

Chapter 5

International regulatory environment—forms of prohibition

5.1 This chapter will examine some approaches taken by jurisdictions that attempt to prohibit online gambling. As noted in the previous chapter, regulation of online gambling is an area of change. Therefore some details within this chapter may have changed by the time the report is published.

The prohibition model

5.2 Despite a growing number of countries adopting a managed regulatory approach toward online gambling, many jurisdictions have adopted forms of prohibition on interactive and online gambling, including the United States (US), Germany and Canada. These approaches are outlined below.

United States of America

5.3 Despite online gambling being prohibited in the US, the US online gambling market amounts to approximately US\$92.27 billion per year in revenue¹ and has around seven million online gamblers.² Online gambling regulation in the US is a two tier system where online gambling is regulated by a combination of state and federal legislation:

In the US, the States have powers to regulate gambling within their own borders, with the Federal government able to regulate gambling activity that occurs across State borders.³

5.4 While the federal government has sought to clarify legislation prohibiting online gambling, some states and districts, including Nevada, California and Washington D.C., have introduced legislation liberalising online poker.⁴

1 iBus Media Limited, *Submission 42*, p. 44. See also Richard K, Miller & Associates which estimates that 'Americans bet over \$100 billion on all types of online gaming in 2010'. *Casinos, Gaming Wagering 2011*, May 2011, p. 15, <http://www.rkma.com/2011casinosSAMPLE.pdf> (accessed 14 November 2011).

2 Regis Controls Pty Ltd, *Submission 35*, p. 5.

3 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 36.

4 iBus Media Limited, *Submission 42*, p. 46.

Federal legislation

5.5 Online gambling in the US is prohibited under two pieces of federal legislation; the *Wire Act 1961* (Wire Act) and the *Unlawful Internet Gambling Enforcement Act 2006* (UIGEA). These work in conjunction with state legislation to prohibit the provision of online gambling across state borders.

Wire Act 1961

5.6 The Wire Act prohibits a person from being engaged in or betting or wagering on any sporting events or contests over wire communication facilities:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers in any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.⁵

5.7 In 2002, the US Fifth Circuit Court of Appeals ruled that the Wire Act only applied to sporting events and contests.⁶ Despite this ruling, the US Department of Justice has continued to interpret the Wire Act to mean that all forms of gambling over the internet are illegal.⁷

Unlawful Internet Gambling Enforcement Act 2006

5.8 The UIGEA works in combination with the Wire Act to impose financial restrictions on online gambling providers and companies who attempt to offer services to US consumers.

5.9 The UIGEA came into effect on 13 October 2006.⁸ The UIGEA 'makes it a felony for a person engaged in the business of betting or wagering to knowingly accept money in connection with unlawful gambling'.⁹ It achieves this by prohibiting banks and credit card companies from processing and settling payments for unlawful internet gambling sites.¹⁰

5 *Interstate Wire Act 1961*, Chapter 50: Gambling, s. 1084, <http://uscode.house.gov/download/pls/18C50.txt> (accessed 13 October 2011).

6 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 36.

7 iBus Media Limited, *Submission 42*, p. 44.

8 iBus Media Limited, *Submission 42*, p. 44.

9 Australian Racing Board Limited, *Submission 27*, p. 23.

10 iBus Media Limited, *Submission 42*, p. 45.

5.10 The UIGEA does not define unlawful online gambling. Rather it establishes financial restrictions on transactions made for any form of gambling defined as unlawful under state or federal law, working in combination with the Wire Act and various state laws. Responsibility for interpreting the legislation and determining which online gambling services are unlawful rests with financial institutions, which may commit an offence if they process a payment for a bet or wager in relation to an unlawful internet gambling transaction.¹¹

5.11 iBus Media stated that the US Treasury has estimated a compliance cost of US\$88.5 million in staff costs associated with the application of the UIGEA, an amount iBus Media argued represents an 'excessive compliance burden' on financial institutions.¹²

Effectiveness in preventing online gambling

5.12 Despite the compliance cost associated with the introduction of the UIGEA, the Australian Racing Board stated that there was an initial withdrawal of some online gambling providers from the US market, which resulted in significant drops in profits by gambling providers:

Evidence suggests that prior to the introduction of the UIGEA, US patrons comprised a significant proportion of global interactive gambling participation. An example in the literature is of the Gibraltar-based online company PartyGaming PLC, which reported a reduction in daily revenues from \$3.6 million to around \$872,000 after it decided to terminate customer relationships with US patrons.¹³

5.13 Professor Robert Williams and Associate Professor Robert Wood agreed that the introduction of the UIGEA resulted in a 25 per cent decrease in the number of online gambling sites accepting bets from US citizens. However, they argued that this reduction has not been permanent with many US citizens participating in online gambling and finding ways around the restrictions imposed by the legislation:

The UIGEA is not directed at individual bettors, and there have only been rare cases of prosecution of US citizens for placing an Internet bet...Anecdotal information suggests that many US players are circumventing the UIGEA by depositing money into non-US financial transaction intermediaries to place bets...Furthermore, many online gambling sites ensure that credit card and/or banking statements do not indicate that the transaction was for gambling.¹⁴

11 iBus Media Limited, *Submission 42*, p. 45.

12 iBus Media Limited, *Submission 42*, p. 45.

13 Australian Racing Board Limited, *Submission 27*, p. 23.

14 Robert Williams and Robert Wood, *Internet Gambling: A Comprehensive Review and Synthesis of the Literature*, Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 2007, p. 11.

5.14 iBus Media also reported that rather than transferring funds to gambling operators through their financial institution, consumers are depositing funds into electronic accounts or 'e-wallets' as a means of circumventing restrictions imposed by the UIGEA:

Electronic accounts or e-wallets are online accounts which draw on a consumer's bank account or credit or debit card and then route the consumer's funds to the online operator, many of which are offshore and therefore not regulated in the US. This model makes it difficult for US financial institutions to distinguish between a gambling transaction and other transactions.¹⁵

5.15 The committee was interested to hear more about the US experience with online gambling financial controls and requested to speak with the relevant US agency but unfortunately they declined to respond. The committee notes that the government's review of the Interactive Gambling Act (IGA) will be looking into 'international regulatory approaches to online gambling services including consideration of their effectiveness and cost'.¹⁶

Effectiveness of US legislation

5.16 The Australian Racing Board argued that while some online providers have managed to avoid financial restrictions under the UIGEA, US legislation has been relatively successful in reducing online gambling:

The financial transactions controls that are in place there have been there for some years now and they are demonstrably effective...The business of the companies that were providing illegal gambling to American citizens dried up. There is some level of it—it is not being suggested that it is going to be 100 per cent efficacious—but it dropped like a stone in the US...The US has done it and is doing it, and it is working.¹⁷

5.17 iBus Media argued that as a result of US legislation, reputable regulated companies have withdrawn from the US market, resulting in customers accessing unregulated and potentially dangerous sites:

US-based consumers are still able to access offshore sites, many of which are unregulated and many do not have harm minimisation measures in place...

15 iBus Media Limited, *Submission 13, Inquiry into the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 15.

16 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 27.

17 Mr Andrew Harding, *Committee Hansard*, 19 August 2011, p. 5.

Critics have also noted that the UIGEA has resulted in publicly-listed, transparent and heavily regulated United Kingdom-based online gambling companies no longer accepting funds from US-based customers....¹⁸

5.18 The main criticism levelled at online gambling legislation in the US is that there is a level of uncertainty surrounding the application of legislation and what constitutes unlawful online gambling. Congress outlined this uncertainty in Section 2 of the *Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2011*:

- (2) The Unlawful Internet Gambling Enforcement Act of 2006 (title VIII of Public Law 109-347; 120 Stat. 1952) was intended to aid enforcement efforts against unlawful Internet operators and to limit unlawful Internet gaming involving United States persons. However, that Act has only been partially successful in doing so.
- (3) There is uncertainty about the laws of the United States governing Internet gambling and Internet poker, though not about laws governing Internet sports betting. The Department of Justice has maintained that a broad range of activity is illegal, including activity that Congress intended to legalize under the Interstate Horseracing Act of 1978. Certain court decisions have used logic not consistent with aspects of the position of the Department of Justice. Enforcement efforts would be aided by bringing greater clarity to this area.¹⁹

5.19 However, despite this uncertainty, US authorities have undertaken legal action against individuals and online gambling providers located outside the US in an attempt to prevent circumvention of the UIGEA and the Wire Act which is described below.

Current US enforcement action

5.20 The committee received evidence on the current legal proceedings occurring in the US regarding alleged illegal gambling activities by a number of online poker sites:

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. The civil complaint and indictments do not relate to the UIGEA directly and

18 iBus Media Limited, *Submission 13, Inquiry into the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 14.

19 Internet Gambling Prohibition, *Poker Consumer Protection, and Strengthening UIGEA Act of 2011*, www.house.gov, (accessed 19 July 2011).

instead concern allegations of conspiracy to commit bank and wire fraud and money laundering activities.²⁰

5.21 The Australian Racing Board noted that the legal action represents a recent development in the application of the UIGEA:

A notable recent development here has been the FBI's use of information supplied by Australian internet entrepreneur, Daniel Tzvetkoff, to lay charges of bank fraud, money laundering and illegal gambling against the founders of the 3 largest US online poker companies. A scheme to deceive banks about the true nature of transaction[s] with them, and so evade the financial transactions controls of the UIGEA, is at the heart of these prosecutions...²¹

5.22 iBus Media argued that the charges do not directly relate to the UIGEA:

The civil complaint and indictments do not relate to the UIGEA directly and instead concern allegations of conspiracy to commit bank and wire fraud and money laundering activities.²²

5.23 US Attorney, Mr Preet Bharara, outlined the case in a recent media release the day after 'Black Friday'²³:

As charged, these defendants concocted an elaborate criminal fraud scheme, alternatively tricking some US Banks and effectively bribing others to assure the continued flow of billions in illegal gambling profits. Moreover, we allege, in their zeal to circumvent the gambling laws, the defendants also engaged in massive money laundering and bank fraud.²⁴

Committee view

5.24 The committee notes that while enforcement of online gambling prohibition in the online environment is difficult and uncertainty surrounds the application of some

20 iBus Media Limited, *Submission 13*, Inquiry into the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 17.

21 Australian Racing Board Limited, *Submission 5*, Inquiry into the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 3.

22 iBus Media Limited, *Submission 13*, Inquiry into the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 17.

23 Black Friday is the name used by some in the gambling industry to refer to 14 April 2011 when three poker sites were shut down and members of their executive indicted by US authorities. See Dunbar, M. 'State of Emergency?', *iGaming Business*, issue 69, July/August 2011, pp 72–74.

24 Mr Preet Bharara, US Attorney, Media Release, *Manhattan US Attorney charges principals of three largest internet poker companies with bank fraud, illegal gambling offences and laundering billions in illegal gambling proceeds*, 15 April 2011, <http://www.justice.gov/usao/nys/pressreleases/April11/scheinbergetalindictmentpr.pdf> (accessed 30 August 2011).

pieces of US legislation, the current legal action in the US demonstrates that enforcement action is possible.

Other enforcement challenges

5.25 Despite recent enforcement action referred to above, the US has experienced difficulties applying legislation to operators located outside the US. Such attempts by US authorities resulted in action being taken by the World Trade Organization (WTO).

Antigua V United States online gambling dispute

5.26 In 2003, Antigua initiated the WTO dispute resolution process challenging the US prohibition of offshore online gambling.²⁵ Antigua argued that prohibition breached the commitment made by the US to free trade in online gambling services in the General Agreement on Trade in Services (GATS).²⁶ In 2004, the dispute resolution panel ruled in favour of Antigua, and following an unsuccessful appeal by the US in 2005, the WTO Arbitrator set April 2006 as the deadline by which US legislation should be amended to comply with the commitments under the GATS.²⁷

5.27 Rather than changing its legislation, the US decided to modify its commitments in the GATS under Article XXI, specifically removing online gambling:

The US, instead of bringing its laws in line with the WTO rules, announced in May 2007 that it would withdraw gambling from the services it opened up under a 1994 world trade deal. Under WTO rules it then had to offer comparable access in other sectors to interested countries.²⁸

5.28 In response to this, in 2007 Antigua requested from the WTO the ability to suspend \$3.2 billion worth of US intellectual property rights which it argued amounted to 'the value of Antigua-US online gambling services trade that would have

25 Isaac Whol, 'The Antigua-United States Online Gambling Dispute', *Journal of International Commerce and Economics*, web version July 2009, p. 6, http://www.usitc.gov/publications/332/journals/online_gambling_dispute.pdf (accessed 19 September 2011). See also Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 6.

26 Isaac Whol, 'The Antigua-United States Online Gambling Dispute', *Journal of International Commerce and Economics*, web version July 2009, p. 6, http://www.usitc.gov/publications/332/journals/online_gambling_dispute.pdf (accessed 19 September 2011).

27 Isaac Whol, 'The Antigua-United States Online Gambling Dispute', *Journal of International Commerce and Economics*, web version July 2009, p. 7, http://www.usitc.gov/publications/332/journals/online_gambling_dispute.pdf (accessed 19 September 2011).

28 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 6.

taken place had the US complied with the initial WTO ruling'.²⁹ The WTO authorised the suspension of \$21 million worth of US intellectual property rights annually, which may include copyrights, patents and trademarks.³⁰ A *New York Times* article explained the effects of the ruling:

...the ruling is significant in that it grants a rare form of compensation: the right of one country, in this case, Antigua, to violate intellectual property laws of another - the United States - by allowing them to distribute copies of American music, movie and software products, among other items.³¹

5.29 At the time of publication of Isaac Whol's article, domestic legislation needed to allow this to occur had not been introduced.³²

Future regulation for the US?

5.30 While online gambling is currently prohibited, there has been a move at both the state and federal level towards a liberalised, regulated approach to online poker.³³

5.31 On 24 June 2011, the *Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2011* (the bill) was introduced into the House of Representatives by Texas Republican Joe Barton. The bill was co-sponsored by both Democrat and Republican representatives, suggesting bi-partisan support for the reforms.

5.32 The bill would legalise online poker across the US, allowing states who wish to prohibit online poker to opt out. The following arguments for the bill's passage were outlined:

- (5) Poker is distinct from the class of games of chance traditionally defined as gambling in that, players compete against each other, and not the person or entity hosting the game (sometimes called 'the

29 Isaac Whol, 'The Antigua-United States Online Gambling Dispute', *Journal of International Commerce and Economics*, web version July 2009, p. 8, http://www.usitc.gov/publications/332/journals/online_gambling_dispute.pdf (accessed 19 September 2011).

30 Isaac Whol, 'The Antigua-United States Online Gambling Dispute', *Journal of International Commerce and Economics*, web version July 2009, p. 7, http://www.usitc.gov/publications/332/journals/online_gambling_dispute.pdf (accessed 19 September 2011).

31 James Kanter and Gary Rivlin, 'WTO gives Antigua right to violate U.S. copyrights in gambling dispute', *The New York Times*, 21 December 2007, <http://www.nytimes.com/2007/12/21/business/worldbusiness/21iht-wto.html> (accessed 13 October 2011).

32 Issac Whol, 'The Antigua-United States Online Gambling Dispute', *Journal of International Commerce and Economics*, web version July 2009, p. 8, http://www.usitc.gov/publications/332/journals/online_gambling_dispute.pdf (accessed 19 September 2011).

33 iBus Media Limited, *Submission 42*, pp 45–46.

house'), and that over any significant interval, the outcome of a poker game is predominantly determined by the skill of the participants.

- (6) United States consumers would benefit from a program of Internet poker regulation which recognizes the interstate nature of the Internet, but nevertheless preserves the prerogatives of States. Such a system would require strict licensing of Internet poker providers and would require licensee operators to:
 - (A) have effective means to prevent minors from playing poker on-line;
 - (B) identify and help treat problem gamblers; to ensure that games are fair;
 - (C) allow players to self-exclude and limit losses; and
 - (D) prevent money laundering.
- (7) Such a program would create a new industry within the United States creating thousands of jobs and substantial tax revenue for Federal and State governments.³⁴

Provisions of the bill

5.33 The bill provides for the establishment of state agencies responsible for licensing online poker providers based in the US. The bill would require license holders to meet strict standards for advertising and prevent services being offered to individuals physically located in states which have opted out.

5.34 Licence holders would also be required to provide harm minimisation measures to consumers including:

- information in plain language about responsible gambling and self exclusion options;
- individualised responsible gaming options including the ability to self-limit access to credit and direct marketing; and
- providers to ensure to a 'reasonable degree of certainty' that self-excluded consumers are prevented from making bets or wagers during a period of self-exclusion.³⁵

5.35 The bill was referred to the Subcommittee on Crime, Terrorism and Homeland Security on 25 August 2011.³⁶

34 *Internet Gambling Prohibition, Poker Consumer Protection and Strengthening UIGEA Act of 2011*, s. 2, via <http://thomas.loc.gov/cgi-bin/query/F?c112:1:./temp/~c112yU7Tci:e3030:#> (accessed on 18 July 2011).

35 *Internet Gambling Prohibition, Poker Consumer Protection and Strengthening UIGEA Act of 2011*, s. 106, via <http://thomas.loc.gov/cgi-bin/query/F?c112:1:./temp/~c112p8hDgr:e74459:#> (accessed on 29 September 2011).

5.36 Other gambling related legislation introduced into Congress includes the proposed Internet Gambling Regulation, Consumer Protection and Enforcement Act (HR 1174) which would establish administrative and licensing requirements for Internet betting, including background check requirements and suitability standards for licence applicants.³⁷ HR 1174 was referred to the Subcommittee on Crime, Terrorism and Homeland Security on 1 June 2011.

Germany

5.37 Online gambling regulation in Germany is currently changing, with the current *Interstate Gambling Treaty* due to expire on 31 December 2011.³⁸

5.38 Online gambling is currently prohibited in Germany under the *Staatsvertrag zum Glücksspielwesen (Interstate Gambling Treaty)*, which came into force on 1 January 2008. The Treaty applies a blanket ban on all forms of online gambling, regardless of whether an operator is 'foreign, domestic, state-run or private'.³⁹ Section 4.4 of the Treaty states:

The organising and arranging of public games of chance on the Internet is prohibited.⁴⁰

5.39 Advertising of online gambling via internet, television or telecommunications is also prohibited by the Treaty.

5.40 The Treaty was effective across all 16 German states, resulting in uniform legislation across the country, and establishes a maximum penalty of five years imprisonment.⁴¹ All states can order service providers to block websites that offer illegal gambling and require banks to prevent money transfers to these operators.

5.41 The aims of the Treaty are:

- (1) To prevent the development of addiction to games of chance and gambling and to establish the preconditions for combating this addiction in an effective manner,

36 *Internet Gambling Prohibition, Poker Consumer Protection and Strengthening UIGEA Act of 2011*, via <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.02366:#>, (accessed on 29 September 2011).

37 iBus Media Limited, *Submission 13*, Inquiry into the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 15.

38 iBus Media Limited, *Submission 42*, p. 49.

39 iBus Media Limited, *Submission 42*, p. 49.

40 European Parliament, Policy Department Economic and Scientific Policy, *Online gambling focusing on integrity and a code of conduct for gambling*, November 2008, p. 25.

41 iBus Media Limited, *Submission 42*, p. 49.

- (2) To restrict the games of chance on offer and to steer the natural gaming urges of the population along well-ordered and supervised paths, in particular, to prevent a switch to illegal games of chance,
- (3) To guarantee protection for young people and gamblers,
- (4) To ensure that games of chance are conducted in accordance with regulations, that gamblers are protected against fraudulent wheelings and dealings, and that the criminal aspect which follows and accompanies games of chance is averted.⁴²

5.42 The Treaty, which applies a blanket ban on all online gambling, has been criticised for being excessively restrictive and failing to prevent players from participating in online gambling:

In implementing a blanket ban, it is arguable that the States have gone further than what is necessary in order to achieve the stated objective; namely, to protect the players.⁴³

5.43 Regis Controls pointed to the large level of online gambling participation in Germany which has 'the second highest number of regular online gamblers in Europe' as a failure of the German prohibition model.⁴⁴

Review of legislation

5.44 In addition to concerns over the restrictive nature of the Treaty and the apparent failure to prevent German citizens participating in online gambling, the Court of Justice of the European Union (EU) ruled on 8 September 2010 that the Treaty breaches EU competition law.⁴⁵ In response, a new draft Interstate Gambling Treaty has been developed jointly by 15 of the 16 federal German states.⁴⁶ A second piece of legislation, the draft *Gambling Bill*, has been developed independently by the remaining federal German state of Schleswig-Holstein and was passed through the state's parliament on 14 September 2011.⁴⁷

42 European Parliament, Policy Department Economic and Scientific Policy, *Online gambling focusing on integrity and a code of conduct for gambling*, November 2008, p. 25.

43 iBus Media Limited, *Submission 42 Attachment 1*, p. 33.

44 Regis Controls Pty Ltd, *Submission 35*, p. 5.

45 World Online Gambling Law Report, *Germany: The EU responds to Germany's draft legislation*, Vol. 10, Issue 7, July 2011, p. 1, <http://www.e-comlaw.com/woglr/print.asp?ID=1647> (accessed 6 September 2011).

46 World Online Gambling Law Report, *Schleswig-Holstein's draft Bill given go ahead by EU*, vol. 10, issue 5, May 2011, p. 1, <http://www.e-comlaw.com/woglr/print.asp?ID=1621> (accessed 6 September 2011).

47 Tom Victor, *Breaking news: Schleswig-Holstein passes egaming treaty*, 14 September 2011, p. 1 of 1, <http://www.egrmagazine.com/news/1694557/breaking-news-schleswig-holstein-passes-egaming-treaty-t.html> (accessed 22 September 2011).

Joint draft Interstate Gambling Treaty

5.45 15 of the 16 federal German States developed a new draft Interstate Gambling Treaty (IGT) following the European Union Commission ruling in September 2010 that the current Treaty breaches EU competition law. The new IGT proposes opening up the German sports betting market and limiting the number of federal licences for private operators of sports betting to seven.⁴⁸ The draft would also implement a '16.67% tax on all stakes',⁴⁹ which some have argued is overly restrictive.⁵⁰

5.46 The draft IGT would implement limits on live-betting options and a limit on online sports stakes.⁵¹ It would also require operators wishing to offer casino-style online games to gain a 'bricks-and-mortar' physical casino licence:

In regard to online casino games, the Prime Minister further announced that a German licence for a bricks-and-mortar casino will be required and that such games will only be permissible 'as offered in the gambling hall of a state-licensed casino'. This means that real gambling in the gambling hall of bricks-and-mortar casino has to be transmitted to the player, for example, by filming a roulette wheel.⁵²

5.47 On 18 July 2011, the European Union Commission released a detailed Opinion rejecting the draft IGT and requested further reasoning and justification behind some measures. The draft IGT is expected to be amended in line with the European Commission's Opinion.⁵³

Draft Gambling Bill from Schleswig-Holstein

5.48 On 9 May 2011, the European Union Commission approved the draft Gambling Bill developed by the state of Schleswig-Holstein which proposes to

48 World Online Gambling Law Report, *Germany: What kind of future for German gambling regulation*, vol. 10, issue 4, April 2011, p. 2.

49 Victorian InterChurch Gambling Taskforce, *Supplementary Submission 31a*, p. 3.

50 iBus Media Limited, *Submission 42*, p. 49.

51 World Online Gambling Law Report, *Germany: What kind of future for German gambling regulation*, vol. 10, issue 4, April 2011, <http://www.e-comlaw.com/woglr/print.asp?ID=1619> (accessed 6 September 2011).

52 World Online Gambling Law Report, *Germany: What kind of future for German gambling regulation*, vol. 10, issue 4, April 2011, <http://www.e-comlaw.com/woglr/print.asp?ID=1619> (accessed 6 September 2011).

53 World Online Gambling Law Report, *Germany: The EU responds to Germany's draft legislation*, Vol. 10, Issue 7, July 2011, <http://www.e-comlaw.com/woglr/print.asp?ID=1647> (accessed 6 September 2011).

liberalise online gambling in Germany.⁵⁴ On 14 September 2011, the Schleswig-Holstein parliament passed the bill by a vote of 46 to 45.⁵⁵

5.49 The new online gambling law will allow companies to offer 'exchange and sports betting, as well as poker and casino games'⁵⁶ excluding blackjack, baccarat and roulette, provided they are established in the EU.⁵⁷ Companies may apply for an unlimited number of licences which will be valid from March 2012.⁵⁸

5.50 A key component of the legislation which differs from the other German states' draft is the establishment of a 20 per cent tax on gross profits:

Companies will pay a 20 per cent tax on gross profits, rather than the 16.67 per cent tax on individual stakes proposed elsewhere, a levy which betting companies have argued would make it impossible for them to compete against state-run operators.⁵⁹

5.51 The legislation was well-received by some in the industry and resulted in increases in the share prices of some major industry players:⁶⁰

The resolution passed today is an important and groundbreaking step on the way to an open and regulated gambling market in Germany.⁶¹

5.52 The legislation is expected to come into force on 1 January 2012.⁶²

54 World Online Gambling Law Report, *Schleswig-Holstein's draft Bill given go ahead by EU*, Vol. 10, Issue 5, May 2011, p. 1, <http://www.e-comlaw.com/woglr/print.asp?ID=1621> (accessed 6 September 2011).

55 Tom Victor, *Breaking news: Schleswig-Holstein passes egaming treaty*, 14 September 2011, p. 1 of 1, <http://www.egrmagazine.com/news/1694557/breaking-news-schleswigholstein-passes-egaming-treaty-.thtml> (accessed 22 September 2011).

56 Reuters, *Bwin.party, Betfair boosted by new German state law*, 14 September 2011, p. 1 of 1, <http://www.reuters.com/article/2011/09/14/bwin-betfair-idUSL5E7KE1TY20110914> (accessed 22 September 2011).

57 Elissa Harwood, *Inside Gaming: Germany's Online Gaming Strides, Caesars' Loveman Gets Political, & More*, 21 September 2011, p. 1 of 2, <http://www.pokernews.com/news/2011/09/inside-gaming-germany-making-online-gaming-strides-caesars-1-11063.htm> (accessed 22 September 2011).

58 Tom Victor, *Breaking news: Schleswig-Holstein passes egaming treaty*, 14 September 2011, p. 1 of 1, <http://www.egrmagazine.com/news/1694557/breaking-news-schleswigholstein-passes-egaming-treaty-.thtml> (accessed 22 September 2011).

59 Reuters, *Bwin.party, Betfair boosted by new German state law*, 14 September 2011, p. 1 of 1, <http://www.reuters.com/article/2011/09/14/bwin-betfair-idUSL5E7KE1TY20110914> (accessed 22 September 2011).

60 Reuters, *Bwin.party, Betfair boosted by new German state law*, 14 September 2011, p. 1 of 1, <http://www.reuters.com/article/2011/09/14/bwin-betfair-idUSL5E7KE1TY20110914> (accessed 22 September 2011).

61 Reuters, *Bwin.party, Betfair boosted by new German state law*, 14 September 2011, p. 1 of 1, <http://www.reuters.com/article/2011/09/14/bwin-betfair-idUSL5E7KE1TY20110914> (accessed 22 September 2011).

Canada

5.53 Regulation of interactive gambling in Canada occurs through a mix of federal and provincial legislation. While federal legislation prohibits the provision of online gambling under the Criminal Code of Canada, provinces have the power to regulate interactive gambling within their province.⁶³

Canadian federal law has been interpreted by provincial governments as allowing them to legally operate an Internet gambling website as long as patronage is restricted to residents within that province.⁶⁴

5.54 While federal law 'may prohibit Canadians from participating in gambling on a website located in another country, there is no mechanism to effectively enforce the prohibition'.⁶⁵ The Ontario Lottery and Gaming Corporation highlighted the services available despite prohibition:

Under section 207.1(a) of the Criminal Code of Canada, only a Province or its designated agency may legally conduct any gambling activities that involve electronic devices. Internet gaming operators are unable to conduct operations in Canada, or to advertise their "play-for-money" sites. However, they continue to advertise "play-for-free" sites extensively, and Canadians spend an estimated \$1 billion annually at a range of unregulated gaming sites.⁶⁶

Provincial online gambling regulation

5.55 Currently, online gambling is legal in British Columbia and the Atlantic provinces and some 'First Nations'⁶⁷ including the Quebec-based Kahnawake Mohawk

62 Tom Victor, *Breaking news: Schleswig-Holstein passes egaming treaty*, 14 September 2011, p. 1 of 1, <http://www.egrmagazine.com/news/1694557/breaking-news-schleswig-holstein-passes-egaming-treaty-.thtml> (accessed 22 September 2011).

63 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 38.

64 Williams, R.J. & Wood, R.T., *Internet Gambling: A Comprehensive Review and Synthesis of the Literature*, Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 2007, p. 38.

65 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 38.

66 Ontario Lottery and Gaming Corporation, *Backgrounder: Internet Gaming*, 10 August 2011, p. 2 of 4, http://media.olg.ca/?p=nlm_news_detail&i=f1fd53a8-49bc-4442-80ed-4998ee7e318b (accessed 6 September 2011).

67 First Nations are defined as Inuit communities recognised by the Canadian Government. First Nations governments are 'entities which can issue gambling licences (including licences for online gambling).' See Department of Families, Housing, Community Services and Indigenous Affairs, *Review of current and future trends in interactive gambling activity and regulation*, Commonwealth of Australia, Canberra, 2008, p. 39.

First Nation, which has established the Kahnawake Gaming Commission (KGC) to 'license and regulate some 30 gambling websites operated through Internet servers physically located on their tribal lands'.⁶⁸

5.56 The Ontario Lottery and Gaming Corporation recently announced its intention to offer internet gaming, which will be regulated by the Alcohol and Gaming Commission of Ontario.⁶⁹ Dr Sally Gainsbury and Professor Alex Blaszczynski discussed the internet gambling platform proposed for launch in 2012:

The site will not be launched until extensive consultation with stakeholders has been completed and a strict responsible gambling platform will be introduced based on empirical evidence and consultation with stakeholders. This includes mandatory pre-commitment limits for time and money, pop-up messages to communicate with players and responsible gambling tools such as self-help tests and information about games.⁷⁰

An international regulatory standard?

5.57 During the inquiry, many submitters raised the idea of a cohesive international approach toward online gambling regulations. In the 2007 report prepared for Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), the Allen Consulting Group stated that international regulatory frameworks were important to the application of Australian legislation for two reasons:

- The effectiveness of these models directly impacts on the accessibility of interactive gambling services for Australians.
- The models provide useful examples for Australian regulators to consider as potential inclusions to the Australian regulatory model (or, conversely, provide cautionary tales of approaches which are not effective).⁷¹

5.58 In its 2010 report, the Productivity Commission (PC) supported international collaboration on online gambling regulation, stating that 'where possible, regulation should be aligned with that of similarly liberalised countries'.⁷²

68 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 39.

69 Ontario Lottery and Gaming Corporation, 'OLG to launch Internet gaming', *Media Release*, 10 August 2010.

70 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 4.

71 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 39.

72 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, p. 15.32.

5.59 Dr Gainsbury and Professor Blaszczyński supported the position of the PC in their evidence to the committee:

This is an extremely sensible approach as it would allow policy measures such as filters and blocking software to be shared and Internet sites to be regulated and evaluated based on international guidelines...⁷³

5.60 The Gaming Technologies Association (GTA) attributed the need for transnational regulation to the global nature of online gambling and argued that transnational cooperation is necessary to effectively regulate online gambling:

Internet gambling is unimpeded by physical borders. The increasing incidence of mobile devices which are routinely connected to the Internet has resulted in an uncontrolled proliferation of gambling opportunities available in Australia with no restriction, despite attempted local prohibition...

...Online gambling is here to stay and defies local prohibition. Its appropriate operation through legislation and regulation requires transnational thinking and international cooperation.⁷⁴

5.61 The interest in international cooperation is evident in many jurisdictions, particularly in Europe where, in March 2011, the European Commission published a Green Paper on online gambling:

...to launch an extensive public consultation on all relevant public policy challenges and possible Internal Market issues resulting from the rapid development of both illicit and unauthorised on-line gambling offers directed at citizens located in the EU.⁷⁵

5.62 GTA stated that the Green Paper would act as a 'precursor to a White Paper and quite likely, draft online gambling legislation in the form of a directive'.⁷⁶

5.63 The Green Paper addresses the issue of different national regulatory frameworks in an international gambling environment:

Enforcement of national rules is facing many challenges, raising the issue of a possible need for enhanced administrative co-operation between competent national authorities, or for other types of action.⁷⁷

5.64 While acknowledging that working towards international agreements with similar jurisdictions would be beneficial, Dr Gainsbury and Professor Blaszczyński

73 Dr Sally Gainsbury and Professor Alex Blaszczyński, *Submission 7*, p. 9.

74 Gaming Technologies Association Limited, *Submission 19*, pp 2–3.

75 European Commission, *Green Paper on on-line gambling in the Internal Market*, March 2011, p. 3.

76 Gaming Technologies Association, *Submission 19*, p. 2.

77 European Commission, *Green Paper on on-line gambling in the Internal Market*, March 2011, p. 3.

noted that the global nature of online gambling makes the creation of an international online gambling policy problematic as 'policy must reflect the needs of a local population'.⁷⁸

5.65 While recognising the difficulties in creating an international standard that jurisdictions will sign up to, the PC noted that international cooperation may provide consumers with stronger protections:

It is likely that multilateral government and commercial action could secure a much better set of consumer protection standards for each country. Like all commercial activities, some countries/providers may not wish to adopt the global standards, but that very fact could be expected to make consumers cautious of using their facilities, given the risks of fraud and poor service.⁷⁹

Committee view

5.66 The committee heard that international approaches to regulation could serve as examples for Australian policy makers. Dr Gainsbury and Professor Blaszczynski argued that there is no 'gold standard' style of regulation currently in existence due in part to the global nature of internet gambling and the local nature of internet gambling policy. Despite this, they argued that international policies present a variety of ideas which can serve as a guide for the creation of a unique internet gambling policy in Australia:

Nevertheless, internationally jurisdictions are increasingly enacting more sophisticated regulatory approaches in acknowledgment of the reality and permanence of Internet gambling. *Although Australian policy makers must formulate a unique response to Internet gambling, international legislation can be used to guide policies.*⁸⁰

5.67 The committee notes that the government review of the *Interactive Gambling Act 2001* will examine international regulatory approaches:

...and their potential applicability in the Australian context and also the extent to which there are options to improve or look at harm minimisation measures with respect to online gambling services.⁸¹

Conclusion

5.68 The committee supports the further examination of international regulatory approaches and potential application to the Australian environment. It also supports investigation of international collaboration on online gambling regulation. However,

78 Dr Sally Gainsbury and Prof Alex Blaszczynski, *Submission 7*, p. 9.

79 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, p. 15.32.

80 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 9.

81 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 30.

the committee considers the process of establishing transnational agreements or legislation will require extensive coordination and consultation. It will be a lengthy process and is useful only as a long term goal, not a short term policy. An additional danger is that in order to achieve international agreement, the regulatory standards may be so low as to be of limited usefulness.

Part 2

The Interactive Gambling Act

In this part of the report, the committee provides the background and detail necessary to understand the current regulation of interactive gambling services in Australia by the *Interactive Gambling Act 2001* (IGA). It covers the issues raised with the committee regarding the effectiveness of the IGA and advertising covered by the IGA.

