

**iBus Media Limited**

**Joint Select Committee on Gambling  
Reform**

**Inquiry into Interactive and Online Gambling and  
Gambling Advertising**

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## 1. Executive Summary

- 1.1 Over the last decade, there has been an enormous increase in the popularity of poker, both terrestrial and online. It is clear that poker is a popular form of entertainment and that there is great consumer demand for poker services. There can be no doubt that increasing numbers of Australians are playing poker online despite the prohibition on online poker services contained in the *Interactive Gambling Act 2001* (the **IGA**).
- 1.2 Online poker can be clearly distinguished from other forms of interactive gambling and wagering activities. Online poker is a game of skill, which is conducted peer-to-peer in a social setting.
- 1.3 The Productivity Commission's Inquiry Report: Gambling (**PC Report**) released on 23 June 2010 recognised that online poker may be distinguished readily from online casino-type games. The Productivity Commission considered that online poker presented the least risk to consumers of all online games and recommended that the provision of online poker services by Australian-based operators to Australian-based consumers in a regulated environment be permitted.
- 1.4 The experience in numerous overseas jurisdictions is that online poker can be regulated effectively and the most appropriate regulatory outcome is for a local licensing regime (incorporating effective harm minimisation measures) to be developed. Indeed, effective harm minimisation measures are easily and widely utilised by online poker operators, both voluntarily and as a requirement of licence conditions.
- 1.5 Furthermore, Australia already has numerous regulatory frameworks in place, which consist of State and Territory-based legislation, licensing systems and Codes of Conduct. Online poker could be regulated with minimal adaptation of these frameworks.
- 1.6 Given the clear demand for online poker, the implementation of legislation in Australia to enable the regulation of online poker would deliver considerable consumer benefits on the basis that mandatory effective harm minimisation measures would constitute an essential feature of any regulatory framework.
- 1.7 This submission to the Joint Select Committee on Gambling Reform is further to iBus Media Limited's submission to the Senate Community Affairs Committee's inquiry into the prevalence of interactive and online gambling in Australia in August 2010.<sup>1</sup>

## 2. Background

- 2.1 iBus Media Limited (**iBus Media**) is the world's largest poker media company running a number of industry-leading poker news-related portals in various languages. iBus Media has been registered in the Isle of Man since November 2008. iBus Media previously traded as PokerNews Limited (Cyprus) from July 2006 to October 2008.

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<sup>1</sup> [http://www.aph.gov.au/senate/committee/clac\\_ctte/interactive\\_online\\_gambling\\_10/submissions.htm](http://www.aph.gov.au/senate/committee/clac_ctte/interactive_online_gambling_10/submissions.htm).

- 2.2 PokerNews' primary business is promoting [online poker](#)<sup>2</sup> rooms via a number of [poker](#)-related websites, the principal one being [www.pokernews.com](http://www.pokernews.com). The majority of income is derived through affiliate agreements with the operators of these poker rooms. Players who visit websites in the PokerNews Media network are directed to online gambling sites through banner placements. For this, PokerNews receives revenue from the gambling company for each player who plays for real money at their site. In some circumstances, PokerNews accepts fixed advertising deals, where a fixed amount is paid upfront for a banner placement. However, fixed deals are a small percentage of the overall business.
- 2.3 The flagship website, PokerNews.com, is translated into 32 different languages other than English and receives more than 11 million visits per month worldwide. iBus Media is the official internet provider of coverage for the major poker tours and tournaments around the world including the World Series of Poker (**WSOP**), European Poker Tour (**EPT**), the Asian Pacific Poker Tour and the Aussie millions held at Crown Casino.

### 3. Introduction

- 3.1 Over the last decade, there has been an explosion in the popularity and growth of online gaming in general and, in particular, online poker. There is no doubt that poker is a popular form of entertainment and that there is great consumer demand for poker services, both online and terrestrial.
- 3.2 According to Global Betting and Gaming Consultants (**GBGC**), which is one of the world's preeminent sources for global online gaming data, the global Gross Gaming Yield (**GGY**) (net online poker operator revenue) grew to USD\$4.356 billion by the end of 2009, which was up from USD\$33.3 million in 2001. The number of active online poker player accounts grew by an even greater percentage from 45,480 in 2001 to 8,551,790 in 2009.<sup>3</sup>
- 3.3 The social networking website [www.facebook.com](http://www.facebook.com) (**Facebook**) currently has over 600 million registered users. Software developers are able to create applications which interact with Facebook features. Facebook reports that poker applications are the most popular of all the applications available on Facebook.<sup>4</sup> As of January 2011, Zynga Poker was reported to have more than 35.5 million active members per month with approximately 7 million members playing per day.<sup>5</sup>
- 3.4 The popularity of poker in Australia has grown significantly in the last decade. Increasing numbers of Australians are playing poker either:
- (a) by participating in tournaments or private games; or

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<sup>2</sup> <http://www.pokernews.com/online-poker/> accessed 04/07/2011

<sup>3</sup> Global Betting & Gaming Consultants, "Interactive Gambling Report - Assessment of the interactive gambling market", April 2010 (**GBGC Report**).

<sup>4</sup> <http://www.appdata.com/apps/facebook/2389801228-texas-holdem-poker>. Accessed on 02 July 2011.

<sup>5</sup> <http://www.facebook.com/TexasHoldEmPoker?v=info>. Accessed on 25 May 2011.

- (b) online, by accessing the websites of offshore operators (given that, under the IGA, Australian-based operators are prohibited from offering online poker services) to Australian-based consumers.
- 3.5 The growth in popularity in poker in Australia is illustrated by the success of the "Aussie Millions" tournament, which is one of the world's largest poker tournaments and is held each January at Crown Casino in Melbourne. When the first "Aussie Millions" tournament was staged in 1998, the prize pool was \$74,000 and there were ten participants from overseas, mainly from New Zealand.<sup>6</sup> This can be contrasted with the 2011 "Aussie Millions" event where more than \$7.21 million in prize money was awarded, with the winner collecting \$2 million and 721 players participating in the main event of the tournament.<sup>7</sup>
- 3.6 The "Aussie Millions" tournament is by no means the only major poker tournament conducted in Australia. Australia also hosts an event in the "Asia Pacific Poker Tour" (APPT), which is held each December in Sydney. The "Grand Final" event held during the 2010 Sydney APPT tournament involved 289<sup>8</sup> players playing for a prize pool of \$1.734 million.<sup>9</sup>
- 3.7 Further information on the growth of both terrestrial and online poker in Australia can be found in iBus Media's April 2009 submissions (**First Submissions**) to the Productivity Commission's Gambling Inquiry, which was conducted during 2009.<sup>10</sup> A copy of the First Submissions is enclosed and marked "A". The First Submissions refer to the growth of terrestrial poker in terms of:
- (a) The expansion of poker-related television programming and an increase in ratings for poker television programs, partly as a result of the use of hole-card cameras, which enable viewers to see the cards of individual players while the hand is still in progress.

When the television series "Joker Poker" was screened on Network Ten in 2007, an estimated 218,000 viewers watched the program. When the series was repeated, an estimated 224,000 viewers watched the program.

During 2007, thirty different series of poker tournaments and poker-related shows were broadcast on Australian cable television. The series were broadcast on a variety of channels, including Fox Sports 1, Fox Sports 2, Fox Sports 3, ESPN, Fox 8, Lifestyle, Fox8, Discovery Travel & Learning and the History Channel. Tens of thousands of viewers watched these programs. The series "Poker Premier League Poker" had 98,969 viewers alone.

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

<sup>7</sup> <http://www.aussiemillions.com/Page.aspx?ID=1752>. Accessed 6 June 2011.

<sup>8</sup> <http://www.onlinepoker.net/poker-news/poker-tournaments-news/appt-sydney-2010-won-jonathan-karamalakis/8684>. Accessed 6 June 2011.

<sup>9</sup> [http://www.appt.com/live/past\\_events/sydney/](http://www.appt.com/live/past_events/sydney/). Accessed on 8 June 2011.

<sup>10</sup> iBus Media Limited, *Submission to Productivity Commission: Gambling Inquiry*, April 2009 (**First Submissions**) at [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0005/87773/sub178.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0005/87773/sub178.pdf). Accessed on 25 May 2011.

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

These have continued to be broadcast to the present date.

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

The Australian Poker League and the National Poker League have historically been the two leading organisers of poker events, which are held in hotels and clubs throughout Australia. It is estimated that these leagues have had more than 1 million people play an event during the past three years.

Over the past year, there has been considerable consolidation in the poker league industry with the Australian Poker League and the National Poker Leagues merging. Prior to the merger, Australian Poker League had over 600,000 members, while the National Poker League had over 280,000 members.

In addition to the Australian Poker League and the National Poker League, many new leagues have begun, particularly in Sydney and Melbourne where participants in pub poker play for cash prizes similar to a regular casino. The National Pub Poker League is an example of an organisation that has grown recently by offering cash prizes. Every four weeks each region holds its own monthly cash final which is made up of venue winners and top point earners.

- (c) The increase in poker tables at casinos.<sup>11</sup>

The number of poker tables at Melbourne's Crown Casino has increased from 12 in 2001 to over 50 in 2011. Sydney's Star City Casino operated 12 poker tables in 2006, with the number having increased to 25 in 2011.

- 3.8 iBus Media's websites, including pokernews.com and pokernetwork.com, have received a total number of Australian visitors of 4.3 million since records began in 2006. The number of absolute unique visitors from Australia, as determined by Google Analytics, is over 1.2 million during the same period.
- 3.9 In respect of the growth of the online poker industry, GBGC found that, despite the prohibition on online gaming contained in the IGA, the online poker industry has experienced exponential growth in Australia. In 2009 there were 400,160 active online poker accounts in Australia. This is estimated to increase to 657,650 active accounts by 2013. In 2004, GGY from online poker in Australia was US\$78,750,000. By 2009, GGY from online poker in Australia was US\$248,870,000 and it is estimated to increase to US\$413,980,000 by 2013<sup>12</sup>.

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<sup>11</sup> First Submission, pages 12-14.

<sup>12</sup> GBGC Report.

- 3.10 The above demonstrates that online poker's increasing popularity is demonstrative of the increase in popularity of poker generally. Interest in poker is very high and the level of participation is increasing too.
- 3.11 The popularity of poker has been recognised in Australia by various State regulators who have issued guidelines in respect of the conduct of poker tournaments. The New South Wales Office of Liquor, Gaming and Racing has issued guidelines recognising that poker tournaments can be legally played in Australia.<sup>13</sup> Victoria<sup>14</sup>, Tasmania<sup>15</sup>, Western Australia<sup>16</sup> and South Australia<sup>17</sup> have similar guidelines.

## 4. The Nature of Poker

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

### 4.2 Game of Skill

- (a) Poker involves an element of skill which enables poker to be treated differently from other online games. Games of chance, such as electronic gaming machines (EGMs), roulette and craps, involve little or no skill in the outcome, which is generally dependent on factors outside the participant's control. Poker can be distinguished from these types of games because participants play a meaningful role through their use of psychological, mathematical and other skills.<sup>18</sup>
- (b) **How is poker played?**
- (i) In most forms of poker, the first round of betting begins with some form of forced bet (known as a blind or ante). The action then proceeds to the left. Each player in turn must either match the maximum

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<sup>13</sup> "Poker Tournaments in NSW": Guidelines. Available at:

[http://www.olgr.nsw.gov.au/pdfs/Poker\\_Tournament\\_Info\\_0308.pdf](http://www.olgr.nsw.gov.au/pdfs/Poker_Tournament_Info_0308.pdf). Accessed on 25 May 2011.

<sup>14</sup> "Poker FAQs". Available at

<http://www.vcgr.vic.gov.au/CA256F800017E8D4/LicInfo/11CD0ED463266F3FCA2577B30006092D?Open>. Accessed 6 June 2011.

<sup>15</sup> Tasmanian Gaming Commission "Poker Rules" January 2009. Available at:

[http://www.treasury.tas.gov.au/domino/dtf/dtf.nsf/LookupFiles/GamingRules-Poker.pdf/\\$file/GamingRules-Poker.pdf](http://www.treasury.tas.gov.au/domino/dtf/dtf.nsf/LookupFiles/GamingRules-Poker.pdf/$file/GamingRules-Poker.pdf). Accessed on 25 May 2011.

<sup>16</sup> 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](http://www.rgl.wa.gov.au/ResourceFiles/Gaming/rules_poker_played_with_cards.pdf). Accessed on 25 May 2011.

<sup>17</sup> 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](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](http://www.olgc.sa.gov.au/general/Latest_News/LicenseesRePoker.pdf). Both accessed on 25 May 2011.

<sup>18</sup> 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>. Accessed on 25 May 2011.

previous bet or fold, losing the amount bet so far and all further interest in the hand. A player who matches the bet may also raise, increasing the bet. The betting round ends when all players have either matched the last bet or folded. If all but one player folds on any round the remaining player collects the pot without showing his hand. If more than one player remains in contention after the final betting round, the hands are shown and the best remaining hand takes the pot.

- (ii) With the exception of initial forced bets, what is being played with (for example chips, money, tokens) are placed into the pot voluntarily by a player who, at least in theory, rationally believes the bet has positive expected value. Thus, while the outcome of any particular hand does feature an element of chance, the long run returns to the players are determined by their chosen actions based on probability and psychology and are not simply a random outcome.
- (iii) Poker games such as Texas Hold’Em, Omaha and 7-Card Stud, for example, require a degree of skill. These games have more betting rounds and are games of partial information as some cards are known to all players and some remain concealed from opponents. Using information on your own hand, how your opponents acted in each betting round and information revealed by the cards that are dealt face up, these poker games require the deployment of analytical skills and strategy to perform well.
- (iv) Poker strategy is a well discussed topic both in books and online on popular forums. The world’s largest poker forum, [www.twoplustwo.com](http://www.twoplustwo.com), as of 8 June 2011, had 23,321,246 posts from its users relating to the strategy of No-Limit Hold’Em, the most popular form of poker. There are also a number of strategy related websites that specialise in providing video content on how to play poker (see for example, [www.cardrunners.com](http://www.cardrunners.com) and [www.deucescracked.com](http://www.deucescracked.com)). These sites have thousands of members that pay a monthly subscription fee, highlighting the considerable consumer interest in poker strategy.
- (v) The above illustrates that poker is a game whose outcome is determined predominantly by the skill of the individual participants. Whilst there are short-term variants, players who consistently make better decisions relevant to their opponents come out ahead in the long run. This attribute is present when playing poker for free or for money. The challenge of applying one’s skills to consistently perform well at the game is another attractive feature of poker not present in casino games such as roulette. In this respect, poker is no different to bridge and chess which are both irrefutably games of skill.

(c) **Judicial Consideration**

- (i) In *Police v Jones*, *Police v Ravesi* [2008] SAMC6 62, charges were brought that the conduct of, and participation by players in, a Texas



Hold'Em Poker tournament constituted unlawful gaming under the laws of South Australia.

- (ii) Expert evidence concerning the nature of poker and other games was given during the hearing. The evidence accepted by the Court was similar to the evidence given in *R v Kelly* (2008) 2 All ER 840 (the Gutshot case) in the UK, namely that the game of Texas Hold'Em Poker is a game where skill prevails and is not merely a game of chance. Further, the Court appeared to accept the expert evidence that, despite an element of chance existing in respect of the manner in which cards are dealt, skill was a determinant element in the outcome in the game over time. This finding disposed of the case because the offence under the South Australian legislation could only be established if poker were found to be wholly a game of chance.
- (iii) Similar findings that poker is a game of skill rather than chance have been made overseas. In a 2009 case heard in South Carolina, the Court determined that "...*Texas Hold-em is a game of skill. The evidence and the studies are overwhelming that this is so. On January 14, 2009, the State of Pennsylvania in a fact situation very similar to this one determined that Texas Hold-em poker is not unlawful gambling as defined by their gaming statutes because it is a game of skill, (Commonwealth of Pennsylvania vs Dent Case No. 733 of 2008)*".<sup>19</sup>
- (iv) In May 2009, a Swedish appeal court substantially reduced various charges and sentences and, in some cases, exonerated men who had been convicted of arranging a land-based Texas Hold' Em poker tournament. The charges of serious illegal gambling were downgraded to regular illegal gambling on the basis that, during the main game of a poker tournament, where a player could be dealt as many as 40 "hands" or sets of cards, as opposed to side games played by those once eliminated from the main game, a player's skill plays a greater role than chance in the outcome of the game.<sup>20</sup>
- (v) Most recently in early July 2010, a Dutch court ruled that poker is a game of skill<sup>21</sup>. Dutch gambling laws state specifically that games reliant on luck or chance may only be played at state operated casinos and that casino-type games are games of chance. The defence successfully argued that poker was able to be distinguished from games of chance because the outcome depended on tactics, experience and psychology.
- (vi) The District Court of New Zealand was also recently required to determine whether poker is a game of skill and a form of gambling.<sup>22</sup>

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

<sup>20</sup> <http://www.thelocal.se/19454/20090514/>. Accessed on 25 May 2011.

<sup>21</sup> <http://www.online-poker-insider.com/articles/opi-dutch-court-determines-poker-is-game-of-skill.html>. Accessed on 8 June 2011.

<sup>22</sup> *Department of Internal Affairs v TV Works Ltd*, CR 08004505568-620, District Court (Auckland), Harvey J, 23 June 2010 (**TV Works Case**).

The prosecution commenced by the Department of Internal Affairs (**DIA**) concerned the broadcast of various television advertisements, among other matters, for an overseas operator of a live terrestrial poker tournament and an online "play for free" poker site (**.Net Site**).

- (vii) Judge Harvey determined that the advertisements did not constitute contraventions of the New Zealand *Gambling Act*. The principal basis of the Court's findings was that the advertisements did not promote gambling or a gambling operator. In reaching this decision, the Court determined, among other things, that:
  - (A) Conducting a poker tournament does not constitute gambling per se because the tournament's structure *"does not involve the payment of consideration based upon the outcome of the game. It involves the splitting of a sum of money derived from payment of entry fees between the players"*. Thus the necessary element of gambling is absent. Accordingly, the operators are not conducting a gambling operation, but rather a competition involving the game and play of poker.<sup>23</sup> Therefore the advertisement promoting the poker tournament did not breach the relevant provision of the *Gambling Act*. The DIA successfully appealed this determination. The broadcaster has subsequently appealed this decision to the High Court. A date has not been set for the appeal hearing.
  - (B) Internet users are able to readily distinguish between play for free websites and play for money websites. The DIA did not appeal Judge Harvey's finding that the advertisements for the play for free website did not contravene the *Gambling Act*.
- (viii) Many in the US are also promoting poker as a game of skill.<sup>24</sup> A recent study conducted in the US concluded that poker is a game of skill rather than luck:

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

*The reason that poker appears to be a game of luck is that the reliability of any short session is low. In a casino game of poker, about 25 hands are dealt per hour. In study 2,*

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<sup>23</sup> TV Works Case, [117]-[118].

<sup>24</sup> 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>. Accessed on 25 May 2011.

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>. Accessed on 25 May 2011.

*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.”<sup>25</sup>*

- (d) An April 2011 study conducted by Steve Levitt (Department of Economics at the University of Chicago) and Thomas Miles (University of Chicago Law School) considered whether or not poker is a game of skill. The performance of players in the 2010 World Series of Poker was analysed. Those players who were identified as being highly skilled before the event commenced, on average had a return of investment of over 30 per cent compared to all other players, who had a return of investment of -15 per cent. The study concluded that the large gap in returns was strong evidence that poker is a game of skill.<sup>26</sup>
- (e) 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.<sup>27</sup> 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.”<sup>28</sup>*

#### 4.3 Peer-to-Peer

- (a) Poker can also be distinguished from most other forms of casino gambling and wagering because participants playing poker compete against one another on a peer-to-peer basis (**P2P**). Therefore, poker can be distinguished from other gaming activities because it includes social and competitive dynamics and involves individual participants matching wits and skills against one another.
- (b) Players find these dynamics to be an appealing aspect of poker, which has helped fuel the game's popularity. This is in contrast with other forms of

<sup>25</sup> DeDonno M A & Detterman D K “Poker Is A Skill”, *Gaming Law Review*, Vol 12, No 1 (February 2008). Available at <http://www.liebertonline.com/doi/abs/10.1089/glr.2008.12105>. Accessed on 25 May 2011.

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

<sup>27</sup> <http://gpsts.org/>. Accessed on 25 May 2011.

<sup>28</sup> “Prof. Nesson Testifies Against Poker Criminalization” Available at: <http://gpsts.org/prof-nesson-testifies-against-poker-criminalization>. Accessed on 25 May 2011.

games, such as casino games and lotteries, which are designed primarily to attract those who wish to play for financial gain.

- (c) Because the game is played P2P, the poker operator has no stake in the final outcome of the game, regardless of whether they are a terrestrial or online operator. Online poker operators do not participate in games and have no interest in their outcome, nor are players able to stake money or gamble on the outcome of the games. The conduct of online poker in this manner reflects the guidelines in place in various States for the conduct of terrestrial poker games. The New South Wales and Victorian guidelines for the playing of poker legally in those States allow poker to be played provided that no person derives a percentage or share of the "buy-in", which is the total amount a person plays to participate in the game and that money is unable to be gambled or staked on the outcome of the poker game<sup>29</sup>.
- (d) In stark contrast, other online games and wagering activities are "house banked". In most of these types of games, participants compete directly against the house (i.e. the operator), with the odds often being fixed. The house or operator takes a share or percentage of the amounts wagered.

4.4 Clearly, on the basis of the above, online poker may be distinguished readily from other forms of gambling. Poker may be characterised as a game of skill, which is played on a peer-to-peer basis in a social setting. This is very different to many other terrestrial and online casino games.

#### 4.5 The IGA

- (a) Despite the obvious demand for online poker services by Australian-based consumers, as detailed above, the IGA prohibits Australian-based operators from providing and advertising prohibited gambling services to Australian-based consumers.<sup>30</sup> In this regard, the IGA targets the supply of services rather than demand for the services.
- (b) "Gambling service" is defined in the IGA to include a service for the conduct of a game where the game is played for money or for anything else of value and the game is a game of chance or of mixed chance and skill and a customer of the service gives consideration or agrees to give consideration to play or enter the game.<sup>31</sup> This definition captures some, but not all, online poker services. Free-to-play websites which allow users to participate in tournaments at no cost would not be captured by this prohibition. Users do not provide or agree to provide any consideration before playing on such websites.
- (c) However, some forms of online gambling are exempt from the IGA. In particular, a range of online wagering and lottery services are not prohibited. The IGA does not distinguish online poker from:
  - (i) other casino-type games, such as roulette, blackjack;

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<sup>29</sup> PC Report:15.22.

<sup>30</sup> IGA, section 6.

<sup>31</sup> IGA, section 4.

- (ii) online versions of EGMs; and/or
- (iii) online bingo.
- (d) In our view, given the distinguishing features of online poker (as a game of skill, which is played P2P in a social setting), online poker should be treated differently to the other forms of casino-type games identified above. In this regard, we note that the Minister for Broadband, Communications and the Digital Economy is able to exclude any service from the provisions of the IGA at his discretion.<sup>32</sup>
- (e) The PC Report released on 23 June 2010 recognised that online poker can be clearly distinguished from other online casino-type games and that the provision of online poker services by Australian-based operators to Australian-based consumers should be permitted. The PC Report is discussed in detail below at 6.

## 5. Harm Minimization Measures

5.1 iBus Media's First Submission to the Productivity Commission outlined a number of harm minimisation measures, which could easily be used by Australian-based online poker operators, if the provision of online poker services were to be permitted in Australia under the IGA<sup>33</sup>. These harm minimisation measures included:

- (a) undertaking verification checks of new players (such as 100 point checks) to prevent under-age access and reduce the risk of money laundering;
- (b) placing limits on the amounts that can be deposited by players per day, week, month or year;
- (c) imposing deposit limits on players relative to their incomes;
- (d) allowing players to self-impose betting limits and self-exclude themselves from a site for a period of time;
- (e) clearly and prominently advertising problem gambling help lines and warnings about the risks associated with gambling on their websites;
- (f) donating a portion of their revenue to problem gambling initiatives;
- (g) clearly showing a player's betting history so each player can monitor his or her wins and losses;
- (h) identifying problem gamblers with reference to an agreed standard and policy for identifying problem gamblers; and
- (i) employing strict measures to protect the privacy of players by ensuring that confidential or sensitive data is maintained securely at all times.

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<sup>32</sup> IGA, section 10.

<sup>33</sup> First Submissions, page 23.

- 5.2 Significantly, many of the measures listed above, which are routinely used by Australian online wagering operators, are not available to offline or terrestrial operators because offline operators are not able to access the same level of individual user data, which is collected by online operators.
- 5.3 The PC Report recognised that providing services online enables online operators to *"actively and cheaply provide a range of preventative and rehabilitative support to people at risk of developing a gambling problem. Similarly, the internet can be used to extend current treatment and counselling services for those seeking help"*.<sup>34</sup>
- 5.4 In response to the Productivity Commission's Draft Report on Gambling, which was released in October 2009, iBus Media lodged further submissions with the Productivity Commission in December 2009 (**Second Submissions**). A copy of the Second Submissions is enclosed and marked "**B**". The Second Submissions identify and discuss numerous commonplace harm minimisation measures which have been adopted by off-shore online poker operators. In preparing the Second Submissions, a number of the major offshore online poker operators' websites (the **Poker Sites**)<sup>35</sup> were reviewed in late 2009 and the following harm minimisation measures were identified at that time as standard practice<sup>36</sup>:
- (a) Measures to restrict access by minors, including:
- (i) When agreeing to the terms and conditions on the Poker Sites, users are required to acknowledge that they are at least 18 years of age at the time their account is created.
  - (ii) Name, address and birth date data is collected to confirm personal details. Fulltiltpoker.com (**FTP**), for example, uses Integrity Age Verification Services (**Integrity**) to ensure that players are at least the minimum legal age. Integrity's software verifies standard issue driver licence details or other government issued ID in respect of citizens of 157 countries. 888.com (**888**) also uses verification software as does Pokerstars.com (**PokerStars**). PokerStars initially restricts new players to low deposit limits and verification may be required where a player wishes to increase their deposit limit, transfer funds to other accounts or makes a request to withdraw over a certain value.
  - (iii) Users with minors in their households are encouraged to keep their password details secure and not activate the "save password" function on any gaming sign-in screen, nor to leave their computers unattended. Users are encouraged to create separate profiles for each user of their computer so that nobody else can access the user's information.
  - (iv) Users are also encouraged to keep their credit card and bank account details secured.

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<sup>34</sup> PC Report: 15.22.

<sup>35</sup> [www.partypoker.com](http://www.partypoker.com); [www.fulltiltpoker.com](http://www.fulltiltpoker.com), [www.pokerstars.com](http://www.pokerstars.com) & [www.888.com](http://www.888.com). Accessed on 25 May 2011.

<sup>36</sup> iBus Media Limited, *Second Submissions to the Productivity Commission: Gambling Industry (Second Submissions)*, December 2009, page 5 to 12 at [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0007/93796/subdr375.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0007/93796/subdr375.pdf). Accessed on 25 May 2011.



- (v) If a user is aware of a minor accessing the online gaming software, each Poker Site provides an email address so that the relevant details can be emailed to the operator, including the user's player name.
  - (vi) Each Poker Site also encourages users with minors in their households to consider voluntarily using protection or filter software on their computer to limit access to specific websites and programs for underage users, for example netnanny.com or safekids.com.
  - (vii) The 888 Site provides parents with tips to prevent underage gambling and displays a link to an associated site, which focuses on responsible gaming and harm minimisation, [www.888responsibile.com](http://www.888responsibile.com). Online poker cannot be played on the site, which displays information about the possible causes of underage gambling; the identification and prevention of teen gambling problems; and how to support and communicate with teens with gambling problems.
- (b) Automated monitoring of player behaviour and targeted intervention, including:
- (i) The use of indicators, which are monitored by the customer service or security departments of online operators. Indicators include whether a person has lost a much larger amount than usual in a short time or is otherwise demonstrating an adverse and noticeable departure from past levels of activity. Should players on the PokerStars Site, for example, wish to increase their maximum deposit amount to participate in the highest level of games, they are first subjected to a stringent security examination during which, for example, their playing history is reviewed, among other matters.
  - (ii) Monitoring of player behaviour is also required to ensure compliance with the anti-money laundering and funding of terrorism laws of the jurisdictions in which the online operators are licensed.
  - (iii) In instances where there is a marked departure from past behaviour, or where unusual patterns occur, the system will flag that activity and it is standard practice to refer the players to the responsible gambling departments of the operators for further investigation and/or intervention.
  - (iv) Intervention activities may include a responsible gaming department staff member contacting the player and asking the player a series of questions to determine whether the player may be developing a gambling problem and/or to refer the player to assistance services.
  - (v) If not already doing so, it is certainly feasible that online operators would be able to send players an automated message when the player is approaching their loss or deposit limit. An automated message in respect of a time limit being reached is not so feasible or desirable for

online poker operators (as opposed to operators of other interactive games). A player would not be likely to leave a table or tournament in the middle of a game, which may be quite lengthy (as opposed to a person playing an online casino-type game, such as roulette or black jack, which finish quickly).

- (vi) Most online operators have automatic deposit limits which apply to all new players. Requests for increases are considered only after a security examination which includes an analysis of past deposits (no chargebacks), further ID checks and a review of the playing history to ascertain that there are no obvious signs of problem activity.
  - (vii) "Spelkoll" is an example of Swedish automated technology which monitors players' behaviour and is referred to in the PC Report.<sup>37</sup> "Spelkoll" translates into "player or gambling control" and is designed to identify gambling patterns that may indicate a gambling problem surfacing in an individual. Svenske Spel, the Swedish company behind the technology, has made Spelkoll available as a voluntary aid, which players can use to monitor their playing activity and let them know of any indication of a developing problem.
  - (viii) Spelkoll checks over a hundred different parameters, such as rate of recurrence in play, habits, wagering levels and all indications of loss chasing. Users are divided into three different levels: green, orange and red. Each of the three levels has a corresponding response that will occur as someone moves through the ranks. The mid-range category of players, or orange players, are excluded from promotional activities and advertising. Those players who reach the red level will likely be invited to withdraw themselves from the site. The tool is a first in the industry and is proficient at exposing, at an early stage, gamblers with a propensity to develop a problem.<sup>38</sup>
- (c) Effective self-exclusion, with measures including:
- (i) On the 888 and PokerStars Sites, users may request, for example, a cooling off period of 12 or 24 hours or 7 days; or self-exclusion periods of 30, 60 or 180 days or 6 months. During the period of self-exclusion, users' accounts are blocked. The self-exclusion period is irrevocable. On the PokerStars Site, once a six month period of self-exclusion has ended, a player is required to request that their account be reactivated as reactivation is not automatic. However, reactivation occurs automatically at the end of self-exclusion periods of less than six months.

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<sup>37</sup> PC Report 15.23.

<sup>38</sup> <http://www.internet-poker.co.uk/Poker-News/General-Poker-News/Self-monitored-gambling-on-the-horizon~547.html>. Accessed on 6 June 2011.



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

delay. An obvious effect of this delay is that online poker players are not likely (or able to) “chase losses”.

- (x) When players are taking a "seat" at a virtual poker table, the PokerStars Site provides them with their account balance and the player receives a prompt to state the maximum amount they want to play for that game which, in any event, cannot exceed their pre-commitment level.
- (f) The availability of online counselling.
  - (i) All of the Poker Sites display a list of indicators, which may point to a user having a gambling problem.
  - (ii) The Poker Sites display links to organisations in various jurisdictions providing counselling services to those with gambling problems, for example, Gamblers Anonymous, Gambleaware.co.uk, GamCare.org.uk, and Gamblingtherapy.org. The 888 Site, for example, displays a link to a webpage on the Gambler's Anonymous website, which features a 20 question self-assessment test for users to determine whether they might have a gambling problem.<sup>39</sup>
  - (iii) In addition to the above, the Poker Sites provide other information which may assist users to keep out of debt and play poker responsibly. The 888 Site provides users with tips to keep out of debt, for example, not to play when depressed and not to borrow money to gamble. The PokerStars Site displays tips on how to play poker responsibly, for example, set deposit limits and not to play for higher stakes to try and recoup any losses.
  - (iv) The various Poker Sites have specific webpages dedicated to responsible gaming and many display a Responsible Gaming Mission statement.<sup>40</sup>
- (g) Accreditation by independent testing bodies, such as e-Commerce Online Gaming Regulation & Assurance (**eCOGRA**), a non-profit organisation based in the United Kingdom, which is considered to be the independent standards authority of the online gaming industry.
  - (i) eCOGRA has set a number of operational and player practice standards which, when met by an operator, enable the operator to display eCOGRA's "Safe and Fair" seal on the operator's website (and be listed on eCOGRA's website [www.ecogra.org](http://www.ecogra.org) as an approved site), is indicative that the operator's website is a quality and safe site.
  - (ii) eCOGRA's list of "Generally Accepted Practices" (**eGAP**)<sup>41</sup>, with which operators' websites must comply to obtain a seal, include

<sup>39</sup> See <http://www.888.com/responsible-gaming/>, which displays a link to <http://www.gamblersanonymous.org/20questions.html>. Both accessed on 6 June 2011.

<sup>40</sup> See <http://www.pokerstars.com/about/responsible-gaming/>. Accessed on 25 May 2011.

<sup>41</sup> See [http://www.ecogra.org/Documents/eGAP\\_-\\_Approved\\_30\\_March\\_2011.pdf](http://www.ecogra.org/Documents/eGAP_-_Approved_30_March_2011.pdf). Accessed 6 June 2011.

,mandatory practices which are of relevance to harm minimisation and which focus on minors and problem gambling. Examples of these practices include but are not limited to the following mandatory minimum requirements:

- (A) Payments to and receipts from players:
  - (I) players must be able to access their account history online for at least the last 60 days with offline access for a minimum period of 12 months)<sup>42</sup>. Access shall be granted to records of all deposits, withdrawals, wagers, wins, losses, fees, and bonuses<sup>43</sup> ; and
  - (II) player account-related queries to be addressed promptly.<sup>44</sup>
- (B) Minimum information requirements include complete transaction history affecting players' balances must be maintained for 12 months<sup>45</sup>, player transaction records must be kept for at least 5 years or in accordance with the operator's regulatory authority<sup>46</sup>, and all changes to game parameters must be reported<sup>47</sup>, and
- (C) Underage and illegal gambling: homepages are required to display a "no under 18's" or an age restriction determined by the regulatory authority, which provides a link to a message regarding underage play<sup>48</sup>; the responsible gaming page is required to provide a link to a filtering program which is recognised to allow players to prevent minors accessing the site<sup>49</sup>; a disclaimer must be displayed stating that no players under the legal age are legally permitted to gamble online<sup>50</sup>; a policy dealing with processes when underage gamblers are identified must be included<sup>51</sup>, and a disclaimer must be displayed stating that only players who are legally permitted in their home jurisdictions may participate in online gambling<sup>52</sup>;
- (D) Personnel training: the proper training of personnel in respect of responsible gambling issues is required;<sup>53</sup>

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<sup>42</sup> eGAP 1.06.

<sup>43</sup> eGAP 1.06.

<sup>44</sup> eGAP 5.09.

<sup>45</sup> .eGAP 3.14.

<sup>46</sup> eGAP 1.06.

<sup>47</sup> eGAP 9.33.

<sup>48</sup> eGAP 2.01.

<sup>49</sup> eGAP 2.02.

<sup>50</sup> eGAP 2.03.

<sup>51</sup> eGAP 2.09.

<sup>52</sup> eGAP 5.02.

<sup>53</sup> eGAP 1.15.

- (E) Self-exclusion requirements: players must have options to set their own deposit limits per day, week and month<sup>54</sup>; requests to decrease deposit limits must be dealt with immediately<sup>55</sup>; self-exclusion due to a gambling addiction shall be for a minimum period of at least six months;<sup>56</sup> and there shall be a clear link from the deposit page to the facility to set deposit limits and/or the responsible gambling page<sup>57</sup>. A cooling off option of at least 24 hours must be in place<sup>58</sup> and best endeavours shall be taken to ensure players do not receive promotional material during the exclusion period.<sup>59</sup>
- (F) Responsible gambling: operators' homepages must contain a clear link to a responsible gambling and player protection webpage which, at a minimum:
  - (I) displays a warning that gambling can be harmful;
  - (II) provides advice on responsible gambling and links to sources of assistance;
  - (III) provides a simple and accepted self-assessment procedure to determine if at risk;
  - (IV) displays the player protection measures (among other, cooling-off, self-exclusion and deposits limits) which are available;
  - (V) displays the responsible gambling policy or a link to the policy<sup>60</sup>, and a clock on the screen at all times.<sup>61</sup>
- (G) eGAP also sets out stringent minimum mandatory requirements in respect of player and game funds<sup>62</sup>, player information<sup>63</sup>, software development and maintenance<sup>64</sup>, total gaming transaction review<sup>65</sup>, server connectivity requirements<sup>66</sup>, general gaming requirements<sup>67</sup>, disaster recovery<sup>68</sup>, system malfunctions<sup>69</sup>, anti-money laundering<sup>70</sup>, responsible

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<sup>54</sup> eGAP 1.09.

<sup>55</sup> eGAP 1.10.

<sup>56</sup> eGAP 1.14.3.

<sup>57</sup> eGAP 1.11.

<sup>58</sup> eGAP, 1.12.

<sup>59</sup> eGAP 1.13.

<sup>60</sup> eGAP 1.01.

<sup>61</sup> eGAP 1.04.

<sup>62</sup> eGAP 5.

<sup>63</sup> eGAP 4.

<sup>64</sup> eGAP 9.31 to 9.35.

<sup>65</sup> eGAP 6.

<sup>66</sup> eGAP 9.28 to 9.30.

<sup>67</sup> eGAP 6.11 to 6.18.

<sup>68</sup> eGAP 9.25 to 9.27.

<sup>69</sup> eGAP 9.09 to 9.24.

advertising and promotions<sup>71</sup>, player complaints and disputes<sup>72</sup>, and probity checks<sup>73</sup>.

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

5.5 iBus Media's recent submission to the Joint Select Committee on Gambling Reforms (**Select Committee**) inquiry into the pre-commitment schemes provided greater detail on the harm minimisation measures, including pre-commitment features, which are provided routinely by online poker operators to players (**Pre-Commitment Submission**). The Pre-Commitment Submission also considered the different online poker licensing regimes which are in place in various overseas jurisdictions. The Pre-Commitment Submission is enclosed and marked "C".

5.6 Given the above harm minimisation measures are widely used by the leading offshore online poker operators, it may be concluded that most online poker operators are very conscious of having sufficient responsible gaming policies, harm minimisation

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<sup>70</sup> eGAP 3.

<sup>71</sup> eGAP 7.

<sup>72</sup> eGAP 8.

<sup>73</sup> eGAP 9.03.

strategies and procedures in place to ensure the integrity of the services they provide. Should online poker services be permitted in Australia subject to a strict regulatory regime, any or all of these widely used harm minimisation features identified above could become mandatory measures required to be used by Australian-based online poker operators.

## **6. The Productivity Commission Report**

6.1 As stated above, the PC report was released on 23 June 2010.<sup>74</sup> The Productivity Commission had been requested by the Australian Government to report on various matters relating to the gambling industry including:

- (a) the implications of new technologies (such as the internet), including the effect on traditional government controls on the gambling industries; and
- (b) the effectiveness and success of harm minimisation measures.

6.2 The Productivity Commission recognised the increased interest in poker, both terrestrial and online, and recommended that a gradual process of liberalisation be adopted in respect of the regulation of online gaming.<sup>75</sup>

6.3 The Productivity Commission's key findings and recommendations were:

- (a) Research suggests that, although online gaming has benefits, the potential impact of consumption of online gaming services by problem gamblers poses a significant social cost. Accordingly, online gaming should be subject to appropriate regulation.
- (b) The IGA, which currently prohibits online gaming, has had limited effectiveness in reducing demand for online gaming services and its effectiveness is likely to decline over time.
- (c) The IGA discriminates against potential online gaming providers by effectively ensuring that the Australian market (which is growing) for online gaming is catered for by offshore providers who operate under different regulatory regimes.
- (d) The most appropriate form of regulation is gradual managed liberalisation of online gaming with strict licensing criteria and harm minimisation requirements.
- (e) Such liberalisation should commence with the liberalisation of online poker which is likely the safest form of online gambling and, subject to the success of such liberalisation, extend to other forms of online gambling.<sup>76</sup>

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<sup>74</sup> <http://www.pc.gov.au/projects/inquiry/gambling-2009/report>. Accessed on 25 May 2011.

<sup>75</sup> PC Report 15.17.

<sup>76</sup> PC Report, 15.1.

- 6.4 The Productivity Commission recognised that there is a clear demand for online poker which suggests that its liberalisation and regulation could deliver considerable consumer benefits.<sup>77</sup> Furthermore, the Productivity Commission considered online poker to be the form of online gaming which involves the least risks because:
- (a) *“It is a game of skill without the speed of play or continuous nature of other games.*
  - (b) *It is unlikely to elicit the ‘trance like’ states commonly seen among players of EGMs or EGM-like games.*
  - (c) *It is a social game (played potentially at home alone, but with others globally in a virtual social setting).*
  - (d) *It is often played in tournament setting with an upfront entry fee. This provides ‘play’ times at a known, fixed cost to players limiting their losses.*
  - (e) *There is evidence to suggest that the typical spend of frequent online poker players is relatively small”.*<sup>78</sup>
- 6.5 Accordingly, the Productivity Commission considered that, although managed liberalisation is not without risk, the licensing of online poker would be a good starting point to enable the regulator to build capacity and fine tune its operations. Lessons learned could be applied to the possible future liberalisation of other gaming products.<sup>79</sup>
- 6.6 Among other matters, the Productivity Commission recommended that, in respect of online poker<sup>80</sup>:
- (a) The Australian Government should amend the IGA to permit the supply of online poker games. Online poker, along with other gambling forms currently exempted from the IGA, should be subject to a regulatory regime that mandates:
    - (i) strict probity standards; and
    - (ii) high standards of harm minimisation including:
      - (A) the prominent display of information on account activity and information on problem gambling and links to problem gambling resources;
      - (B) the ability of players to pre-commit to a certain level of gambling expenditure;

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<sup>77</sup> PC Report 15.31.

<sup>78</sup> PC Report, 15:31.

<sup>79</sup> PC Report, 15.31.

<sup>80</sup> PC Report, 15.34 to 15.35.

- (C) the ability of players to self-exclude; and
    - (D) the display of automated self warnings arising from potentially harmful patterns of play.
  - (b) The Australian Government should monitor the effectiveness of:
    - (i) such harm minimisation standards; and
    - (ii) the performance of the regulator in overseeing a national regulatory regime.
  - (c) The Australian Government should also evaluate whether:
    - (i) the provision of online poker should continue to be permitted; and
    - (ii) liberalisation should be extended to other online gambling forms.
- 6.7 The PC Report referred favourably to numerous harm minimisation measures identified in iBus Media's First and Second Submissions.<sup>81</sup>

## 7. Australian Regulatory Framework

- 7.1 While online gaming operators are prohibited from providing gaming services to Australian-based customers by virtue of the IGA. Many States and Territories have legislative regimes which contemplate licensing systems suitable for online operators. The legislative regimes are capable of regulating online gaming services provided by Australian-based operators to Australian-based customers.
- 7.2 Legislation dealing specifically with internet gambling exists in substantially similar terms in the Australian Capital Territory (**ACT**), Queensland and Victoria, which is largely based on the "Draft Regulatory Control Model for New Forms of Interactive Home Gambling" (**National Model**<sup>82</sup>). The Gaming Ministers from all States and Territories agreed in 1997 to a set of policy principles, which are reflected in the National Model, which was also released in 1997. The policy principles included the regulation of licensing, various audit and inspection requirements, technical operations, and player protection requirements, including harm minimisation requirements, such as the ability to self-exclude and set limits.
- 7.3 The ACT, Queensland and Victorian legislation provides that a person must not conduct or participate in an interactive game, knowing the game is not an authorised game, unless licensed.<sup>83</sup> In addition, Tasmania and the Northern Territory both have existing gambling legislation which contains provisions which contemplate clearly the

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<sup>81</sup> PC Report 15.22 to 15.28.

<sup>82</sup> See [http://www.aph.gov.au/Senate/Committee/it\\_ctte/completed\\_inquiries/1999-02/gambling/report/e06.pdf](http://www.aph.gov.au/Senate/Committee/it_ctte/completed_inquiries/1999-02/gambling/report/e06.pdf). Accessed on 25 May 2011.

<sup>83</sup> *Interactive Gambling (Player Protection) Act 1998* (Qld), sections 16 and 164; *Interactive Gambling Act 1998* (ACT), sections 14 and 127; and *Gambling Regulation Act 2003* (Vic), section 7.2.2.



licensing of interactive gaming operators in those jurisdictions.<sup>84</sup> These legislative frameworks are discussed in further detail below.

- 7.4 The regulatory framework applicable to online gambling in Australia, in general terms, consists of the legislation identified above, the system of licensing which is in place in those States and Territories and Codes of Practice. Each of these has been imposed on online gambling operators and requires those operators to utilise various harm minimisation measures.
- 7.5 In addition, testing laboratories based in Australia have the expertise to ensure that systems comply with regulatory and harm minimisation requirements
- 7.6 This regulatory framework (comprising legislation, a licensing system, and Codes of Practice) was in place before the enactment of the IGA in 2001.
- 7.7 The existing regulatory and licensing regimes in Queensland, Victoria, Tasmania, South Australia, the ACT and the Northern Territory, which have the ability to regulate and grant licences in respect of online gaming services provided by Australian-based operators to Australian-based customers, are described further below.<sup>85</sup> In particular, legislation in Queensland, Victoria, Tasmania, the ACT and Northern Territory permits specifically the licensing of online gaming operators, while the South Australian legislation has a framework for online bookmakers, which could be adapted for online gaming operators. Each of these frameworks has specific provisions dealing with, for example, minors, pre-commitment, and exclusion options (by self or operator).
- 7.8 These existing State and Territory regulatory and licensing regimes referred to above demand operators have many harm minimization measures in place as a condition of their licence and reflect those measures identified in the PC Report.<sup>86</sup>
- 7.9 Queensland
- (a) Queensland has legislation which deals specifically with online gaming services. *The Interactive Gambling (Player Protection) Act 1998 (Qld Act)* regulates online gaming services and was enacted in accordance with the National Model.
  - (b) Section 16(1) of the Qld Act provides that it is an offence to conduct an unauthorised interactive game in Queensland or to allow a person who is in Queensland to participate in an unauthorised interactive game.<sup>87</sup> Section 16(2)

<sup>84</sup> *Gaming Control Act 1993* (Tas), sections 5A and 76B; *Gaming Control Act 1993* (NT), Part 4, Division 5.

<sup>85</sup> Second Submissions page 25 to 36.

<sup>86</sup> PC Report 15.22 to 15.28.

<sup>87</sup> Section 6 of the *Interactive Gambling (Player Protection) Act 1998* defines an “interactive game”:

(1) as one in which

(a) a prize consisting of money or something else of value is offered or can be won under the rules of the game; and

(b) a player--

(i) enters the game or takes any step in the game by means of a telecommunication device; and

(ii) gives, or undertakes to give, a monetary payment or other valuable consideration to enter, in the course of, or for, the game; and

(c) the winner of a prize is decided-

provides that it is an offence to participate in, or encourage or facilitate participation in, an unauthorised interactive game. Online casino games, which are played for money, would be captured by the definition of "interactive game".

- (c) Under the Qld Act, an interactive game can be approved either through a process set out in the Qld Act or by being an approved game in an Australian jurisdiction with a corresponding law.
- (d) When a player registers, they must produce evidence of their identity, place of residence and their age: the minimum age being 18.<sup>88</sup>
- (e) The Qld Act provides for player setting of pre-commitment levels and self-exclusion. Players must be able to set limits on amounts by giving written notice to an operator. Limits set must be able to be changed by players. However, whilst requests to reduce limits are effected immediately, requests to increase limits can not take effect for seven days. Should an operator allow a player to make a deposit in excess of their own limit which they have set, the operator may incur a penalty of 100 penalty points.<sup>89</sup>
- (f) Players must be able to self-exclude themselves from playing on a licensed operator's site by given the operator written notice. The operator is then required to provide the player with a self-exclusion order and the details of at least one entity which provides counselling services for problem gambling. Players can revoke the self-exclusion order but only if they request the revocation in writing within 24 hours of receiving the self-exclusion order from the operator. Otherwise, revocation can only take place at least 1 year after the player received the self-exclusion order from the operator.<sup>90</sup>
- (g) The Qld Act also allows for licensed operators to issue an exclusion direction to a player prohibiting them from playing further games conducted by the operator if the operator believes, on reasonable grounds, that the player has a gambling problem. Players who have been prohibited by an exclusion direction issued by an operator may only apply for the direction to be revoked once a year has passed since the date the player was given the direction.<sup>91</sup>
- (h) The *Queensland Responsible Gambling Code of Practice (Qld Code)*<sup>92</sup> has been developed by the Queensland Responsible Gaming Advisory Committee (**Qld Committee**), which is made up of members from the community, industry and the Queensland government. The Qld Committee consulted with key stakeholders when developing the Qld Code, which is supported by the

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(i) wholly or partly by chance; or

(ii) by a competition or other activity in which the outcome is wholly or partly dependent on the player's skill.

<sup>88</sup> Section 18(2) of *Interactive Gambling (Player Protection) Act 1998*.

<sup>89</sup> Section 136 of *Interactive Gambling (Player Protection) Act 1998*.

<sup>90</sup> Sections 137 to 137B of the *Interactive Gambling (Player Protection) Act 1998*.

<sup>91</sup> Sections 137C to 137E of the *Interactive Gambling (Player Protection) Act 1998*.

<sup>92</sup> See

<http://www.olgr.qld.gov.au/resources/responsibleGamblingDocuments/responsibleGamblingCodeOfPractice.pdf>  
Accessed 25 May 2011.

*Queensland Responsible Gambling Resource Manual (Qld Manual)*. The Qld Manual sets out best practice across all codes of gambling and is a tool to assist with the implementation of the Qld Code.

- (i) The Qld Code is administered by the Queensland Office of Gaming Regulation. Compliance with the Qld Code is voluntary. However, the Qld Code does contain practices with which compliance is a legislative requirement, for example, the provision of pre-commitment and self-exclusion measures. Therefore, if an operator does not comply with a legislative requirement which is included in the Qld Code, then an action may be taken against the operator under, for example, the Qld Act.
- (j) A wide variety of responsible gaming measures are covered by the Qld Code, which are relevant to online operators. Operators are required to provide certain information, including ensuring that a responsible gambling mission statement is clearly displayed. Information is also required to be displayed prominently concerning the potential risks of gambling and where to obtain assistance for problem gambling. Information must also be displayed alerting customers to the availability on request of the following:
  - (i) the nature of the games, their rules, odds and so forth;
  - (ii) the operator's Responsible Gambling Policy document;
  - (iii) information concerning exclusion;
  - (iv) complaint resolution mechanisms; and
  - (v) the key points of the operator's financial transaction practices.<sup>93</sup>
- (k) Operators are required to have a staff member perform a customer liaison role. That person must have been trained to provide information to customers to assist with gambling problems. In addition, there must be support staff to provide assistance to customers with gambling problems and to assist staff if they have a gambling problem. Complaint handling procedures must be in place and promoted which deal with gambling-related issues. Mechanisms are required to be in place, which ensure staff are provided with effective and ongoing responsible gambling training.<sup>94</sup>
- (l) The Qld Code contemplates online operators complying with numerous measures in respect of exclusion provisions. Operators, for example, are required to provide exclusion procedures and documentation in support. Customers who seek contact information in respect of exclusion notification are to be offered support services for gambling-related problems. Where practical, operators are to support players in seeking exclusion from other operators (where the customer has been excluded from the operator). Operators are not to market or promote their services to excluded customers or

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<sup>93</sup> *Queensland Responsible Gambling Code of Practice (Qld Code)*, pages 7 and 19.

<sup>94</sup> Qld Code, pages 8 and 20.

customers who have requested that they not be provided with this type of information.<sup>95</sup>

- (m) The Qld Code also sets out requirements in respect of the physical gambling environment. In terms of online operators, requirements with which they are expected to comply include prohibiting minors from gambling, not encouraging gambling by providing gratuities and implementing practices so that players are aware of the passage of time and are discouraged from playing in intensive or extended periods of play.<sup>96</sup>
- (n) In addition to these requirements, the Qld Code prescribes numerous measures in respect of responsible gambling advertising and promotions practices<sup>97</sup> and financial transaction practices<sup>98</sup>, with which operators are required to comply.
- (o) In June 1999, the Queensland government awarded the first interactive gaming licence under the Qld Act to GOCORP Limited (ACN 083 201 923). The licence was awarded for 15 years (until June 2014).<sup>99</sup> GOCORP subsequently merged with Lasseters Casino Pty Ltd, a Northern Territory-based operator.

#### 7.10 Victoria

- (a) Victoria also has legislation dealing specifically with online gaming services. Chapter 7 of the *Gambling Regulation Act 2003* (Vic) (**Victorian Act**) sets up a regime for regulating such services, which is modelled on the National Model.
- (b) Many of these provisions are in substantially similar form to the Qld Act.
- (c) Section 7.2.1 of the Victorian Act provides that the conduct of an approved interactive game in accordance with Chapter 7 is lawful, while section 7.2.2 provides that the conduct of an unauthorised “interactive game” is unlawful. Given that the definition of “interactive game” (which is the same as that under the Qld Act) includes “a competition or other activity” where the winner is determined wholly or partly as a result of the player’s skill, it is arguable that all games, not just casino games, which are played for money, would be captured by this definition of “interactive game”.
- (d) An interactive game can be approved either through a process set out in the Victorian Act or by being an approved game in an Australian jurisdiction with a corresponding law.
- (e) The Victorian Act stipulates various harm minimisation requirements with which interactive gaming licensees are expected to comply. An operator, for example, must not permit a registered player to play a game (which is also required to be approved) unless the player’s identity has already been authenticated in accordance with the conditions of the licence.

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<sup>95</sup> Qld Code, pages 9 and 20.

<sup>96</sup> Qld Code, pages 10 and 21.

<sup>97</sup> Qld Code, pages 12 and 22.

<sup>98</sup> Qld Code, pages 11 and 21.

<sup>99</sup> GOCORP Limited *Prospectus* April 2007 at page 70.

- (f) Section 7.4.16 of the Victorian Act requires operators to allow players to set limits on the amount they wish to wager, which the player may change or revoke by providing written notice. Any written request to increase or revoke a limit will not take effect until 7 days have passed since the operator received the notice.
- (g) There are some additional requirements in the Victorian Act relating to self-exclusion. For example, section 7.4.17 of the Victorian Act requires licensed operators to acknowledge self-exclusion orders. If a player gives notice that they do not wish to be permitted to participate in the online gaming activities conducted by the operator, the operator is required to give a copy of the self-exclusion notice to the Victorian Commission for Gambling Regulation (**Victorian Commission**). The operator must not allow the player to play any online games on the site until the notice is revoked. The Victorian Commission is required to give copies of the notice to other licensed providers and the relevant authority in each participating jurisdiction. A player can revoke the self-exclusion order by given written notice: however, revocation will not take effect until seven days have passed since written notice was given. An operator is prohibited (and subject to penalties) if it accepts a wager from a player who has self-excluded themselves in accordance with the Victorian Act or a corresponding law.
- (h) In Victoria, it is a condition of an interactive gaming licence that the holder implements a Responsible Gambling Code of Conduct approved by the Victorian Commission.
- (i) For codes and self-exclusion programs to gain approval from the Commission, the documents are also required to comply with benchmarks set by the Commission, namely the *Criteria and Benchmarks for Approving Responsible Gambling Codes of Conduct* and *Criteria and Benchmarks for Approving a Self-Exclusion Program*.<sup>100</sup>

#### 7.11 Australian Capital Territory

- (a) The Australian Capital Territory (**ACT**) is another jurisdiction which has legislation dealing specifically with online gaming services. *The Interactive Gambling Act 1998* (**ACT**) (**ACT Act**) regulates online gaming services and, like Queensland and Victoria, is modelled on the National Code.
- (b) Many of these provisions are in substantially similar terms to the Qld and Victorian Acts.
- (c) The ACT Act requires those wishing to be registered as players to provide evidence of their identity, place of residence and age (being more than 18). Licensed operators are unable to register players until their identity has been verified.<sup>101</sup> Furthermore, licensed operators must not allow minors to

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<sup>100</sup> See

<http://www.vcgr.vic.gov.au/CA256F800017E8D4/responsible/411690FD5015ED51CA25777E000A0D94?OpenDocument>. Accessed 8 June 2011.

<sup>101</sup> Section 18 of the IGA (ACT).

participate in authorised games<sup>102</sup> Players themselves are also subject to penalties should they allow a minor to participate as a player.

- (d) Like Victoria, persons may apply to the ACT Commission of Gambling and Racing (**ACT Commission**) for an order that a player, who is resident in the ACT, be prohibited from playing an authorised game. Players themselves can seek an order as can any other person who satisfies the ACT Commission that they have a close, personal interest in the welfare of the person for whom the prohibition order is sought.<sup>103</sup>
- (e) The ACT has a Code of Practice (**ACT Code**) in respect of responsible gambling made under the *Gambling and Racing Control Act 1999* (ACT) which applies to, among others, operators authorised under the ACT Act.<sup>104</sup>
- (f) The ACT Code sets out various requirements in relation to staff care and training, including a requirement that all staff members involved directly in providing gambling services successfully complete an approved training program within the previous 5 years.<sup>105</sup>
- (g) There are also various requirements in respect of problem gambling.<sup>106</sup> For example, specific requirements in respect of recording incidents of problem gambling and appointing at least one problem gambling officer per facility exist. Licensed operators must take reasonable steps to provide information about counselling and advisory services if a customer asks about problem gambling.
- (h) The ACT Code also contains numerous requirements in relation to advertising. In connection with minors, for example, licensees must not publish advertising which shows people under the age of 25 gambling or which encourages people under the age of 18 to gamble (or which targets them). Other requirements, among others, are that advertisements must not be false or misleading or suggest that gambling is a form of financial investment.<sup>107</sup> There are also particular requirements in respect of promotions and inducements.<sup>108</sup>
- (i) As can be seen from the above, the legislation and regulatory framework in Queensland, Victoria and the ACT is largely the same, being based on the National Model and there are stringent requirements in respect of the provision of responsible gambling services and harm minimisation measures.

7.12 Whilst Tasmania, South Australia and the Northern Territory do not have specific legislation authorising online gaming, current legislation in these jurisdictions applies to online gaming.

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<sup>102</sup> Section 134 of the IGA (ACT).

<sup>103</sup> Section 102 of the IGA (ACT).

<sup>104</sup> *Gambling and Racing Control (Code of Practice) Regulation 2002* (ACT) at <http://www.legislation.act.gov.au/sl/2002-28/default.asp>. Accessed 25 May 2011.

<sup>105</sup> Clause 1.4 of Schedule 1 Code of practice to the *Gambling and Racing Control (Code of Practice) Regulation 2002* (ACT) (the **ACT Code**).

<sup>106</sup> Division 1.2.2 of the ACT Code.

<sup>107</sup> Part 1.4 of the ACT Code.

<sup>108</sup> Clause 1.29 of the ACT Code.

### 7.13 Tasmania

- (a) Part 4A of the *Gaming Control Act* 1993 (Tas) (**GCA**) applies to online gaming. Section 76U of the GCA allows for a Tasmanian gaming licence to be endorsed with a simulated gaming endorsement, which authorises the operator to conduct online simulated games.<sup>109</sup>
- (b) Casino games provided via an online gambling service would arguably fall within the definition of “simulated game”. Clarification could take place by a statutory amendment to enable online poker to be regulated in this manner.
- (c) The Tasmanian Gaming Commission (**TGC**), established under the GCA, is an independent body responsible for the regulation of gaming in Tasmania. The regulatory framework allows the TGC to issue gaming licences to applicants meeting the required regulatory, financial and probity standards for the conduct of approved gaming activities. The ‘approved gaming activities’ include race wagering, sports betting, simulated gaming, major lotteries, pools, betting exchanges, totalisator wagering and other activities that may be prescribed.
- (d) The GCA requires licensees to implement and comply with various player protection measures, including:
  - (i) the ability of players to impose limits on their play and exclude themselves from participating in wagering activities;
  - (ii) the ability of third parties to exercise exclusion measures in respect of players;
  - (iii) a prohibition on the provision of credit by a licensed provider; and
  - (iv) a complaints mechanism.
- (e) Division 7 of the GCA concerns player protection measures in respect of gaming and wagering activities conducted by Tasmanian licensees. Players must be able to set their own net loss limit for wagers made in a calendar month. In a manner similar to the regime implemented in other States, any written request to reduce a limit takes effect when received by the operator, whilst a request to increase a loss limit will not take effect until 7 days has elapsed since the request was received by the operator.<sup>110</sup>
- (f) Similarly in respect of wagering, players must be able exclude themselves from participating in wagering. If a player requests self-exclusion, the operator must within 3 days remove their name from the register of players, ensure all customer support people are aware of the exclusion and give a written copy of the notice to the TGC. A self-exclusion notice cannot be revoked for a least 6

<sup>109</sup> See [http://www.austlii.edu.au/au/legis/tas/consol\\_act/gca1993156/s76u.html](http://www.austlii.edu.au/au/legis/tas/consol_act/gca1993156/s76u.html). Accessed on 8 June 2011.

<sup>110</sup> Section 76ZK of the GCA 1993.



months from the date on which the notice was given.<sup>111</sup> There is no reason why these provisions cannot be extended to online poker.

- (g) The GCA also includes a procedure which enables persons with a close personal interest in the welfare of a player, to apply to the TGC for an order prohibiting the player from engaging in wagering. The player has an opportunity to make representations. If satisfied that the making of the order is in the public interest and the interest of the player, the TGC will make an exclusion order prohibiting the player from wagering with the licensed operator. A licensed operator is prohibited from accepting a wager from an excluded player, or directly advertising their services to an excluded person.
- (h) The TGC is also able to issue Player Protection Standards, with which licensees must comply, which are designed to minimise the harmful effects of gambling.
- (i) As can be seen from the above, the Tasmanian requirements in respect of the regulation of online gaming and harm minimisation are prescriptive. They can be extended readily to the licensing of online poker.

#### 7.14 South Australia

- (a) The *Authorised Betting Operations Act 2000* (SA) (**ABOA**) sets out a strict regulatory regime which requires online interstate bookmakers to be authorised to provide online wagering activities to South Australian residents.
- (b) Section 6A(1)(b) and (c) of the ABOA provides that the South Australian Independent Gambling Authority (**SA IGA**) may proscribe advertising codes of practice, responsible gambling codes of practice and requirements for systems and procedures, which are designed to prevent gambling by children. The codes of practice may apply to all betting operators, or only those within a specified class.<sup>112</sup>
- (c) Section 6A(3) of the ABOA sets out various measures which a responsible gambling code of practice may address. These include:
  - (i) requiring information relating to responsible gambling and the availability of services to address problems associated with gambling to be displayed or made available to persons proposing to make bets;
  - (ii) the provision of staff training, which addresses responsible gambling practices and the services available to address problems associated with gambling;
  - (iii) requiring accounts to be kept for persons who make bets by telephone, internet or other electronic means and for the accounts to be managed in a way that allows the amount available for betting at any given time to be limited; and

<sup>111</sup> Section 76ZNB of the GCA 1993.

<sup>112</sup> Section 6A(2) of the *Authorised Betting Operations Act 2000* (SA) (**ABOA**).



- (iv) requiring account statements to be provided at regular intervals.
- (d) Under section 62C of the ABOA, an authorised interstate betting operator must ensure that its betting operations in South Australia comply with the applicable gambling codes of practice. Compliance with the *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice (SA Code)*<sup>113</sup> is mandatory for authorised interstate bookmakers. The SA Code sets out a framework by which an interstate bookmaker can ensure that the authorised services it provides are provided in a responsible manner consistent with community expectation.
- (e) Authorised operators are required, for example, to display on their websites a message stating that their gambling operations are governed by a code of practice, a copy of which must be available on the website. When accounts are opened, operators must inform new registrants that its gambling operations are governed by a code of practice. Operators are also required to prepare and maintain documents in respect of any gambling website which detail the way in which staff are trained and the way in which measures for problem gambling are implemented, as well as the role staff play in the implementation of the code.<sup>114</sup>
- (f) Operators are required to do various things to bring their responsible gaming policies to their customers' attention. Operators must provide their responsible gambling materials to new customers when new accounts are created and provide a responsible gambling warning statement to customers when the operators provides account statements to customers. Responsible gambling materials must include a helpline message and be made available in Arabic, Chinese, Greek, Italian and Vietnamese, in addition to English, and in any other language the operator thinks appropriate. Operators must also take reasonable steps to ensure that customers who show difficulty in controlling their expenditure have their attention drawn to a problem gambling assistance service.<sup>115</sup>
- (g) The provision of self-exclusion measures is mandatory under the SA Code. Customers must be able to exclude themselves for a fixed or indefinite period. If a customer requests self-exclusion via a phone call, the request must be dealt with while the customer is on the phone. If the request is lodged online, the operator must deal with the request within 24 hours. If a telephone service, a translation service must be provided if requested by the customer. When customers request self-exclusion, the operator must refer the customer immediately to a gambling help service. Before a self-exclusion notice is rescinded, customers must have an opportunity to review the self-exclusion notice with customer service staff. Operators must ensure that excluded people are removed from loyalty mailing databases.<sup>116</sup>

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<sup>113</sup> See [http://www.iga.sa.gov.au/pdf/rules\\_forms\\_codes/AIBO-RGCode-r03.pdf](http://www.iga.sa.gov.au/pdf/rules_forms_codes/AIBO-RGCode-r03.pdf). Accessed on 25 May 2011.

<sup>114</sup> Clause 2 of the SA Code.

<sup>115</sup> Clause 5 of the SA Code.

<sup>116</sup> Clause 9 of the SA Code.

- (h) The SA Code also has a number of measures in respect of staff and training. All staff members involved in selling gambling products must receive problem gambling training. Staff are required to be provided with a refresher course at least every two years. Employee newsletters and magazines must include responsible gambling information. Responsible gambling information must also be provided in the workplace to remind staff of their responsibilities.<sup>117</sup>
- (i) Problem gambling training programs must be designed to provide information about the potential effects of gambling on customers. Information on the recognition and identification of problem gambling must be included in training programs. Approach, intervention, referral and follow-up procedures are required to be well understood by staff.<sup>118</sup>
- (j) The SA Code requires gamblers to be allowed to set limits. The pre-commitment requirements include requirements that customers must be able to set a pre-commitment level at a level of their choice, with the pre-commitment offered as a limit on net losses during a relevant period, a limit on deposits during the relevant period or both a net loss and deposit limit. The pre-commitment levels must be able to be set for fixed periods of 7 days.
- (k) Customers must be given the option of setting a pre-commitment level and accounts are not to be activated until a customer has made a conscious decision to set a pre-commitment level or to have no limit. Decisions to increase pre-commitment levels should not be effected for at least 7 days, while decisions to decrease limits should commence as soon as possible.
- (l) The provision of the ABOA and the SA Code extend to authorised interstate betting operators. These provisions are working in practice – there is no reason why consideration could not be given to extending these obligations to the online gaming sector including online poker providers.

#### 7.15 Northern Territory

- (a) Part 4, Division 5 of the *Gaming Control Act* 1993 (NT) (**NT Act**) provides for the licensing of internet gaming. Regulations place player protection requirements on licensees.
- (b) Lasseters Casino Pty Ltd (**Lasseters Online**) was licensed in 1999 to conduct internet gambling operations. Restrictions applying to that operator were contained in a separate licence agreement. The licence required Lasseters Online to have numerous harm minimisation measures in place including:
  - (i) measures to prevent access by minors;
  - (ii) monthly deposit limits with any wagers being restricted to the amount of the deposit plus any winnings that might have accumulated; and
  - (iii) the capacity for players to set their own bet limits and self-exclude, either for a seven day cooling off period or permanently.

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<sup>117</sup> Clause 10(1) of the SA Code.

<sup>118</sup> Clause 10(3) of the SA Code.

- (c) Whilst the licence issued to Lasseters Online has now lapsed, the licensing regime remains in place which enables licenses to be granted in the Northern Territory to conduct internet gambling operations.
- (d) The *Gaming Control (Internet Gaming) Regulations 2006 (NT Regulations)* stipulate various requirements with which licensed online gaming operators are required to comply. Matters for compliance include the approval of computer and control systems, the licensing of key employees, financial controls, player protection, and collusion, among other matters.
- (e) In respect of player protection, the NT Regulations provides mechanisms for the prohibition of specified people from registering as a player.<sup>119</sup> Licensed operators must not make a payment out of a player's account unless the player's identity, age and place of residence have been verified first by the operator's approved control system.<sup>120</sup> Operators must not provide credit to customers.<sup>121</sup>
- (f) The pre-commitment requirements in the Northern Territory are substantially the same as those in the other States and the ACT, identified above.
- (g) The NT Regulations also contains numerous provisions in respect of the protection of minors.<sup>122</sup> Licensees must ensure that anyone accessing the operator's website is able to access computer software to enable access to the site to be restricted or prevented by a minor using the person's computer.<sup>123</sup>
- (h) Finally, all operators are required to comply with the Code of Practice for Responsible Gambling (**NT Code**)<sup>124</sup>, which has been developed jointly by the Territory, the operators licensed in the Territory and counselling service providers.
- (i) Matters covered by the NT Code include:
  - (i) the provision of information concerning potential risks;
  - (ii) the clear display of a responsible gambling mission statement;
  - (iii) mechanisms for dealing with customer complaints;
  - (iv) the maintenance of responsible gambling records;
  - (v) training and skills development for employees;
  - (vi) self-exclusion procedures; and
  - (vii) the prohibition of minors.

<sup>119</sup> Regulation 48 of the *Gaming Control (Internet Gaming) Regulations 2006 (NT Regulations)*.

<sup>120</sup> Regulation 52 of the NT Regulations.

<sup>121</sup> Regulation 56 of the NT Regulations.

<sup>122</sup> Regulations 59 to 61 of the NT Regulations.

<sup>123</sup> Regulation 61 of the NT Regulations.

<sup>124</sup> See [http://www.nt.gov.au/justice/licenreg/sports\\_betting.shtml](http://www.nt.gov.au/justice/licenreg/sports_betting.shtml). Accessed 25 May 2011

- (j) The Northern Territory's regulatory regime is administered by the Northern Territory Licensing Commission (**NT Commission**).
  - (k) From an historical perspective, the NT Commission has considerable expertise in the regulation of online gambling services due to the licensing scheme it has administered in respect of online sports bookmakers. Many of Australia's largest online corporate bookmakers are licensed in the Northern Territory. These corporate bookmakers are subject to strict regulatory requirements, many of which address the provision of responsible gambling services which focus on the minimisation of harm.
  - (l) This is in addition to the experience and expertise acquired by the NT Commission in supervising the operations of Lasseters Online. (Much of this expertise is transferable readily to the regulation of other forms of online gambling including online poker.)
- 7.16 Further, various Australian-based operators were awarded licences in Queensland, Northern Territory and the Australian Capital Territory to conduct online gaming activities prior to the 2001 enactment of the IGA. These included, but are not limited to:
- (a) GOCORP Limited (ACN 083 201 923), which was licensed by the Queensland government;
  - (b) Lasseters Casino Pty Ltd (ACN 080 397 306), which was licensed by the Northern Territory government; and
  - (c) Tattersall's, which was licensed by the Tasmanian government and then in the Australian Capital Territory.

## **8. Overseas Regulation of Online Poker**

- 8.1 The Productivity Commission has acknowledged in the PC Report that the prohibition on online gaming has resulted in Australians only being able to use offshore sites<sup>125</sup>.
- 8.2 As pointed out in the Second Submissions, when making any determination as to the appropriate regulatory framework for the regulation of Australian-based online gaming, the manner in which various licensing schemes in overseas jurisdictions operate should also be considered. In particular, the Second Submissions referred in detail on the harm minimisation measures required to be implemented by operators licensed in the United Kingdom, Alderney and the Isle of Man, each having liberalised the provision of online gaming services subject to a stringent regulatory framework.<sup>126</sup>
- 8.3 In addition to the above, a number of other jurisdictions, including Italy, Malta and France, among others, have regulatory regimes in place which allow for the licensing of online poker operators. These are discussed briefly below.

### **8.4 United Kingdom, Alderney & the Isle of Man**

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<sup>125</sup> PC Report, 15.18.

<sup>126</sup> Second Submissions, page 13 to 19.

- (a) Each of the United Kingdom, Alderney and the Isle of Man has detailed requirements in respect of player protection, including:
  - (i) restricted access by minors;
  - (ii) responsible gambling information;
  - (iii) exclusion procedures; and
  - (iv) anti-money laundering measures.<sup>127</sup>

Many of the harm minimisation features identified in the PC Report in respect of online gambling are a requirement of the licence conditions of online poker operators licensed in the United Kingdom, Alderney and the Isle of Man.

- (b) United Kingdom
  - (i) The United Kingdom was the first major European Union member state to introduce legislation enabling private operators to subject themselves to the UK licensing regime in order to offer their services under the terms of a licence granted or recognized by the UK.<sup>128</sup>
  - (ii) The *Gambling Act 2005 (UK Act)* is a comprehensive piece of legislation dealing with all forms of gambling. It is both technology neutral and product neutral in that it provides licences for all types of gambling products (betting, casino, bingo, poker etc.).
  - (iii) Poker is regulated in a similar manner to betting exchanges on the basis that they share the same characteristic of being a peer to peer (P2P) operation rather than a house banked game.
  - (iv) Despite the availability of a licence, no major poker site has sought a licence in the UK. One of the reasons for this is that the British legislation is fully EU compatible, to the extent that an operator having a licence in the European Union or in a white listed territory (which includes Tasmania), is allowed to advertise its services in the UK as if it 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 UK licence to provide and promote their services in the UK. While the Gambling Commission, the relevant regulator, does not regulate these operators, the Gambling Commission has worked to establish guidelines for agreed good practice with the regulators in the EU and the white listed territory regulators. Also, the level of gambling taxation, (which is 15% of Remote Gaming Profit) creates a financial disincentive to obtaining a licence in the UK.
  - (v) Most of the leading online poker operators are licensed in a white listed jurisdiction.

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<sup>127</sup> Second Submissions, pages 13 to 19.

<sup>128</sup> *Gambling Act 2005* at [http://www.opsi.gov.uk/acts/acts2005/ukpga\\_20050019\\_en\\_1](http://www.opsi.gov.uk/acts/acts2005/ukpga_20050019_en_1). Accessed on 22 June 2011.

- (c) We have reviewed the submission of the United Kingdom Gambling Commission (the **Gambling Commission Submissions**) to the Senate Community Affairs Committee (**Senate Committee**). The Gambling Commission has concluded that, from its experience and the experience of other regulators that it works closely with, it is possible to regulate online gambling. Furthermore, the Gambling Commission believes that the regulation of online gambling is essential for the protection of the vulnerable.<sup>129</sup>
- (d) The Gambling Commission considers that the legislative framework in the United Kingdom has achieved effectively its licensing objectives. These include, among other matters:
  - (i) the protection of children and other vulnerable people from harm;
  - (ii) ensuring gambling is conducted in a fair and open manner; and
  - (iii) preventing gambling from being a source of crime or used to support crime.<sup>130</sup>
- (e) The Gambling Commission noted that all operators are required, for example, to use stringent age verification checks and other key social responsibility measures.<sup>131</sup>

## 8.5 Italy

- (a) The Amministrazione Autonoma Dei Monopoli Di Stato (AAMS) is responsible for regulating the gambling sector in Italy. The conduct of online poker by Italian operators was first introduced in March 2008 when the Remote Skill Gaming Rules were implemented. Under these Rules, poker is defined as a game of skill, on the basis that any monetary winnings are largely dependent on the skill of the players.
- (b) Until very recently, Italy's market was largely closed to foreign competition. However, with the Abruzzo region being struck by an earthquake on 6 April 2009, coupled with the ongoing global economic downturn, the prospect of additional revenue prompted the Italian government to liberalise further the Italian gambling market and enact three pieces of legislation that introduced important changes to the gambling framework:
  - (i) Decreto Legge No 39 in April 2009 (**Decreto Abruzzo**);
  - (ii) Legge 7 de Iuglio 2009 in June 2009 (**Comunitaria 2009**); and
  - (iii) Decreto Legge No 78 on August 2009 (**Decreto Anti-crisi**).

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<sup>129</sup> Gambling Commission (UK), "Gambling Commission submission to the Australian Senate Community Affairs Committee – remote" (**Gambling Commission Submission**), July 2010, 12.1 to 12.2.

<sup>130</sup> Gambling Commission Submission, 3.2.

<sup>131</sup> Gambling Commission Submission, 7.2.

- (c) Prior to the enactment of the Decreto Abruzzo and Comunitaria 2009, only online poker tournaments (which were considered skill-based games by the AAMS), were authorised subject to certain strict conditions. As a result of the Decreto Abruzzo and Comunitaria 2009, Italy now permits the conduct of online poker games for cash, subject to appropriate licences.<sup>132</sup>
- (d) The Comunitaria 2009 granted the AAMS the power to regulate online gambling and “*to limit, according to the market’s needs, the number of licences it provides*”.<sup>133</sup> The AAMS has the power to grant online gambling licences to operators provided that the following conditions, among others, have been met:
  - (i) the operation of a game of chance remotely in one of the states of the European Economic Area (**EEA**), on the terms of a valid and effective licence issued by that State, with a total turnover of not less than €1.5 million over the last two financial years before the date of the application;
  - (ii) the incorporation of a legal entity with a registered office in one of the states of the EEA before the licence is awarded;
  - (iii) the location of their technology infrastructure (both hardware and software) to the remote gaming activities located within a state of the EEA; and
  - (iv) the payment of an amount of €300,000 plus VAT (20 percent).<sup>134</sup>
- (e) Following the recent liberalisation of the Italian online gambling market, numerous online gambling operators have been licensed to conduct business in Italy, including Gioco Digitale, Microgame, Lottomatica, PokerStars, Snai (an Italian poker operator) and Bwin.

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

#### 8.7 **Malta**

- (a) In 2004, Malta became the first European Union member to regulate online poker services. iBus Media's First Submissions referred briefly to the system of licensing for online poker operators in place in Malta.<sup>135</sup>
- (b) The provision of online poker in Malta is regulated by the *Remote Gaming Regulations 2004*<sup>136</sup> (**RGR**), which are issued under the *Lotteries and Other Games Act 2001* (**LOGA**). The Lotteries and Gaming Authority (the **Authority**) is responsible for licensing administration matters.

<sup>132</sup> Article 12(f) of the Decreto Abruzzo.

<sup>133</sup> See Article 24 of the Comunitaria 2009.

<sup>134</sup> See Article 24 of the Comunitaria 2009.

<sup>135</sup> First Submission, page 29.

<sup>136</sup> <http://www.lga.org.mt/lga/content.aspx?id=87374> visited on 28 July 2010. Accessed 25 May 2011.



- (c) There are four classes of licences available and poker, being a P2P game, is covered by a Class 3 license which relates specifically to remote gaming conducted from Malta.<sup>137</sup>
- (d) Malta requires online gaming operators to comply with various requirements set out in the RGR. In respect of mandatory harm minimization measures, online poker operators licensed in Malta are required to restrict access to those over 18 and to carry out age verification checks.<sup>138</sup> Maltese licensees are also required to provide specific mechanisms for player protection. All registered players must be able to set limits on the following for online casino type games (except for online poker):
  - (i) the amount wagered within a specific time;
  - (ii) the amount of losses incurred within a specific time; and
  - (iii) the amount of time spent playing in any one session.<sup>139</sup>
- (e) The above are not mandatory for online poker operators because the Authority considers that poker is distinguishable from other casino-type games on the basis that:
  - (i) poker is not a repetitive game;
  - (ii) online poker players are not likely to lose track of time; and
  - (iii) each poker game has a start and finish point at which players are conscious of their wins, losses and account balance.<sup>140</sup>
- (f) Players must be able to exclude themselves from playing for a definite or indefinite period of time.<sup>141</sup> In addition, while players are able to revoke a limit or decrease an exclusion, licensees are only able to action such a request once seven days have passed from the date of the player's request.<sup>142</sup> However, licensees are required to immediately action a player's request to set a limit or self-exclude.<sup>143</sup>
- (g) It is also a mandatory requirement for online poker operators licensed in Malta to display a counter on the screen at all times during the game which automatically updates and shows the player's account balance.
- (h) In addition, licensees for other types of online casino games (not poker) are required to display an "automatic reality check" at intervals of an hour which must:
  - (i) suspend play;

<sup>137</sup> Schedule 1 to the *Remote Gaming Regulations 2004* (RGR).

<sup>138</sup> RGR 32.

<sup>139</sup> RGR 43.

<sup>140</sup> [http://www.lga.org.mt/common/file\\_provider.aspx?id=634081501182345000](http://www.lga.org.mt/common/file_provider.aspx?id=634081501182345000). Accessed 25 May 2011.

<sup>141</sup> RGR 43(1).

<sup>142</sup> RGR 43(2).

<sup>143</sup> RGR 43(4).



- (ii) clearly indicate how long the player has been playing;
  - (iii) display the player's winnings and losses during each time period;
  - (iv) requires player confirmation that they have read the message; and
  - (v) provides the player with an option to end the session or return to the game.<sup>144</sup>
- (i) The websites of online poker operators must also display links to websites of organisations (approved by the Authority) which specialise in helping problem gamblers.

## 8.8 France

- (a) France has liberalised its online gaming laws recently. The provision of online poker services by operators licensed in France is regulated by the Online Gaming Regulatory Authority (**ARJEL**). Online poker is permitted under Law No. 2010-476, which opened up the French market to competition in the online gaming sector together with a number of decrees:
- (i) Decree No. 2010-482: Online gaming: Conditions for granting authorisations to online gaming operators; and
  - (ii) Decree No. 2010-518: Availability of online gaming and gambling services.
- (b) The French Law and Decrees contain numerous sections dealing with the ways in which licensed operators must act to combat problem gambling. The requirements include specific information that must be displayed prominently on the website and in all commercial communications.
- (c) When opening an account with an online operator, each player must set an individual deposit and playing limit. Players may alter the limits at any time. Where increasing limits, changes will not take effect for two days. Where decreasing limits, the change will become effective immediately. No transactions can take place until a player sets a limit.<sup>145</sup>
- (d) Operators must provide players with a mechanism by which a player may at any time exclude themselves from gaming, either temporarily or permanently. While players are able to determine the period of their self-exclusion, the period must not be less than seven days.<sup>146</sup>
- (e) Furthermore, until the identity of each player has been verified by providing identification documentation and supporting bank account information, players are only permitted to open a temporary account. Players are unable to withdraw funds from temporary accounts, which will be closed if the player

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<sup>144</sup> RGR 44.

<sup>145</sup> Decree No. 2010-518: Availability of online gaming and gambling services (**Decree No. 2010-518**): Articles 16 and 18.

<sup>146</sup> Decree 2010-518: Article 18.

does not provide the necessary identification documentation within one month.<sup>147</sup>

- (f) Once a player's identity has been verified, the online operator is required to send a player a unique personal identification number (**PIN**) to access his/her account, which is distinct from the player's password.<sup>148</sup> Once received, the player must then use the PIN to terminate the provisional status of their account and, if this is not done within six weeks of the PIN being issued, online operators are required to terminate the provisional account.<sup>149</sup>
- (g) Each player's account must distinguish between amounts transferred by the player, amounts transferred by the operator as winnings and the amounts transferred by the operator as promotional offers. The operator is required to retain (and make available to the player) a 12 month history of bets, wins and losses, promotional offers and financial transactions relating to the player.<sup>150</sup>
- (h) In addition, ARJEL manages a central blacklist. Any player is permitted to add his/her name to the blacklist. Operators are required to check the name on the blacklist prior to opening an account, for any new player on the basis that they cannot open an account if shown. Operators are also required to perform checks of existing accountholders against the blacklist at regular intervals.
- (i) Licensed online poker operators must also not accept any bid that would put the player account into debit. Game rules and, if applicable, tournament rules, must be made accessible to players before the start of each game or session. At the start of each game, operators are also required to inform each player of the total amount of cash which they must have at the start of the game to make his or her bids. Online poker operators are also required to make a system available which informs players of their wins and losses at any time as well as details of the sequence of games they have played in the past year.<sup>151</sup>
- (j) Save for online sportsbetting and online poker, other online games are not permitted currently under the French regulatory framework. This is because the French government has taken the view that these games give rise to lower levels of risk. In the future, the provision of other online games such as casino games (which are considered to be of greater risk) may be permitted.

## 8.9 Estonia

- (a) In January 2010, the *Gambling Act 2009* came into force. This permits locally-based Estonian operators to obtain a licence to provide online poker services. From 2011, overseas-based online poker operators will be permitted to apply for a licence in Estonia provided they meet certain requirements, for example,

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<sup>147</sup> Decree No. 2010-518: Articles 3 and 4.

<sup>148</sup> Decree 2010-518: Article 5.

<sup>149</sup> Decree 2010-518. Article 5.

<sup>150</sup> Decree 2010-518. Article 13.

<sup>151</sup> Decree 2010-723 dated 29 June 2010 in respect of categories of round games mentioned in II of Article 14 of Law No. 2010-476 dated 12 May 2010. Article 5.II.

licensees will be required to provide measures which exclude minors from participating in gaming, warnings concerning problem gambling and the contact details of organisations which provide help to problem gamblers.<sup>152</sup>

#### 8.10 Denmark

- (a) In June 2010 the Danish Parliament passed a new *Gambling Act* that introduces licences for online poker as well as casino games and sportsbetting. Although the law has already come into effect, the licensing system is yet to be finalised and the implementing regulations are expected to come into force in late 2011. The draft regulations contemplate very similar requirements to the harm minimisation measures required by operators licensed in France.<sup>153</sup>
- (b) However, land-based operators licensed in Denmark have objected to the law on the basis that the law is unfair because online operators will pay less tax. Accordingly, the European Commission is currently considering the law.<sup>154</sup>
- (c) In a press release issued in April 2009, the Danish Government noted that the liberalisation was necessary in order to promote consumer choice, gain control of an already existing market, effectively combat gambling addiction and ensure that both the State and charitable causes continue to get funding from the gaming market.<sup>155</sup>
- (d) The Danish Gambling Authority indicated that it would allow part of a licensee's gambling system or operator's servers to be located outside Denmark in 'special cases' and under the Authority's close supervision.<sup>156</sup> The Danish Government has now approved this approach, and will allow foreign operators wishing to apply for a Danish e-gaming licence to locate their servers outside the country, following the publication of revised annexed 'technical requirements' to the 2010 draft gambling law.<sup>157</sup>

#### 8.11 Spain

- (a) The Spanish Parliament passed a law in May 2011 that introduces a licensing regime for poker, sportsbetting and a number of casino games.
- (b) Work is ongoing on the implementing regulations, which may be sent to the European Commission for review as early as this month. The Spanish State Gambling Commission hopes to issue the first online licences by the end of 2011.<sup>158</sup> The implementing regulations will contain the consumer protection and responsible gaming requirements.

<sup>152</sup> [http://www.gamblingcompliance.com/files/Estonia\\_Reg\\_Report.pdf](http://www.gamblingcompliance.com/files/Estonia_Reg_Report.pdf). Accessed 25 May 2011.

<sup>153</sup> Draft Executive Order on Online Casinos (bekendtgørelse om onlinekasino).

<sup>154</sup> <http://onlinecasinospotlight.com/2011/05/denmark-amends-a-clause-in-their-online-gambling-proposal/>. Accessed on 8 June 2011.

<sup>155</sup> <http://www.skm.dk/presse/pressemeddelelser/ministeren/7597.html>. Accessed 28 June 2011.

<sup>156</sup> 'At a Glance', *World Online Gambling Law Report* Vol 10 Issue 05, May 2011.

<sup>157</sup> 'At a Glance' *World Online Gambling Law Report* Vol 10 Issue 06, June 2011.

<sup>158</sup> <http://www.gamblingcompliance.com/node/46803/hl/search/spain%3B>. Accessed on 4 July 2011.

- (c) At this stage, the Spanish government currently intends to permit both online cash and tournament poker. It is also considering allowing foreign players to register on .es websites if they are willing to pay Spanish taxes.<sup>159</sup>

## 9. Other Overseas Regulatory Developments

- 9.1 A number of other European-based countries, including Holland, Belgium, Greece and the Czech Republic are moving closer to creating a regulatory framework whereby it is anticipated that private operators will be permitted to obtain licenses in those jurisdictions to provide online poker. Furthermore, in other countries such as Ireland, it appears that these jurisdictions are likely to give serious consideration in the near future to the introduction of a licensing regime that will allow the provision of online poker services to their residents.

### 9.2 Belgium

In early 2010, Belgium announced that a regulatory framework was to be established which allows for the licensing of online poker operators. The framework and licensing system will be administered by the Belgian Gaming Commission. The proposed framework is still being implemented but a test was launched in January 2011 under which existing offline licence holders can offer their services online. This requires any prospective online poker operator to first obtain a licence for terrestrial-based gambling in Belgium before they can apply for a licence to offer internet gambling. Furthermore, a cap is to be placed on the number of licences for internet operators.<sup>160</sup> The European Commission objected to the law on the basis that it was discriminatory but the Belgian Government disagrees and has proceeded with its implementation.

### 9.3 United States

- (a) With revenues of US\$92.27 billion, the USA is the largest gambling market in the world and arguably the most significant.<sup>161</sup> As noted in the Initial Submission, there is no prohibition of online gaming in US Federal Law. (However, the Department of Justice considers that the *Wire Act* 18 U.S.C. § 1084 prohibits online gambling. This view has been taken despite a ruling by the US Fifth Court of Appeals that the Wire Act applies only to sports betting and not other types of online gambling.)
- (b) In recent years, there has been significant controversy surrounding the *Unlawful Internet Gambling Enforcement Act (UIGEA)*, which prohibits the processing of payments relating to unlawful internet gambling. The UIGEA came into effect on 13 October 2006 and created a federal crime of voluntary receipt by someone “*in the business of betting or wagering*” of monies

<sup>159</sup> <http://www.gamblingcompliance.com/node/46803/hl/search/spain%3B>. Accessed on 4 July 2011.

<sup>160</sup> <http://gamingzion.com/gamblingnews/belgian-online-gambling-to-arrive-in-2011-1280>. Accessed 25 May 2011.

<sup>161</sup> American Gaming Association; see [http://www.americangaming.org/Industry/factsheets/statistics\\_detail.cfv?id=7](http://www.americangaming.org/Industry/factsheets/statistics_detail.cfv?id=7).

connected with the participation of someone else in unlawful internet gambling. The term “unlawful internet gambling” was circularly defined as:

*‘...to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received or otherwise made.’<sup>162</sup>*

- (c) This has the effect that only those online gambling activities which were unlawful previously remain unlawful after the implementation of the UIGEA (and those that were lawful remain lawful). However, financial institutions may now commit an offence under the UIGEA if a bank account “transmits” a bet or wager in relation to an unlawful internet gambling transaction. This has resulted in financial institutions being burdened with the responsibility of identifying and distinguishing between unlawful and lawful gambling activities.
- (d) As a result, the UIGEA has met considerable resistance from financial institutions and congress members, among others. Many of the objections made mirror the difficulties assessed in the IGA review (**IGA Review**)<sup>163</sup> conducted by the Department of Communications, Information Technology and the Arts (**DCITA**)<sup>164</sup> in 2003, which is discussed below. When the UIGEA regulations were implemented on 19 January 2009, financial institutions were given until 1 December 2009 to comply with the rules. However, financial institutions continued to make submissions that the obligation to monitor and identify internet gambling transactions represents an excessive compliance burden. Indeed, the US Treasury estimates compliance costs will amount to US\$88.5 million in staff costs.<sup>165</sup>
- (e) The UIGEA, which prohibits the transfer of funds from financial institutions to internet gambling sites, took effect on 1 June 2010.<sup>166</sup>
- (f) On 28 July 2010, during the 111<sup>th</sup> Congress, the proposed *Internet Gambling Regulation, Consumer Protection, and Enforcement Act (HR 2267)* was passed by the House of Representatives Financial Services Committee by an overwhelming, bipartisan vote of 41-22. HR 2267 authorises the US Secretary of the Treasury to create a regulatory system for the licensing of internet-based online poker, among other matters.<sup>167</sup> However, HR 2267 has since lapsed.

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<sup>162</sup> 31 USC § 5362(10)

<sup>163</sup> Department of Communications and Information Technology and the Arts, *Review of the operation of the Interactive Gambling Act 2001 (DCITA Review)*, July 2004.

<sup>164</sup> This department is now known as the Department of Broadband, Communications and the Digital Economy (**DBCDE**).

<sup>165</sup> : Treasury, Fed Issue Final Rule on Unlawful Internet Gambling (11/12/08). See page 88 of document at <http://www.scribd.com/doc/7916861/UIGEA-Treasury-Fed-Issue-Final-Rule-on-Unlawful-Internet-Gambling-111208>.

<sup>166</sup> [http://en.wikipedia.org/wiki/SAFE\\_Port\\_Act](http://en.wikipedia.org/wiki/SAFE_Port_Act). Accessed 25 May 2011.

<sup>167</sup> <http://www.govtrack.us/congress/bill.xpd?bill=h111-2267&tab=summary>. Accessed 25 May 2011.

- (g) More recently, in March 2011 the proposed *Internet Gambling Regulation, Consumer Protection and Enforcement Act (HR 1174)* was introduced into the current 112<sup>th</sup> Congress. HR 1174 contemplates the licensing of Internet gambling activities by the Secretary of the Treasury. On 1 June 2011, HR 1174 was referred to the Subcommittee on Crime, Terrorism and Homeland Security.<sup>168</sup>
- (h) A companion bill to HR 1174 has also been introduced, the *Internet Gambling Regulation and Tax Enforcement Act (HR 2230)*, which proposes to amend the *Internal Revenue Code 1986* to regulate and tax internet gambling if and when HR 1174 becomes law and the licensing of Internet gambling activities is permitted.
- (i) In April 2011, operators of three online poker sites became the subject of a civil complaint filed by US authorities and certain individuals associated with these sites were indicted for, among other matters, accepting funds from US-based players. All charges are being strenuously defended.
- (j) In June 2011, the proposed *Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act (HR 2366)* was introduced into the 112<sup>th</sup> Congress and has since been referred to various Committees for review. HR 2366 contemplates a program for the State licensing of online poker, which would include effective means to:
  - (i) prevent the participation of minors;
  - (ii) identify and help treat problem gamblers;
  - (iii) allow players to self-exclude and impose loss limits; and
  - (iv) prevent money laundering.<sup>169</sup>
- (k) A number of other US State jurisdictions have introduced legislation that will liberalise online poker. This includes Nevada, California and Washington D.C.
- (l) On June 10 2011, Nevada approved AB 258, providing a regulatory framework for interactive gaming.<sup>170</sup> However, AB 258 authorises only intrastate interactive gaming. The Bill specifies that licences for interstate interactive gaming operations will not become effective until federal legislation has been passed authorising interstate interactive gaming.
- (m) In California, SB 40 has been introduced to the Californian Senate. If enacted, the bill will provide for a framework to authorise intrastate interactive poker in California. On 16 May 2011 was read a second time and re-referred to the Committee on Governmental Organisation.<sup>171</sup>

<sup>168</sup> <http://www.govtrack.us/congress/bill.xpd?bill=h112-1174>. Accessed 30 June 2011.

<sup>169</sup> [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=112\\_cong\\_bills&docid=f:h2366ih.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=112_cong_bills&docid=f:h2366ih.txt.pdf). Accessed on 4 July 2011.

<sup>170</sup> See <http://www.leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=561>. Accessed on 1 July 2011.

<sup>171</sup> See [http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb\\_0001-0050/sb\\_40\\_bill\\_20110516\\_status.html](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sb_40_bill_20110516_status.html).



- (n) In April 2011 Washington D.C. became the first US jurisdiction to legalise internet intrastate poker.<sup>172</sup> D.C. officials held a public hearing on 29 June 2011 to discuss plans to launch a demonstration service and the development of regulations.<sup>173</sup> The legislation contemplates 10 to 20 “hot spots” where people over the age of 19 can play games on their laptop.<sup>174</sup> The service will offer monetary prizes but, during the demonstration phase, the games will be free, with free credits provided upon registration and prizes will only be redeemable for participation in games provided by the D.C Lottery.<sup>175</sup>

#### 9.4 Norway

- (a) Norwegian law prohibits offering gaming and lottery services without a licence. Licences are granted under the following statutory exemptions: *Totalisator Act* (1927), *Gaming Schemes Act* (1992), and *the Lottery Act* (1995).
- (b) The Norwegian parliament amended the *Totalisator Act* (1927), *Gaming Schemes Act* (1992) and *the Lottery Act* (1995) to make it illegal for payment processing companies to process financial transactions for online casinos, lotteries, sports books or interactive wagering providers, not licensed in Norway. These amendments came into effect on 1 June 2010.<sup>176</sup>
- (c) Unlike the USA's UIGEA, the Norwegian government has sought to amend existing statutes to broaden the existing offence of “*accessory involvement*” in unlawful gambling, rather than create an entirely new act. This means financial institutions would be expected to identify gaming operators by their unique merchant code applied to transactions, and block transactions involving those operators without a valid licence. Given that only the state-run enterprises Norsk Tipping and Norsk Rikstoto hold permits, the legislation will mean transactions involving all other operators will be blocked.
- (d) Various criticisms from both within and outside Norway have been levelled at the implementation of the financial control blocks. In February 2011, the Norwegian Gaming and Foundation Authority (NGFA) conducted a preliminary inquiry to assess the effect of the prohibition on payment processing. The inquiry showed that 35% of online gamblers surveyed said that it had become more difficult to gamble on non-licensed sites after the prohibition was introduced. However, the inquiry also revealed that 23% of online gamblers surveyed still used credit cards to pay for stakes despite the ban. 35% of those surveyed said they paid with pay cards.<sup>177</sup> The NGFA did not “see any significant change in the number of players gambling on non-

<sup>172</sup> Lloyd Levine, ‘Looking Beyond Black Friday: How States are Adapting’, *World Online Gambling Report*, Vol 10 Issue 05, May 2011 at page 7.

<sup>173</sup> [www.gamblingandthelaw.com/blog/html](http://www.gamblingandthelaw.com/blog/html), entry made on 29 June 2011.

<sup>174</sup> [www.gamblingandthelaw.com/blog/html](http://www.gamblingandthelaw.com/blog/html), entry made on 29 June 2011.

<sup>175</sup> [www.gamblingandthelaw.com/blog/html](http://www.gamblingandthelaw.com/blog/html), entry made on 29 June 2011.

<sup>176</sup> Anne Mette Hjelle, ‘Norway: Payment Blocking and Online Gambling: First Results’, *World Online Gambling Law Report* Vol 10 Issue 03, March 2011.

<sup>177</sup> Anne Mette Hjelle, ‘Norway: Payment Blocking and Online Gambling: First Results’, *World Online Gambling Law Report* Vol 10 Issue 03, March 2011.



licensed online gaming sites".<sup>178</sup> The payments ban also failed to significantly reduce turnover. However, NGFA acknowledged that since more than a third of gamblers said it had become more difficult to gamble on non-licensed sites, the ban may influence the recruitment of new players in the future.<sup>179</sup>

- (e) Criticisms (many of which are similar to the comments made in the IGA Review) have also included the following:
- (i) The merchant code (MC 7995) used by licensed Norwegian gambling operators (i.e. Norsk Tipping and Norsk Rikstoto) is the same as other gambling operators worldwide. This means financial institutions cannot accurately differentiate between licensed Norwegian operators and unlicensed gambling operators (or in other words between lawful and unlawful online gambling activity). Numerous submissions, notably from the Norwegian Financial Services Association and the Norwegian Savings Banks Association, have noted that all transactions would need to be blocked to comply with the legislation.<sup>180</sup>
  - (ii) The burden of compliance rests with financial institutions, which are required to monitor transactions and ensure only legal online transactions take place. This amounts to a significantly high burden, similar to the USA under the UIGEA.
  - (iii) When payment transfers are blocked, the financial institutions must inform the Norwegian Gaming Authority of the name, address and bank account number of the payment recipient. Names and other information which establish a connection to individuals must not be registered.
  - (iv) Also, the ban appears to be at risk of being in violation of Article 36 of the European Economic Area Agreement. The European Commission, which issued an opinion in April 2008, stated the proposed measures may be "ineffective, disproportionate and go beyond what is necessary to attain the legitimate aims pursued".<sup>181</sup> Of particular importance are:
    - (A) the lack of credible evidence linking online gambling to problem gambling; and
    - (B) the fact there is sufficient existing legislation limiting the risk of money laundering, such that the online payment controls are disproportionate and unnecessary. As a result, the opinion suggested that the risks of criminal activity "are not so high to justify the restrictive measures as far as gaming operators legally established in an EEA State are concerned and in

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<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.*

<sup>180</sup> Ben Moshinsky, 'Norwegian Payments Consultation Raises Blocking Doubts', 8 Jul 2009, *Gambling Compliance* published online at [www.gamblingcompliance.com](http://www.gamblingcompliance.com).

<sup>181</sup> James Kilsby, 'Norway Pushes Ahead With Payments Ban Proposal', 24 Sep 2008, *Gambling Compliance* published online at [www.gamblingcompliance.com](http://www.gamblingcompliance.com).

contrast with illegal operators established in Member States and third countries".<sup>182</sup>

## 9.5 Germany

- (a) Germany's ban on internet gambling is contained in the *Staatsvertrag zum Glücksspielwesen (Interstate Gambling Treaty)*, which came into force on 1 January 2008 and will expire on 31 December 2011.<sup>183</sup> The ban applies whether an operator is foreign, domestic, state-run or private. Advertising of gambling on the internet is also prohibited.<sup>184</sup> The treaty is binding across all 16 German states, and means uniform legislation is effective throughout Germany. Penalties for internet gambling include imprisonment for up to 5 years.<sup>185</sup> The Court of Justice of the European Union ruled in 2010 that the Interstate Gambling Treaty breaches EU Laws, and accordingly the German Federal States have started to develop new legislation.<sup>186</sup> However, the new draft Interstate Gambling Treaty is still restrictive. For instance, the draft proposes a turnover tax rate of 16.6% which would deter operators from applying for a licence. Furthermore, whilst online lotteries are allowed, only those lotteries organised by state lottery providers will be permitted. The draft Interstate Gambling Treaty is currently before the European Commission for review. Their response is due on 10 July 2011.<sup>187</sup>
- (b) Section 9 of the Interstate Gambling Treaty authorises, inter alia, the German regulatory body to:

*'Prohibit banks and financial services institutions from being involved in payments relating to illegal games of chance and payouts from the same'*

*'Prohibit internet service providers within the meaning of section 3 of the German Teleservices Act, from cooperating as regards access to unauthorised offers of games of chance.'*

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<sup>182</sup> James Kilsby, 'Norway Pushes Ahead With Payments Ban Proposal', 24 Sep 2008, *Gambling Compliance* published online at [www.gamblingcompliance.com](http://www.gamblingcompliance.com)

<sup>183</sup> *Staatsvertrag zum Glücksspielwesen (Interstate Gambling Treaty)* s 4(4): 'The establishment and provision of public gambling through the internet is forbidden.'

<sup>184</sup> Section 5 of the *Interstate Gambling Treaty*.

<sup>185</sup> Section 284 of the *German Criminal Code*.

<sup>186</sup> Michiel Willems, 'Schleswig-Holstein's Draft Bill Given Go Ahead by EU', *World Online Gambling Report* Vol 10 Issue 05, May 2011.

<sup>187</sup> *Ibid*

- (c) There is little evidence, however, that banks support the ban. Professor Hartmann Wendels, director of the University of Cologne's Institute of Banking Economics & Banking Law, considers that the financial transaction controls are practically impossible to monitor and investigate in Germany and all online transactions cannot be monitored in order to filter out payments made to online gambling companies.<sup>188</sup>
  - (d) Attempts to block internet service providers (ISPs) are similarly problematic, with ISP blocking measures bypassed very easily by new technical developments and through simple modifications by the providers and users.<sup>189</sup>
  - (e) Earlier this year, the European Commission determined that it did not object to a draft Gambling Bill proposed by the German State of Schleswig-Holstein, which would allow for the licensing of poker, sportsbetting and all forms of casino games.
- 9.6 The above discussion indicates that recent attempts overseas to control interactive gaming via controls placed on financial transaction, in countries such as Norway, appear to have failed to date. Indeed the Productivity Commission at 15.26-15.27 of the Report acknowledges, for example, the difficulties in restricting the use of credit cards and does not recommend that the use of credit cards for internet gambling (wagering and gaming) be banned.

## 10. Conclusion

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

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<sup>188</sup> Hambach & Hambach Law Firm, '*German State Treaty on Gambling – Legislator Demands the Impossible*' at <http://www.gaminglaw.eu/actuality-112/german-state-treaty-on-gambling-legislator-demands-the-impossible.html>. Accessed 6 June 2011.

<sup>189</sup> Hambach & Hambach Law Firm, '*German State Treaty on Gambling – Legislator Demands the Impossible*' at <http://www.gaminglaw.eu/actuality-112/german-state-treaty-on-gambling-legislator-demands-the-impossible.html>. Accessed 6 June 2011.

- 10.5 The Productivity Commission ultimately recommended that the provision of online poker services by Australian-based operators to Australian-based consumers be permitted in a regulated environment. This is consistent with the regulatory position in a number of other industrialized countries and there appears to be a trend in other countries, such as the US, that this is the more appropriate regulatory structure to put in place.
- 10.6 While the IGA prohibits online gaming operators from providing gaming services to Australian-based consumers, many States and Territories already have legislative regimes which contemplate licensing systems suitable for regulating online poker services provided by Australian-based operators to Australian-based consumers. These existing regulatory and licensing regimes, which have been imposed on other types of online gambling operators, demand that the operators implement many harm minimisation measures as a condition of their licence. These harm minimisation measures reflect those measures identified in the PC Report and our First and Second Submissions to the Productivity Commission.
- 10.7 When making any determination as to the appropriate regulatory framework for the regulation of Australian-based online operators, the requirements of various overseas licensing schemes should be considered. The experience overseas is that online poker can be regulated effectively: this is illustrated in the Gambling Commission's Submissions. The major overseas Poker Sites referred to above illustrate that effective harm minimisation measures can be easily and widely implemented by online poker operators.
- 10.8 In conclusion, the experience overseas indicates that an online regulatory framework, which allows for the provision of online poker services, can both deliver considerable benefits to consumers and include effective harm minimisation measures as an essential feature.
- 10.9 iBus Media considers that a similar framework could be introduced in Australia.
- 10.10 iBus Media looks forward to the Committee's findings.
- 10.11 In any event, iBus Media would be pleased to attend any public hearing convened by the Committee to answer any questions relating to this submission which the Committee may have.

**5 July 2011**