrary, wagering contributes considerably to the gambling problems of Australians. The Productivity Commission made this point clearly in its report on Australian gambling industries.”¹⁶

A number of the States and Territories also had a negative reaction to the IG Act. The Northern Territory government, for instance, considered taking legal action against the bill.¹⁷

We agree with the numerous comments made by the ALP, State and Territory governments and other commentators that banning online gaming does not prevent problem gambling and leads to consumers accessing unregulated and illegal overseas sites. Certain studies have, in fact, found that the IG Act has not decreased the number of Australians accessing online gambling sites.¹⁸

E) NOIE Report

Prior to the enactment of the IG Act, a report released by the National Office for the Information Economy (**NOIE Report**) concluded that it was feasible in a strict technical sense for the

... ¹⁶ Senate Official Hansard No 9, 2001, Thursday 28 June 2001, pages 25341-25342 (quotes by Senator Mark Bishop). Available at: <http://www.aph.gov.au/hansard/senate/dailys/ds280601.pdf>

... ¹⁷ ABC News Online “NT Govt threatens to challenge gambling bill” 30 June 2001. Available at: http://www.abc.net.au/news/politics/2001/06/item20010629182810_1.htm

... ¹⁸ See paragraph 66 - Chalmers R “Regulating the Net in Australia: Firing Blanks or Silver Bullets” Murdoch University Electronic Journal of Law, Volume 9, Number 3 (September 2002) at paragraph 56. Available at: <http://www.austlii.edu.au/au/journals/MurUEJL/2002/35.html>

... Also see: http://www.archive.dbcde.gov.au/_data/assets/word_doc/0018/10953/Interactive_Gaming_Council_Canada.doc

Commonwealth to pursue a ban on interactive gambling.¹⁹ However, the NOIE Report found that all potential methods of banning interactive gambling can potentially degrade general internet performance and none would be 100 per cent effective in preventing Australians' access to interactive gambling services.

The NOIE Report recognised that a ban on interactive gambling could damage Australia's e-commerce industry:

"Recent research including NOIE's Current State of Play, reports by consultancies Merrill Lynch and Goldman Sachs, and a study by the Organization for Economic Cooperation and Development (OECD) confirm Australia's position as a leading new economy. However, representatives from the gambling and Internet industries have argued that, should Australia attempt to block or filter certain e-commerce activities (such as interactive gambling), it could develop a reputation as an 'old economy,' struggling to come to terms with new economy developments. No other developed country has attempted to implement a technical program of any scale for controlling Internet content, with the partial exception of Singapore. This reputation could deter investment in e-commerce activities and infrastructure in Australia."

The extraordinary growth in e-commerce since the release of the NOIE Report and the essential part that e-commerce and the internet now play in day-to-day life in Australia and globally make this point even more relevant today.

The NOIE Report noted that banning interactive gambling might also affect a range of ancillary services that depend on interactive gambling services, such as software development.

Many submissions made to the NOIE, during the preparation of its report, considered that a ban on online gambling would be even more harmful to gamblers than regulation. The NOIE Report stated:

"Nearly half of the submitters commented on the potential for a ban to expose Australian gamblers to harm. Of these, the clear majority thought that a ban would expose Australian gamblers to harm (generally because of the perceived limitations of technical measures for blocking access to unregulated foreign sites coupled with the absence of a regulated domestic alternative)."

The NOIE Report concluded that *"if the Government decides to proceed with a ban on interactive gambling, it will need to conduct rigorous regulation impact analysis to assess carefully the various technical options described in the ComTech Report in order to identify an optimal solution."* Although the NOIE estimated that it would take at least six months to conduct this assessment and

... ¹⁹ "Report of the investigation into the feasibility and consequences of banning interactive gambling" National Office for the Information Economy 27 March 2001.

at least a further six months to implement an optimal solution, Parliament passed the IG Act on 28 June 2001 – just three months after the NOIE Report was released.²⁰

F) Review of the IG Act

During 2003 to 2004, the Department of Communications, Information Technology and the Arts (DCITA) (now the Department of Broadband, Communications and the Digital Economy) conducted a review of the IG Act. The DCITA released its report entitled “Review of the operation of the Interactive Gambling Act 2001” in July 2004 (DCITA Report).²¹ Notwithstanding the earlier conclusions of the Netbets Report and the wide criticism of the IG Act, the DCITA Report did not recommend any changes to the IG Act.

The prohibition in the IG Act extends to games of mixed chance and skill.²² Whilst the game of poker is not specifically referred to in the IG Act, it is possible that the Federal authorities consider that the IG Act prohibits the provision of online poker to persons in Australia – although there has been no case law on this point. The DCITA Report only made five references to poker – all of which were in passing. The DCITA Report stated:

*“The IGA makes it an offence to provide interactive gambling services to customers physically located in Australia. This offence, which carries a maximum penalty of \$220 000 per day for individuals and \$1.1 million per day for corporations, applies to all interactive gambling service providers, whether based in Australia or offshore, whether Australian or foreign owned. These prohibited services typically include online casino-style gaming services of chance or mixed chance and skill, such as roulette, **poker** [our emphasis], craps, online poker machines and blackjack.”²³*

Whilst the above comments in the DCITA Report suggest that poker would fall into the category of banned interactive gambling services, it did not specifically state that that was the case nor was poker considered in any detail.

The failure by the IG Act and the DCITA Report to examine properly online poker is not surprising considering that online poker (in its current form and popularity) did not exist at the time of the DCITA Report. Since the DCITA Report, there have also been significant improvements and growth in the provision of online services and accessibility. Internet penetration is now much higher and consumers increasingly use the internet on a daily basis for entertainment purposes, engaging with

... ²⁰ It is beyond the scope of this submission to comment on the current proposals to implement measures which seek to require ISPs to block certain objectionable content, save to mention that many of the issues raised in the NOIE Report remain relevant today.

... ²¹ Available at: http://www.archive.dbcde.gov.au/data/assets/pdf_file/0015/10950/Review_of_the_Operation_of_the_Interactive_Gambling_Act_2001_Report.pdf

... ²² see definition of “gambling service” in section 4 of the IG Act.

... ²³ DCITA Report, page iv.

other users and to process transactions. For these reasons, the findings of the DCITA Report are, to a large extent, no longer applicable to the current state of the online gaming market, particularly when it comes to examining online poker.

G) Growth in Popularity of Poker

(i) General

Since 2004, when the DCITA Report was prepared, there has been very significant growth in the popularity of, and demand for poker:

“Poker’s popularity experienced an unprecedented spike at the beginning of the 21st century, largely because of the introduction of online poker and the invention of the hole-card camera, which turned the game into a spectator sport. Viewers could now follow the action and drama of the game, and broadcasts of poker tournaments such as the World Series of Poker and the World Poker Tour brought in huge audiences for cable and satellite TV distributors. Because of the increasing coverage of poker events, poker pros became celebrities, with poker fans all over the world entering into expensive tournaments for the chance to play with them. This increased camera exposure also brings a new dimension to the poker professional’s game—the realization that their actions may be aired later on TV.

Since 2003, major poker tournament fields have grown dramatically, in part because of the growing popularity of online satellite-qualifier tournaments where the prize is an entry into a major tournament. The 2003 and 2004 World Series of Poker champions, Chris Moneymaker and Greg Raymer, respectively, won their seats to the main event by winning online satellites.”²⁴

In fact, Australia hosts one of the world’s largest poker tournaments – “Aussie Millions” – each January at Crown Casino in Melbourne.

“The Aussie Millions Poker Championship is the largest, richest and most prestigious gaming event in the Southern Hemisphere and ranked fifth in the world. Featuring a comprehensive slate of tournaments in every major poker variation, the Aussies Millions is poker’s longest running tournament in the Southern Hemisphere, dating back to 1998. In 2008, the event attracted more than 2,000 entrants from a cast of nations and awarded just under AUS\$16 million in prize money, as players competed for game’s most coveted trophy, the Aussie Millions ‘Main Event’ Champion.”²⁵

The 2009 championship, which was held between 4 to 26 January 2009, had 18 official events and had a guaranteed first place prize of \$2 million. The Main Event – which consisted of 681 entrants

... ²⁴ <http://en.wikipedia.org/wiki/Poker>

... ²⁵ <http://www.aussiemillions.com/MediaReleasePage.aspx?ID=898>

with a \$6.81 million prize pool – was televised by Fox Sports Net and broadcast internationally from March 2009.²⁶

Australia also hosts the Asia Pacific Poker Tour tournament – the last Sydney event was held in December 2008 and involved 477 players and a total prize pool of \$2.8 million.²⁷ Other major poker tournaments include the World Poker Tour²⁸ and the World Series of Poker²⁹ (WSOP), both held each year in Las Vegas. The WSOP has gained increased exposure and popularity in Australia since Australian Joe Hachem won the main event in 2005.³⁰ In recent years, poker games have been broadcast in Australia on both cable and free-to-air television, such as “Wild Turkey Joker Poker” and various Australian poker groups have been established, including the Australian Poker League, the National Poker League and the Australian Poker Association.

To illustrate the popularity of terrestrial poker, it is estimated that the Australian Poker League and the National Poker League (the two leading organisations of poker events in pubs and clubs across Australia) have 500,000 and 300,000 members respectively. The number of poker tables at Crown Casino in Melbourne has increased from 12 in 2001 to 64, currently. Star City Casino in Sydney currently operates 30 poker tables compared to just 12 in 2006 and has plans to expand their poker rooms.

Figures also demonstrate the popularity of televised poker games. It is estimated that the series “Joker Poker” broadcast in 2007 by Network Ten attracted 218,000 viewers and another 224,000 viewers when the series was repeated.

In 2007, thirty different series of poker tournaments and poker related shows were broadcast in Australia on satellite television. These series were broadcast on various channels including ESPN, FOX8, Discovery Travel & Learning, Fox Sports 1, Fox Sports 2, Fox Sports 3, Lifestyle and the History Channel. These programs attracted tens of thousands of viewers. For instance, the series “Poker: Premier League Poker” attracted 98,969 viewers alone.

Similarly, in 2008, poker-related programs included numerous poker tournaments broadcast on a variety of satellite television stations and attracting thousands of viewers. This year, there have already been eight poker tournaments broadcast on ESPN, Fox Sports and FOX8 and the program “World Poker Tour” shown on FOX8 has so far attracted 33,417 viewers.

The popularity of poker is also demonstrated by the number of visits to the PokerNews.com website which, because the site is primarily a news outlet providing advertising for major brands, provides a reliable indication of the interest in poker.

... ²⁶ <http://www.aussiemillions.com/aussiemillions/>

... ²⁷ <http://www.appt.com/results/>

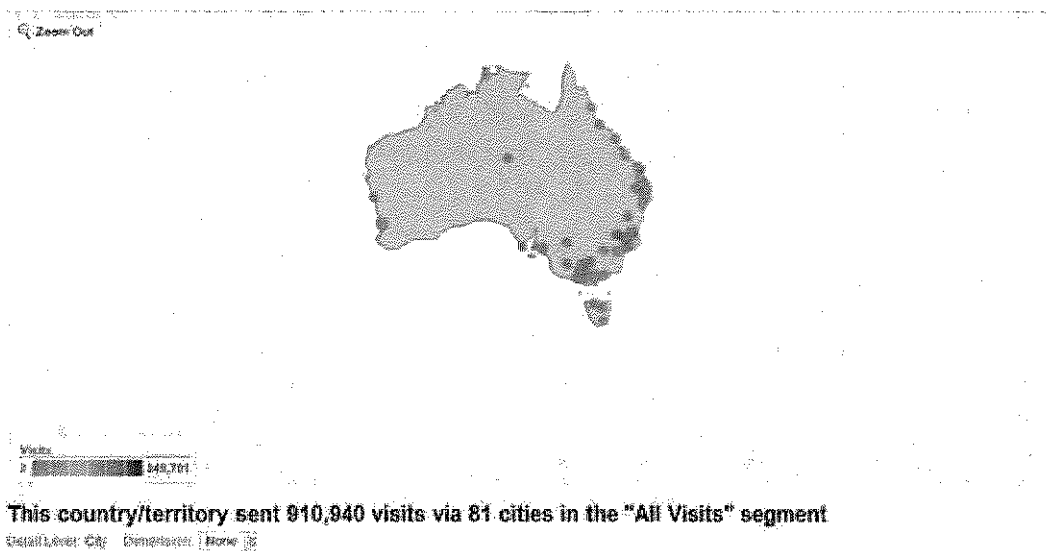
... ²⁸ <http://www.worldpokertour.com>

... ²⁹ <http://www.worldseriesofpoker.com>

... ³⁰ <http://www.joehachem.com/poker>

The following graph and table shows Australian based traffic numbers to the PokerNews.com website. The figures show that, since records began in February 2006, the total number of Australian visitors to the site has been 932,871. Google Analytics also tracks the number of absolute unique visitors from Australia as 168,932 over the same period.

In addition to traffic to this main site, PokerNews estimates a further 31,317 absolute unique visitors from Australian based customers to PokerNews' other brands³¹ totalling 200,249 unique customers. During that time, PokerNews has signed up approximately 7,500 Australian members who participate in the community based aspects of PokerNews' site.



The figures also show that over the three year period from 2006 to date the percentage of new Australian visitors increased by approximately 20.03%.

... ³¹ Google Analytics has recorded 53,081 absolute unique visitors from Australia to PokerNews' non-pokernews.com brands (www.pokerworks.com and www.neverwinpoker.com) and PokerNews estimates a 50% cross over between users reading both brands.

Site Usage		Goal Conversion		Visits		
Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate		
All Visits: 932,817	All Visits: 6.97	All Visits: 00:11:37	All Visits: 20.63%	All Visits: 27.46%		
New Visitors: 188,822	New Visitors: 6.16	New Visitors: 00:06:27	New Visitors: 100.00%	New Visitors: 42.86%		
State/Level	City	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
1. Eastbourne						
All Visits		249,701	7.22	00:12:02	17.65%	26.33%
New Visitors		43,883 (18%)	6.29	00:07:46	100.00%	40.43%
% of Total		17.57%	+12.85%	-35.42%	466.59%	53.52%
2. Sydney						
All Visits		188,563	6.56	00:10:24	22.28%	30.03%
New Visitors		35,880 (19%)	4.12	00:04:46	100.00%	48.04%
% of Total		18.92%	-37.14%	-64.88%	348.68%	58.89%

(ii) Australia

Australian regulators have recognised the popularity of poker and a number of States have issued guidelines detailing the manner in which poker will be treated. This is unusual and recognises the “special case” status of poker.

For example, the NSW Office of Liquor, Gaming and Racing has issued guidelines which recognise that poker tournaments can be played legally in NSW.³² The March 2008 version states:

- 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;
- poker chips without money value can be used; and
- prizes can be awarded to the winner of the tournament.

Similar guidelines exist in the other States in Australia.³³

... ³² NSW Office of Liquor, Gaming and Racing “Poker Tournaments in NSW” March 2008. Available via: <http://www.olgr.nsw.gov.au>

... ³³ Queensland Office of Liquor, Gaming and Racing “Advertising & Promotions Guideline” and “Guidelines for player loyalty programs”. Available via: <http://www.olgr.qld.gov.au/responsibleGambling/industryInfo/adAndPromoGuidelines/index.shtml>

The Victorian Commission for Gambling Regulation has a webpage entitled “How do I play poker legally” which provides guidance on the laws for playing poker games and tournaments. Available at: <http://www.vcgr.vic.gov.au/CA256F800017E8D4/FAQ/2F8EB774B6BFA76ECA25706E002986E3?Open>

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 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

(iii) **Online Poker**

Consistent with the significant growth of poker as a global form of entertainment, there has been a corresponding increase in the popularity of online poker such that it is now a multibillion dollar industry.

According to GBGC, the growth (both past and forecast) and the current size of the online poker industry is considerable. Despite the IG Act, the report found that in 2008 there were 363,120 active online poker accounts in Australia.³⁴ This is estimated to increase to 492,260 active accounts by 2012. In 2008, gross gambling yield from online poker in Australia was US\$212,240,000 and is estimated to increase to US\$279,780,000 by 2012. The following table has been extracted from the GBGC Report:

Gross Gambling Yield – Australia (in US\$ millions)

Year	Online Poker
2004	78.75
2005	124.23
2006	163.37
2007	198.92
2008	212.24
2009e	225.49
2010e	241.33
2011e	262.04
2012e	279.78

As previously stated above, from a global perspective, the Gross Gambling Yield for the online poker industry exceeded \$3 billion (USD) in 2008 with nearly 7 million active player accounts worldwide,

Tasmanian Gaming Commission "Poker and Competition Poker Rules" 8 November 2007. Available at: [http://www.treasury.tas.gov.au/domino/df/df.nsf/LookupFiles/Gaming-Rules-Poker-and-Competition-Poker.pdf/\\$file/Gaming-Rules-Poker-and-Competition-Poker.pdf](http://www.treasury.tas.gov.au/domino/df/df.nsf/LookupFiles/Gaming-Rules-Poker-and-Competition-Poker.pdf/$file/Gaming-Rules-Poker-and-Competition-Poker.pdf)

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

... ³⁴ GBGC Report.

and the industry continues to grow. Globally, GBGC estimates that GGY will approach \$5 billion (USD) by the close of 2012 with active player accounts exceeding 9 million.

The growth trends demonstrate the very high, and increasing, level of interest and participation in the game. However, there still remains relatively little examination about the public harm of online poker. This is examined at Section M below.

H) Effectiveness of the IG Act

(a) Online poker operators generate their revenue from rake in cash ring games, and entry fees in tournaments. Rake is a percentage of each pot in cash ring games taken by the online poker operator as revenue. It is typically calculated on a sliding scale with the highest percentages applied at the lowest stake levels with the percentages decreasing as the stakes rise. Most operators set a fixed limit, per-hand cap on rake but the percentages and caps vary from one operator to the next. Recently published statistics indicate the following average rakes.³⁵

Stakes	Percentage of Operator Revenue	Average Rake%
Micro < \$0.25	52.2%	6.05%
Low \$0.25 - \$0.99	34.8%	5.90%
Medium \$1.00 - \$5.99	11.7%	2.35%
High > \$6.00	1.3%	1.30%
Weighted Average Rake	100.0%	5.50%

(b) As mentioned above, online poker operators also generate revenue by charging entry fees for tournament play. These fees are typically set at 10% of the prize pool.

(c) An informal survey of some of the largest online poker operators conducted specifically for the preparation of this submission reveals that approximately 62% of online poker operator revenue in 2008 was generated from cash ring games and the remaining 38% was earned through tournament offerings. Applying these percentages to the weighted average rake calculated above and assuming an average tournament fee of 10%, it would appear that online poker operators achieve an overall average revenue percentage of 7.2%.

(d) When this figure is applied to the GGY data set out in this paper, an estimate of the amount of player expenditure on online poker can be calculated. For example, global GGY for poker in 2008 was \$3.495 billion (USD). This means that, to generate revenue at the 7.2% rate calculated above, players staked approximately \$48.541 billion (USD). Applying this same calculation to Australian GGY (\$212.24 million (USD) for 2008), we estimate that Australian online poker players staked roughly \$2.948 billion (USD) in 2008.

... ³⁵ Available at: <http://www.marketrake.com/images/NLSH%20g14.jpg>

These calculations suggest that the IG Act has done little to curb the growth of online poker in Australia.

To the best of PokerNews' knowledge, the IG Act has not significantly influenced the decisions of any of its partner brands when considering whether or not to offer online gambling to Australian residents. PokerNews is not aware of any prosecutions brought by Australian authorities against its partner brands or of any URLs that have been blocked or attempted to be blocked by Australian authorities. In short, there appears to be little to no compliance or enforcement of the IG Act, particularly in relation to overseas operators.

The effectiveness of the IG Act is considered further in Section M below.

D) Game of Skill

(e) Poker can be distinguished from other forms of gambling that involve mostly chance. The element of skill involved in poker means that online poker must be treated differently from other online games. For instance, the outcome of roulette, craps and poker machines and other games of chance, particularly where played against the dealer (house), involve little or no skill and generally depend on factors outside of the control of the participant. This is not the case with poker where participants play a meaningful role in the outcome through the use of mathematical, psychological and other skills.³⁶

(f) In *Police v Jones, Police v Ravesi* [2008] SAMC 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. Expert evidence regarding the nature of poker and other games was given. In essence, 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.

(g) This finding was sufficient to dispose of the case as the offence under the South Australian legislation could only be established if poker was found to be wholly a game of chance. Many in the US are also promoting poker as a game of skill.³⁷ A recent study conducted in the US also 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."

... ³⁶ 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>

... ³⁷ 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>

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.”³⁸

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.³⁹ 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.”⁴⁰

We submit that these views further strengthen the argument that online poker is a form of entertainment unlike other games of chance which have little to no entertainment value. The continued prohibition of online poker ignores the view that the game is a bona fide recreational activity which can be played in a responsible manner with the aid of a regulatory framework.

J) Peer-to-Peer Gaming

(h) There exists another important distinction between poker and most other forms of casino gambling and sports betting. That is, in the case of poker, the players compete against one another in a peer-to-peer (P2P) format. 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 their skills against one another.

(i) This is part of the reason for the significant growth of poker as an entertainment activity. It allows an environment to be created where players can meet and participate in a game whose outcome is dependent on their skill. In this respect, it is no different from other skillful games like bridge and chess.

... ³⁸ DeDonno M A & Dettelman 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>.

... ³⁹ <http://gpsts.org/>

... ⁴⁰ “Prof. Nesson Testifies Against Poker Criminalization” Available at: <http://gpsts.org/prof-nesson-testifies-against-poker-criminalization>

On the other hand, online casinos and sports betting operations are known as “house banked” activities. As a result, in most of these games, individual participants are competing directly against the operator and, in many cases, against a fixed set of odds.

In respect of online poker, the fact that the house does not participate and has no interest in who wins further emphasises online poker as a social game and weakens arguments that online poker is more harmful than terrestrial poker. In addition to being a recreational activity, the P2P format of online poker means there is a social aspect to the game. The game of poker is 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 IG Act should provide for an exemption to permit online poker games in a P2P format.

K) Regulation of Poker

The managed liberalisation of terrestrial poker in Australia is in contrast to, and inconsistent with, the possible application of the IG Act to online poker which, it is submitted, is unnecessary and inappropriate. We submit that online poker should be treated differently from other forms of prohibited online gambling such as roulette, lotteries and online poker machines. As discussed above, poker is recognised as a game in which the component of skill predominates – not dissimilar from a sporting or other recreational activity – rather than a game purely or substantially involving chance. As the growth in popularity of the game has shown, poker has high entertainment value for both players and spectators and has become a socially-acceptable activity.

The perceived harm of online poker is inconsistent with the growing social attractiveness of the game as a form of entertainment. Online poker tournaments are now held where players around the world can play together in real time. Concerns associated with online poker, such as problem gambling, integrity of operators and security can all be properly managed by sensible regulation, rather than prohibition – as was concluded in the Netbets Report.

Technology exists for online poker to be properly regulated. In fact, online gaming can be even more transparent and easier to regulate than offline gaming. For instance, unlike their land-based counterparts – online gaming providers have the ability to easily monitor and record a player’s personal details, transaction history, winnings, and length and time of play. This information can be used to regulate the industry and help minimise problem gambling and under-age access. For instance, well regulated online operators are already required to provide a player with online access to view the rules of games, clearly show the odds of each game, display problem gambling help lines, offer self-exclusion options and impose betting limits. These good practice methods can easily be required and employed in Australia as well. Online games offer the ability for players to easily monitor how much they win or lose and to be able to leave a game without the social pressure of other players and the dealer being physically present.

It is already accepted that regulated online gambling facilitates the regulation of money laundering. For example, under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (**AML/CTF Act**), gambling service providers are recognised as a class of reporting entities and are accordingly subject to a range of obligations including:

- establishing AML/CTF programs as a way for a gambling provider to identify, mitigate and manage the risk of their products or services. Most AML/CTF programs must have two parts. Part A must set out procedures relating to things such as:
 - assessing the risk of products and services that the business provides;
 - screening employees prior to hiring and ongoing monitoring of staff; and
 - training employees in AML/CTF trends, risk-based procedures and the consequences of non-compliance.

Part B of the program requires specified procedures for establishing methods for identifying customers and their agents that will enable the reporting entity to be reasonably satisfied about a customer's true identity and to gather and validate minimum "know your client" (KYC) information;
- monitoring customers in relation to the provision of services with a view to identifying, mitigating and managing the risk that the provision of its services might involve or facilitate money laundering or financing of terrorism. This involves :
 - KYC checks;
 - monitoring customer transactions; and
 - undertaking due diligence;
- providing reports to AUSTRAC about suspicious matters, transactions involving the transfer of money of \$10,000 or more (whether in physical currency or e-currency) and international funds transfer instructions.

In addition to the above, AUSTRAC has issued specific rules for gambling service providers.

Section 33 of the AML/CTF Act requires online gambling service providers to carry out customer identification procedures in respect of their customers. If an online gambling service provider does not carry out the applicable customer identification procedure, the entity must not continue to provide and must not commence to provide any gambling services to the customer until the entity carries out the applicable customer identification procedure.

The AML/CTF Rules provide that, if a betting account is used for online gambling, the betting account provider has 90 days to complete customer identification and provided no withdrawals are permitted on the account during this period.⁴¹

Chapter 11 of the AUSTRAC Regulatory Guide sets out guidance on the obligations of gambling service providers under the AML/CTF Act and the AML/CTF Rules. AUSTRAC has issued further guidance for gambling services (including online providers) in AUSTRAC Guidance Note 08/03.

... ⁴¹ Rule 10.4.3 of the AML/CTF Rules.

These procedures are consistent with procedures introduced by Australian regulators of online gambling, such as the Racing, Gaming and Licensing Division of the Northern Territory. Online gambling operations are required to comply with strict rules, including rules relating to technical aspects of an online system such as administrative and accounting aspects, audit and reporting and data structure, data access and data transfer.⁴²

The existence of the AML/CTF Act and the AUSTRAC guidelines indicates a recognition by government that online gambling can be regulated – which appears to be inconsistent with the Federal government’s policy of prohibition of online gambling. Furthermore, the benefits of online and computer technology will enable online poker operators to comply more readily with AML/CTF obligations compared to land based operators.

L) Harm Minimisation

The IG Act was essentially passed because of a concern that online gambling would lead to increased problem gambling in Australia. As stated in the Revised Explanatory Memorandum for the IG Bill: *“The concern is thus that the growth in availability of interactive gambling services to the Australian community will lead to an increase in problem gambling.”*⁴³ However, such concern was not based on any empirical evidence demonstrating that online gambling creates more problem gamblers compared to terrestrial gambling. In fact, the Internet Gambling Survey, conducted by Allen Consulting Group in association with the review of the IG Act, did not find any evidence that people who gamble over the Internet are any more or less likely to become problem gamblers.⁴⁴

When the IG Act was introduced, there was limited experience relating to the effectiveness of harm minimisation measures in connection with interactive gambling. Accordingly, limited consideration was given to those measures at the time of enactment of the IG Act and the

... ⁴² Northern Territory Treasury “Internet Gambling Internal Control Requirements” Version 1.0, August 2000 Available at: <http://www.nt.gov.au/justice/licenreg/documents/gaming/NTTIGInternalControlrequirementsV1.0.pdf> Also see Northern Territory Treasury “Internet Gambling Technical Requirements” Version 1.03, December 2004 http://www.nt.gov.au/justice/licenreg/documents/gaming/NTT_Internet_Gambling_Technical_Requirements_V1.03.pdf.

... The Tasmanian Gaming Commission has also released technical standards for online operators, available at: [http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/547E89EF680B014D4A2568B60080E813/\\$file/Internet_Gaming_Technical_Requirements_Version3.0.pdf](http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/547E89EF680B014D4A2568B60080E813/$file/Internet_Gaming_Technical_Requirements_Version3.0.pdf)

... ⁴³ page 7, Interactive Gambling Bill 2001 – Revised Explanatory Memorandum, The Parliament of the Commonwealth of Australia, House of Representatives (circulated by authority of the Minister for Communications, Information Technology and the Arts, Senator the Honourable Richard Alston).

... ⁴⁴ pages 7 and 8, “Final Report on Issues Related to Commonwealth Interactive Gambling Regulation” by The Allen Consulting Group, 2 July 2003 (amended 4 February 2004, Report for the Department of Communications, Information Technology and the Arts).

approach taken was that prohibition of the provision of interactive gambling services was the most effective means of minimising problem gambling.

It is clear that the prohibitions in the IG Act have done little to deter either operators from providing services to Australian residents, or Australian residents from playing on games provided on offshore interactive gambling sites. Currently, no harm minimisation measures enforced by an Australian regulatory body apply to the provision of these services.

However, since 2001, there has been extensive expertise obtained by Australian regulators (and operators) in applying harm minimisation measures in the online gambling sector. These have been effective and are clearly a more preferable option to the current system which potentially results in a complete lack of regulated measures to an Australian regulatory standard protecting Australian residents being in place.

Set out below is a summary of the measures that can be taken to minimise any harm associated with online poker. Many of these measures are already in place in respect of other forms of online gambling that are provided legally in Australia, for example, online sports betting, which are excluded expressly from the IG Act. Online poker operators could be required to:

- undertake verification checks of new players (such as 100-point checks) to prevent under age-access and reduce the risk of money laundering;
- place limits on the amounts that can be deposited by players per day, week, month or year. Further parameters could be imposed such as imposing deposit limits on players relative to their incomes;
- allow players to self-impose betting limits and self-exclude themselves from a site for a period of time;
- clearly and prominently advertise problem gambling help lines and warnings about the risks associated with gambling on their websites;
- donate a portion of their revenue to problem gambling initiatives;
- clearly show a player's betting history so each player can monitor his or her wins and losses;
- identify problem gamblers with reference to an agreed standard and policy for identifying problem gamblers; and
- employ strict measures to protect the privacy of players by ensuring that confidential or sensitive data be maintained securely at all times.

Many of the above initiatives available for regulation of online gaming are not available to offline operators because they do not have access to the same level of individual data collected by online operators.

Early steps have already been taken towards promoting and implementing the above harm-minimisation methods. On 5 April 2001, the National Working Party on Interactive Gaming released an exposure draft of a document entitled "Australia: Uniform Standards for the Regulation of

Interactive Gaming (The AUS Model)".⁴⁵ The objective of the AUS Model was to provide standards on which regulatory regimes in each State and Territory relating to online gambling could be based to provide mechanisms for player protection and harm minimisation, operator probity and system integrity for the benefit of players regardless of where they are located. The AUS Model sets out various rules, covering the initiatives mentioned above, including numerous player protection measures, exclusion rules, licensing controls, operational and technical controls, advertising rules, player registration and financial transaction rules.

Not only do harm-minimisation measures exist for online poker, a recent study suggests that the perceived harm caused by online poker is exaggerated. A study conducted by the Harvard Medical School⁴⁶ recorded the outcomes of online poker games played by 3,445 participants over a two year period. The findings suggest that the majority of internet poker players moderate their behaviour based on their wins and losses:

"It is important to establish an epidemiological baseline for any area of addiction-related research, especially potentially new objects of addiction (LaBrie et al., 2008). In this research, we provide evidence that supports the findings in our previous research (LaBrie et al., 2007, 2008; LaPlante et al., 2008) that most subscribers who gamble on the Internet do so moderately. In fact, correlation analyses indicated that as Percent Lost increased, Duration, Total Sessions, and Total Wagered all decreased, suggesting that the majority of individuals moderated their behavior based on their wins and losses – exhibiting "rational" betting behavior. This suggests that, at the population level, losing discourages ongoing play and winning encourages continuing play.

One other important aspect of our population-level findings is the discontinuous nature of its gambling behavior. Most of the gambling behavior variables in this study indicated a large skew. This suggests that the vast majority of the sample look similar when examining their gambling behavior, but differently from the most involved poker players at the high end of the distribution. This is not surprising because there is evidence from the epidemiology of other patterns of behavior associated with various expressions of addiction (e.g., drinking, drugging, shopping, etc.) that the vast majority of the population can engage in these activities moderately and without meaningful health risks (Grant et al., 2004; Kessler, Chiu, Demler, & Walters, 2005; Lejoyeux, Ades, Tassain, & Solomon, 1996; Regier & Robins, 1991)."

This study was the first epidemiological study of actual internet poker playing behaviour.

... ⁴⁵[http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/94CEC4BCA2433416CA256B2100018F6B/\\$file/AUS_Model.pdf](http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/94CEC4BCA2433416CA256B2100018F6B/$file/AUS_Model.pdf)

... ⁴⁶ LaPlante D. A., et al. "Sitting at the virtual poker table: A prospective epidemiological study of actual Internet poker gambling behavior" *Computers in Human Behavior* (2009), doi:10.1016/j.chb.2008.12.027

The Prevalence Studies conducted in the UK (referred to in Section M(i) below) also suggest that the perceived harm of online gaming is often overstated.

It is worth noting that the issues raised in this submission concerning the benefits of regulation over prohibition have been raised many times before.⁴⁷ In a submission to the Department of Communications, Information Technology and the Arts in 2002, the Interactive Gaming Council stated:

"The acceptance of a global market for online gaming is a reality unless the Internet itself is banned, something that is unlikely. A policy of regulation is logical. If gambling in various forms is already available to residents of Australia then why would a new technology change this offering. If governments want to provide protection for the public, then the solution is regulation. Further, the goals of a proper regulatory scheme are commendable: fostering responsible gaming practices (harm minimization in other terminology), specifically protecting the most vulnerable citizens, underage and problem gamblers, and addressing money-laundering concerns.

*The debate would not be complete without addressing the question of prohibition. Rather than allow the industry to continue in uncharted territory, regulation is needed to protect players, instill confidence and to potentially create a new revenue source. The IGC urges Australian policy makers to move away from any recommendation to deputize sectors within an industry, for example financial institutions or ISPs, and instead focus on working with members of the online gaming industry to develop workable controls and regulation."*⁴⁸

Similarly, in a 2004 article published in the Queensland University of Technology Law & Justice Journal, Andrew Essa commented:

"This paper has proposed a framework with two perspectives of why prohibition and the IGA is not working. First, the Government supported prohibition not because it was the most effective solution to the online-gaming problem, but arguably for political reasons. The solution also did not reconcile

... ⁴⁷ As stated by Andrew Essa in "The Prohibition of Online-Casinos In Australia: Is It Working?" [2004] QUTLJJ 6: "Interestingly, 70 per cent of the 59 public submissions received by the NOIE after the Moratorium Act recommended regulation, yet the report did not." Full article available at: <http://www.austlii.com/au/journals/QUTLJJ/2004/6.html#fn12>

... ⁴⁸

http://www.archive.dbcde.gov.au/_data/assets/word_doc/0018/10953/Interactive_Gaming_Council_Canada.doc

...

with the Government's rationale for prohibition. It also lacked sufficient justification and was chosen in spite of significant independent research recommending regulation. Arguably this indicates a lack of transparency in policy and decision making. The second perspective showed that the prohibition model contained within the IGA does not work when applied to the Internet.

The Government must now contend with the consequences of failed prohibition. Whatever the source of the problem, a realistic, appropriate, and widely-supported solution dealing with online-gaming must be found. Persuasive guidance may be found overseas as similar jurisdictions like Canada, the US and UK, struggle to find and implement such a solution. The struggle generally involves attempting to find the right balance between the benefits of new technologies, and whether these benefits are worth the subsequent social costs. In that quest, politics will be paramount. However, adhering to principles of responsible government, especially transparent decision making, is crucial in achieving this goal.”⁴⁹

With the passage of time, the above comments have become even more relevant.

M) Overseas Regulation of Online Gaming

It is useful to examine how other countries have treated online gambling. A number of important jurisdictions are considered below.

(i) United Kingdom

The United Kingdom was the first major European Union member state to introduce legislation enabling private operators to subject themselves to UK licensing in order to offer their services.⁵⁰

The online gambling market in the UK appears to be a relatively small segment of the gambling market as a whole. However, it is not insignificant. Over the year to December 2008, 9.7% of 8,000 adults surveyed in the UK said they had participated in at least one form of remote gambling (through a computer, mobile phone or interactive/digital TV) in the previous month. This compares with the 2007 calendar year figure of 8.8% and the 2006 calendar year figure of 7.2%.⁵¹

The Gambling Act 2005 is a comprehensive piece of legislation dealing with all forms of gambling. It is both technology neutral and product neutral in that it provides licenses for all types of products (betting, casino, bingo, poker etc.).

... ⁴⁹ <http://www.austlii.com/au/journals/QUtlj/2004/6.html#fn12>

... ⁵⁰ The Gambling Act 2005 (http://www.opsi.gov.uk/acts/acts2005/ukpga_20050019_en_1)

... ⁵¹

<http://www.gamblingcommission.gov.uk/UploadDocs/publications/Document/ICM%20Omnibus%20Survey%20March%202008%20-%20December%202008.pdf>

Poker is not regulated in isolation, rather included in the act itself together with Betting Exchanges that share the same characteristic of being a peer-to-peer (P2P) operation rather than a house banked game. Poker falls under the definition of Game of Chance since this definition includes any game that involves any amount of chance, i.e. not a predominance test.

It can be noted that not one major poker site has relocated there. One of the reasons for this could be that the British legislation is fully EU compatible, to the extent that, if an operator has a licence within the European Union or in a white listed territory (which includes Tasmania), they are allowed to advertise their services in UK as if they had a local licence. This means that poker operators licensed in any member state of the EU or a white listed jurisdiction do not need to obtain a local licence to provide and promote their services in the UK. Also, the level of gambling taxation, which is 15% and is calculated on Remote Gaming Profit, creates a financial disincentive to conducting business in the UK.

Most of the leading online poker operators are licensed in a white listed jurisdiction. The Gambling Act 2005 provides, in section 331(4), for the implementation of a white list.⁵²

Problem gambling in the UK

The large British Gambling Prevalence Survey, that was conducted in the UK in 1997 (report dated 2000)⁵³, was repeated again in 2007⁵⁴. The Prevalence Surveys were large-scale nationally representative surveys of participation in gambling and the prevalence of problem gambling in Great Britain. The 2007 Survey was undertaken to help the British Gambling Commission understand the nature and scale of gambling in Britain at a point before the Gambling Act 2005 was implemented on 1 September 2007. It was commissioned as part of the Gambling Commission's commitment to the licensing objectives of keeping crime out of gambling, ensuring gambling is conducted fairly and openly, and protecting children and vulnerable people from harm from gambling.

The 2007 Survey results showed that the number of people at risk were almost exactly the same ten years later, and that the rate of problem gambling in the adult population was approximately 0.6% in both studies. This is noteworthy since online gaming did not exist in 1997 but had become very popular by 2007 (with an increase in market share from approximately less than 1%), indicating that the introduction on online gaming did not increase the number of problem gamblers.

... ⁵² http://www.opsi.gov.uk/acts/acts2005/ukpga_20050019_en_1

... ⁵³ <http://www.gamblingcommission.gov.uk/UploadDocs/publications/Document/1999%20Prevalence%20Study.pdf>

... ⁵⁴ <http://www.gamblingcommission.gov.uk/Client/detail.asp?ContentId=311>

... <http://www.gamblingcommission.gov.uk/Client/detail.asp?ContentId=288>

Also, it is interesting to note that the result of the Prevalence Surveys is almost identical to the result of similar studies conducted in Sweden,⁵⁵ a country with a far reaching policy to protect players by allowing only a monopoly company to offer gambling services. It is thus not obvious that Sweden's monopoly ownership of gambling generally assists in achieving a lower rate of problem gambling than emerges from the liberal market arrangements in Great Britain.⁵⁶

(ii) Italy

Italy introduced regulations in March 2008 which contemplate the business of online poker when the Remote Skill Gaming Rules were implemented. Poker is defined as a skill game falling within these regulations. The system is based on existing regulations for sports betting licences.

Few online poker operators have been able to go live yet with real money poker under an Italian licence; however, many operators have been granted licences and are currently finalizing technical testing to obtain approval to go live. Also, the regulatory system is in the course of being amended to facilitate the licensing of online poker.

A few characteristics in the Italian system are worth noting:

- *International liquidity*

The initial regulation only allows for a closed system where Italian players can play only against each other. This will remain for the first 6-12 months after which operators will be able to pool their Italian players with players from other countries. The initial plan was to allow this from the beginning but heavy lobbying from the local operators resulted in this closed system during the first year of the regulations. This is a major issue since it means that a local licensee has nowhere near as many players on their site as do the non-licensed operators. In poker and P2P games in particular, the amount of players is vital since a player will only find the desired game if there is a large amount of players online at all times. For this reason, local players still prefer to play on non-licensed sites.

⁵⁵ "Online Gambling – Focusing on Integrity and a Code of Conduct for Gambling" Policy Department Economic and Scientific Policy. Available at: <http://www.europarl.europa.eu/activities/committees/studies/download.do?file=23191>

This study specifically stated: "*As regards problem gambling and under-age gambling, independent factual studies are few in number. In relation to problem gambling we were able to do a simple comparison between Sweden, which has a state monopoly model of gambling, and the UK, which operates a liberalised market: interestingly, the rate of problem gambling is broadly the same in both jurisdictions, from which it may be possible to conclude that the organisational structure and ownership of gambling does not bear decisively on problem gambling.*"

...

... ⁵⁶ Also see paragraphs 4.22 and 4.33 of "Online Gambling – Focusing on Integrity and a Code of Conduct for Gambling" Policy Department Economic and Scientific Policy.

The local authorities acknowledge this and, as indicated above, are working to amend the regulations to allow Italian licensees to pool players internationally in order to make the regulated sites as attractive as the non-regulated sites.

- *Licensing*

The original legislation stated that a licence can only be awarded to an Italian company. However, that is being changed and a new law is imminent which will allow a licence to be held by any company that is located in the EU or in a white listed jurisdiction. The white list has yet to be drafted. When the white list is finally prepared, it will be further expanded after AAMS⁵⁷ establishes cooperation agreements with relevant jurisdictions.

- *Servers & Other Technical Issues*

Initially, the regulations provided that all technical equipment had to be located in Italy. However, that requirement is being amended so that the servers can be anywhere within EU or in a white listed jurisdiction. A requirement exists currently that the servers must be connected to the AAMS database, and AAMS has issued very detailed requirements on how information must be communicated through this connection to enable AAMS to keep track in real time of all activities of Italian players.

(iii) *Malta*

The Remote Gaming Regulations 2004 is the main Act governing licensing in Malta.⁵⁸ General information about the licensing system is available on the LGA website: <http://www.lga.org.mt>. There are 4 classes of licenses available and poker, as a P2P game, is covered by a Class 3 license.

(iv) *Isle Of Man*

The main act which provides for the licensing of online gaming in Isle of Man is the Online Gambling Regulation Act 2001⁵⁹ which is accompanied by a number of regulations regarding subjects such as anti money laundering (AML), advertising, disaster recovery and systems verification. Isle of Man is generally viewed as one of the more stringent regulators and has therefore not managed to attract as many licensees as some other jurisdictions.

Appendix A of this Submission sets out a copy of "[Guidance Notes for an Application for a Licence under the Online Gambling Regulation Act 2001 \(as amended\)](#)", issued by the Gambling Supervision Commission of the Isle of Man, available at: <http://www.gov.im/lib/docs/gambling//minimumsetofrequirementsgscogra.pdf>.

... ⁵⁷ Amministrazione Autonoma Dei Monopoli Di Stato (State Monopolies Autonomous Administration) <http://www.aams.it/site.php?page=home>

... ⁵⁸ http://www.lga.org.mt/common/file_provider.aspx?id=633570872482030000&ext=.pdf

⁵⁹ <http://www.gov.im/gambling/licensing/>

More information can be obtained at www.gov.im/gambling.

(v) Other Countries

Several European countries are working on implementing legislation licensing private online gaming operators and will most likely do so within the next year or two. This includes France, Spain, Ireland, Denmark, Czech Republic and Belgium.

The next country most likely to issue regulations appears to be France which has announced that it proposes to license sports betting and poker. Like Italy, poker will be classified as a skill game. Regulators in France are currently drafting the proposed legislation with the aim to introduce it in parliament in April 2009. It is anticipated that this will result in the first licences being issued before the end of 2009.

The early drafts of the legislation are modelled on the Italian legislation but, following the Italian experience, certain key points have been amended. For example, France will allow the pooling of French poker players with players from the rest of the world and will allow poker cash games immediately.

Spain has also decided to implement federal legislation regarding online gaming rather than, as now, allowing the autonomous regions to regulate it separately. We do not know if draft legislation exists yet but the Popular Party in a recent resolution urged the government to speed up the process.

Another country that has proposed a roadmap for the implementation of online gambling regulations (which will provide for licensing) is Ireland where a recent report showed that there would be substantial financial gains in regulating and taxing the sector even with a low tax rate. Also, the government in Denmark has clearly stated their intent to regulate and poker is being discussed separately. There is also a court case pending in the Danish Supreme Court that will decide if certain types of poker are skill games according to Danish law.

Although many jurisdictions appear to be moving towards an approach of managed liberalisation in respect of online gambling regulation, there are others that have yet to adopt this approach. It is instructive to examine more closely three other jurisdictions.

(vi) United States

Contrary to popular belief, aside from the specific prohibition of sports betting, there exists no federal law in the United States which prohibits any other form of online gaming. The United States Department of Justice has claimed that the Wire Act⁶⁰ prohibits all forms of online gaming.⁶¹ However, the highest United States court that has issued a ruling on this issue disagrees. In

... ⁶⁰ 18 U.S.C. § 1084

... ⁶¹ Testimony of Catherine L. Hanaway, United States Attorney for the Eastern District of Missouri, United States Department of Justice, before the United States House of Representatives Committee on the Judiciary, Concerning "Internet Gambling", November 14, 2007. Available at: <http://judiciary.house.gov/hearings/pdf/Hanaway071114.pdf>

November 2002 the 5th Circuit Court of Appeals affirmed a District Court ruling that the Wire Act applies only to sports betting. The District Court reached the following conclusion:

*[A] plain reading of the statutory language [of the Wire Act] clearly requires that the object of the gambling be a sporting event or contest.*⁶²

In upholding the lower court ruling, the 5th Circuit Court of Appeals offered the following language:

The district court concluded that the Wire Act concerns gambling on sporting events or contests and that the Plaintiffs had failed to allege that they had engaged in internet sports gambling. We agree with the district court's statutory interpretation, its reading of the relevant case law its summary of the relevant legislative history and its conclusion.

*Because the Wire Act does not prohibit non-sports internet gambling, any debts incurred in connection with such gambling are not illegal. Hence, the Defendants could not have fraudulently represented the Plaintiffs' related debt as legal because it was, in fact, legal.*⁶³

Most recently in March 2009, in a case as yet unpublished in the federal register, the State of Washington Court of Appeals in ruling upon a request for declaratory relief with respect to alleged Dormant Commerce Clause violations of a State gambling statute, offered the following analysis in rejecting one of the State's arguments:

*The Wire Act is similarly inapplicable. As Rousso correctly points out, that statute has, in fact, never been interpreted by a court as a federal prohibition on Internet gambling.*⁶⁴

Another common misconception with respect to US law is the theory that the recently enacted Unlawful Internet Gambling Enforcement Act (UIGEA) serves to prohibit online gaming in the US. This is simply not the case. The plain language of the UIGEA belies this notion.

*No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.*⁶⁵

By the definitive language above, it is clear that the UIGEA did nothing to change any existing gambling law in the US. The gaming activities that were unlawful before UIGEA passage remain unlawful, and conversely, those that were lawful remain lawful. Unfortunately, UIGEA did not go so far to specifically distinguish between lawful and unlawful online gaming activities instead leaving it to the regulated community (e.g. financial institutions) to make their own determinations. This has

... ⁶² In re Mastercard, 132 F. Supp. 2d at 480

... ⁶³ In re Mastercard, 5th Circuit Court of Appeals. Available at: <http://caselaw.lp.findlaw.com/data2/circs/5th/0130389p.pdf>

... ⁶⁴ Lee H. Rousso vs. State of Washington, Washington Court of Appeals. Available at: <http://www.courts.wa.gov/opinions/pdf/61779-6.pub.doc.pdf>

... ⁶⁵ 31 U.S.C. § 5361(b)

created an enforcement quagmire for financial institutions which has resulted in harsh criticism of the Act from many circles including members of the US Congress and the financial services community.

Nevertheless, the passage of UIGEA did have an immediate effect of chilling the market as several publically traded online gaming operators, particularly gambling operators listed on the London Stock Exchange, chose voluntarily to exit the US market shortly thereafter. Though operator GGY and active player accounts in the US subsequently dipped in 2007 from record highs in 2006⁶⁶, these numbers rebounded in 2008⁶⁷ falling just short of 2005 figures. GBGC forecasts predict that this growth will continue such that the recovery will be complete, surpassing the previous high water mark of 2006 within the next few years.

As a result, it is difficult to conclude that the intended effect of the UIGEA to curb online gaming activity has been particularly successful. Efforts are already underway in the US Congress to develop a regulatory model for online gaming in the US and, with the recent inauguration of President Obama in January 2009, there is optimism that progress toward this end will be attained in the next few years.

(vii) Germany

Germany provides an illustration of a different regulatory model due to developments during the past two years. Each individual State has the power to regulate gaming and has licensed a local lottery operator which holds a monopoly in respect of most gambling products. Some license offline casinos and most also license or operate slot machines.

Facing an infringement proceeding from the EU Commission based on the fact that the regulatory situation was in violation of the EU Treaty [free movement of services between member states], the States decided to implement a State Treaty concerning gambling. The State Treaty came into effect on 1 January 2008 and, in order to avoid the EU Commission taking action on the basis that it was discriminatory, completely banned all forms of online gaming. No party licensed by any State was permitted to conduct online gambling. The reason given was that online gaming was too addictive. No research was adduced to support this rationale.

The State Treaty provides that each State can adopt measures to force ISPs to block access to online gaming sites and to force banks to block payments to such sites. The result has not been as expected by the legislature. The German online gaming market has continued to grow with poker especially experiencing significant growth. Attempts to block websites have failed as the ISPs have refused to cooperate and claim that (as shown in Italy) any measure they are forced to implement will be technically difficult, expensive and easy to circumvent. There has also been no system implemented to block payments relating to online gaming since the regulators have not been able to present a workable solution.

... ⁶⁶ From GBGC: 2006 US GGY: \$7.100B (USD), 2007 US GGY: \$5.089B (USD) Active Player Accounts 2006: 10.595M, 2007: 8.204M

... ⁶⁷ From GBGC: 2008 US GGY: \$5.625B (USD) Active Player Accounts 2008: 8.932M

The EU Commission has stated that they intend to examine the legality of the State Treaty due to it not being proportionate. In implementing a blanket ban, it is arguable that the States have gone further than what is necessary in order to achieve the stated objective; namely, to protect the players. The objective of the State Treaty was to prevent online gaming taking place – this has not been realised and it can be argued that adequate protection of the players can be achieved through a strict licensing system. It has also been argued that, as the states allow the more addictive slot machines and casinos, the ban on online gaming is in no way proportionate.

During the last year, it has become evident that State lotteries are losing revenue by not being allowed to operate online and their overall revenues are rapidly declining. Most industry observers predict that the State Treaty will be renegotiated shortly with a different approach adopted that will allow online gaming to be regulated rather than banned.

(viii) Australia

As discussed above, the Commonwealth passed the IG Act in 2001, which, with limited exceptions, prohibited the provision of online gaming services to residents of Australia and certain “designated countries”. Assuming that the primary goal of this legislation was to prevent access by Australian to overseas gambling operators and, through that means, to achieve harm minimisation through the protection of individual players, it is necessary to assess whether, eight years later, this effort can be judged as a success.

If success is measured by the Gross Gambling Yield of online gaming operators providing services to residents of Australia or for that matter, active player accounts, the answer to this question is clearly “no”.

We understand that GBGC data indicates that, in 2001, at the inception of the IG Act, the GGY for all online gaming activities in Australia was a mere \$182.8 million (USD).⁶⁸ By the close of 2008, this figure had grown to approximately \$1.091 billion (USD). Likewise, active player accounts have experienced significant growth during this period, increasing from 94,020 in 2001 to 1.54 million by the close of 2008.

On a percentage basis, poker in Australia has experienced even greater expansion during this period. As poker had not gained widespread acceptance amongst consumers in Australia by 2001, GGY for online poker in that year was only \$1.6 million (USD). By the end of 2008, this amount had increased to \$212.24 million (USD). Active player accounts also jumped from 2,430 from 2001 to 363,120 in 2008. These recent statistics contradict the findings of the 2003 Allen Consulting Group Report which found that the level of illegal interactive gaming was not significant and was in decline.⁶⁹

... ⁶⁸ GBGC Report.

... ⁶⁹ page 8, “Final Report on Issues Related to Commonwealth Interactive Gambling Regulation” by The Allen Consulting Group, 2 July 2003 (amended 4 February 2004, Report for the Department of Communications, Information Technology and the Arts).

Though a portion of this increase can likely be explained by the relative novelty of online gaming in 2001 and the dramatically increased degree of internet penetration in Australia over the past eight years giving far more people access to these online gaming services, this by no means accounts for all of the growth as the following more recent growth trends indicate:

Gross Gambling Yield – Australia (in US\$ millions)

Year	Sports Betting	Casino	Poker	Bingo
2004	225.85	225.20	78.75	2.60
2005	237.52	280.20	124.23	7.75
2006	267.46	382.62	163.37	12.98
2007	341.45	417.33	198.92	22.95
2008	391.30	461.10	212.24	26.50
4-Year Increase %	73.26%	104.75%	169.51%	919.23%

The active player account data paints a very similar picture.

Active Player Accounts – Australia (000's)

Year	Sports Betting	Casino	Poker	Bingo
2004	208.68	324.93	131.32	6.18
2005	229.96	405.06	203.09	18.12
2006	266.88	540.92	259.38	29.98
2007	351.41	630.14	338.93	44.29
2008	424.36	703.29	363.12	50.26
4-Year Increase %	103.35%	116.44%	176.52%	713.27%

From the tables above, the trend becomes obvious. Residents of Australia are engaging in online gaming activities in ever increasing record numbers. GBGC projections do not indicate a downturn in the foreseeable future.

If the true goal of the Commonwealth is in fact harm minimisation, then perhaps a different approach warrants consideration. The licensing and regulation of online gaming does not necessarily result in an expansion of gaming. In fact, the opposite can be argued.

By providing for the licensing of online gaming, responsible online gaming operators will submit themselves to the jurisdiction of the Australian gambling regulatory system. Like sports betting operators, poker operators, as a condition of the licence, will then be held accountable for maintaining appropriate standards with respect to the prevention of underage play, responsible gaming matters, K-Y-C procedures, issues of fair gaming play and proper AML procedures; Australia can far better ensure that their residents are protected to the greatest extent possible.

Policies of prohibition only serve to drive the activity underground, clearing a path for less scrupulous operators to take advantage of a climate in which there are no consequences for inappropriate behaviour. As a direct result, the contemplated beneficiaries of the prohibitionist legislation are the ones who wind up suffering the most.

As it seems clear that the adult residents of Australia intend to continue participating in online gaming activities, perhaps the time has come to better regulate these activities. It certainly appears that the current policy is not working.

N) Economic Benefits of Regulation

Attempts to prohibit online gaming have suppressed technological innovation and advancements and eliminated opportunities to grow the local economy and attract valuable foreign investment. For example, studies have shown that the US has lost billions by choosing not to regulate and tax online gambling:

“A new study by the accounting firm PricewaterhouseCoopers has determined that the United States could benefit significantly should the Unlawful Internet Gambling Enforcement Act of 2006 be overturned and online gambling become regulated and taxed. According to PricewaterhouseCoopers, the U.S. could raise as much as \$52 billion in revenue over the next ten years by regulating and taxing online gambling.”⁷⁰

Indeed, efforts are currently underway to clarify the legal treatment in the US by replacing the laws purporting to restrict online gambling with a streamlined regulated system.⁷¹ Should the US

... ⁷⁰ Harris M “Study Shows Online Gambling Could Produce \$52 Billion in Revenue over Next Decade for U.S.” PokerNews 4 March 2009. Available at: <http://www.pokernews.com/news/2009/03/study-shows-online-gambling-could-generate-52-billion-us-tax-revenue-1192.htm>

... ⁷¹ Palmer D “U.S. could reap billions taxing Web gambling: study” Reuters UK 26 February 2009. Available at: <http://uk.reuters.com/article/technologyNewsMolt/idUKTRE51O85J20090226>

... Rutherford L “Utah Attorney General Says It Is Time To Legalize Online Gambling” CasinoGamblingWeb.com 5 March 2009. Available at: http://www.casinogamblingweb.com/gambling-news/gambling-law/utah_attorney_general_says_it_is_time_to_legalize_online_gambling_50676.html

... Drawbaugh K & Palmer D “Congress May End Internet Gambling Ban” Reuters 9 March 2009. Available at: <http://www.publish.com/c/a/Online-Media/Congress-May-End-Internet-Gambling-Ban>

government clarify legal status by adopting a regulatory approach, it is likely that there will be significant further growth in the US gambling industry and an increase in opportunities for US and Australian cross border investments in the gambling sector - especially given the free trade agreement with the US. However, such opportunities will not be realised if Australia continues to prohibit online gambling. Similarly, many potential economic opportunities exist with other countries (many within the European Union) that regulate, rather than ban, online gaming. Again, these opportunities are jeopardised or lost because of Australia's ban relating to online gambling.

Australia's ban of online casino games compared with its regulation of online sports wagering may be challenged by other countries for being in breach of WTO trade law. This was recently demonstrated by the successful claim brought by Antigua against the US in which the WTO found that the US breached trade law by prohibiting online gambling whilst permitting American operators to offer remote betting on horse and dog racing.⁷² If such a claim were brought against Australia, in addition to any sanctions and penalties that may be imposed, Australia's reputation as an investor-friendly and technology advanced and open nation is likely to be undermined.

The European Union has taken a similar view to the WTO. It is concerned that protectionism by state members, under the guise of "consumer protection", is hypocritical and anticompetitive given the existence and legality of offline venues.⁷³ It has been argued by many that legislation restricting online gaming is simply intended to protect state-based monopolies from competition online. The arguments put forward by the WTO and the EU point to an open market as the best solution when considering gambling regulation.

The IG Act has led to a number of previously Australian-based operators relocating offshore or winding down physical operations in Australia since the legislation came into force. Well-known examples include Canbet and Lasseters. Lasseters Corporation Limited recently reported an EBITDA loss of \$3,613,890 for the year ended 31 December 2008 and has been suspended from official quotation on the ASX.⁷⁴ Lasseters cited issues with the IG Act and the UIGEA among the business's constraints.⁷⁵ In the case of Canbet, the business was relocated from Australia overseas as a result

... ⁷² Klapper B S "WTO authorizes \$21 million in sanctions against US for online betting ban" Sydney Morning Herald 31 March 2007 Available at: <http://news.smh.com.au/technology/wto-authorizes-21-million-in-sanctions-against-us-for-online-betting-ban-20070331-58j.html>

... Also see: <http://www.antiguawto.com/index.html>

... ⁷³ See for example: <http://www.pokernews.com/news/2007/3/eu-court-ruling-strikes-blow.htm>, <http://www.pokernews.com/news/2009/03/eu-commission-concludes-us-violates-wto-pact-1299.htm>

... ⁷⁴ <http://www.asx.com.au/asx/research/companyInfo.do?by=asxCode&asxCode=LAS>

⁷⁵ <http://m.zdnet.com.au/139157361.htm>

<http://www.asx.com.au/asxpdf/20090206/pdf/31fy7z3g04s3b0.pdf>

...

of the IG Act. In addition, potential entrants to the market have been turned away from being either domiciled in Australia or setting up significant operations in Australia.

O) Conclusion

The growth in popularity of online gaming and, in particular, online poker over the past ten years has been extraordinary. The IG Act was passed when the online gaming industry was still in its infancy and failed to anticipate its future expansion.

Any attempt at prohibition of online poker in Australia is inconsistent with the licensing regime and regulation of terrestrial poker and other forms of terrestrial gambling in Australia. This difference in treatment is not justified given the growth and acceptance of the Internet and the measures that can be placed to control and regulate online gaming. In particular, prohibition of online poker would fail to appreciate its popularity and its special case as a game of skill as well as its entertainment value.

Online gaming cannot only be regulated, but can be regulated in an effective manner, given the existence of online and software technology and Federal and State/Territory laws that are already in place (and which can be improved and adapted, if necessary). In many respects, online gaming can be more easily regulated than terrestrial gaming. Technological controls can address concerns such as problem gambling and under age access.

Furthermore, prohibition of gaming has not prevented Australians from accessing online operators that, due to the IG Act, are unlicensed and unregulated in Australia and, in some cases, also illegal in their home jurisdiction. Regulation is more likely to encourage responsible gaming as consumers will be drawn towards sites which are licensed in Australia, and hence trust-worthy, – being sites regulated in accordance with Australia’s gambling regulatory system at which their transactions can be monitored and rules exist for self-exclusion, betting limits, problem gambling advertisements and other control measures.

Also from an economic point of view, regulation is more favourable than prohibition. Regulation can increase taxation revenue for the government, create employment, support ancillary industries such as software providers, improve online technology and attract foreign investment.

PokerNews looks forward to the Productivity Commission’s findings.

In any event, PokerNews would be pleased to attend any public hearing convened by the Productivity Commission to answer any questions relating to this submission which the Commission may have.

9 April 2009

