

**iBus Media Limited**

**Joint Select Committee on Gambling  
Reform**

**Inquiry into the Interactive Gambling and  
Broadcasting Amendment (Online Transactions and  
Other Measures) Bill 2011**



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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 Countries which have tried to regulate the growth of interactive gambling by attempting to restrict financial transactions, such as the United States and Norway, have largely failed with their attempts to date.
- 1.6 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.
- 1.7 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. Such legislation would be far more effective in providing consumers with a safer playing environment than the manner of financial transaction regulation contemplated in the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 (the **Bill**).
- 1.8 This submission to the Joint Select Committee on Gambling Reform (**Select Committee**) is further to iBus Media Limited's submission to the Select Committee's

inquiry into interactive and online gambling and gambling advertising dated 6 July 2011 (**First Select Committee Submission**).<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.
- 2.2 PokerNews' primary business is promoting online poker 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](http://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>2</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>3</sup> As of January 2011,

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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).

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

<sup>3</sup> <http://www.appdata.com/apps/facebook/2389801228-texas-holdem-poker>. Accessed on 02 July 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>4</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
- (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>5</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>6</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>7</sup> players playing for a prize pool of \$1.734 million.<sup>8</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 submission (**First Productivity Commission Submission**) to the Productivity Commission's Gambling Inquiry, which was conducted during 2009 and 2010.<sup>9</sup> The First Productivity Commission Submission refers 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.

<sup>4</sup> <http://www.facebook.com/TexasHoldEmPoker?v=info>. Accessed on 25 May 2011.

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

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

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

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

<sup>9</sup> iBus Media Limited, *Submission to Productivity Commission: Gambling Inquiry*, April 2009 (**First Productivity Submission**) 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 2007, thirty different series of poker tournaments and poker-related shows were broadcast on Australian cable television. The series were broadcast on a variety of channels, including Fox Sports 1, Fox Sports 2, Fox Sports 3, ESPN, Fox 8, Lifestyle, Discovery Travel & Learning and the History Channel. Tens of thousands of viewers watched these programs. The series "Poker Premier League Poker" had 98,969 viewers alone.

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

These have continued to be broadcast 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>10</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 over 4.3 million Australian visitors since records began in 2006. The number of absolute unique visitors from Australia, as determined by Google Analytics, is over 1.2 million during the same period.
- 3.9 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

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<sup>10</sup> First Productivity Commission Submission, pages 12-14.

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>11</sup>.

- 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>12</sup> Victoria<sup>13</sup>, Tasmania<sup>14</sup>, Western Australia<sup>15</sup> and South Australia<sup>16</sup> have similar guidelines.

#### 4. The IGA

- 4.1 Despite the obvious demand for online poker services by Australian-based consumers, as detailed above, the IGA prohibits Australian-based operators from providing and advertising prohibited gambling services to Australian-based consumers.<sup>17</sup> In this regard, the IGA targets the supply of services rather than demand for the services.
- 4.2 "Gambling service" is defined in the IGA to include a service for the conduct of a game where the game is played for money or for anything else of value and the game is a game of chance or of mixed chance and skill and a customer of the service gives consideration or agrees to give consideration to play or enter the game.<sup>18</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.

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<sup>11</sup> GBGC Report.

<sup>12</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>13</sup> "Poker FAQs". Available at <http://www.vcgr.vic.gov.au/CA256F800017E8D4/LicInfo/11CD0ED463266F3FCA2577B30006092D?Open>. Accessed 6 June 2011.

<sup>14</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>15</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>16</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>17</sup> IGA, section 6.

<sup>18</sup> IGA, section 4.

- 4.3 However, some forms of online gambling are exempt from the IGA. In particular, a range of online wagering and lottery services are not prohibited. The IGA does not distinguish online poker from:
- (a) other casino-type games, such as roulette, blackjack;
  - (b) online versions of EGMs; and/or
  - (c) online bingo.
- 4.4 In our view, given the distinguishing features of online poker (as a game of skill, which is played peer-to-peer in a social setting), online poker should be treated differently to the other forms of casino-type games identified above. The distinguishing features of online poker are discussed in detail in the First Productivity Commission Submission.<sup>19</sup> In this regard, we note that the Minister for Broadband, Communications and the Digital Economy (**DBCDE**) is able to exclude any service from the provisions of the IGA at his discretion.<sup>20</sup>
- 4.5 During 2003 and 2004, the Department of Communications, Information Technology and the Arts (**DCITA**) (now known as the DBCDE) conducted a review of the IGA (**DCITA Review**).<sup>21</sup> One of the terms of reference of the DCITA Review was the feasibility of and capacity to regulate financial transactions connected to interactive gambling services.<sup>22</sup> The DCITA Review considered this issue with specific reference to section 69A of the IGA which provides that regulations may be made which make agreements in respect of payments for the supply of illegal interactive gambling services unenforceable.
- 4.6 DCITA made a number of findings in respect of the feasibility of and capacity to regulate financial transactions including the following:
- (a) The regulation of financial transactions in accordance with section 69A of the IGA would be unlikely to achieve Parliament's intended outcome, namely to discourage the provision of interactive gambling services to Australian-based consumers.<sup>23</sup>
  - (b) Means of circumvention which would reduce the effectiveness of financial transaction regulation included:
    - (i) the failure of gambling merchants to code Internet gambling transactions correctly;
    - (ii) the correct coding of transactions being obscured by the use of online payment processors; and

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<sup>19</sup> First Productivity Commission Submission at page 18.

<sup>20</sup> IGA, section 10.

<sup>21</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>22</sup> DCITA Review at page 2.

<sup>23</sup> DCITA Review at page 76.



- (iii) the use of non-credit card payment systems.<sup>24</sup>

Each of these circumvention measures is discussed in further detail below in section 6.

- (c) Regulation of this nature would place little pressure on online operators to cease their operations in connection with Australia. Furthermore, a rise in problem gambling could result (rather than a reduction) because consumers would be able to repudiate any gambling debt.<sup>25</sup>

## 5. The Productivity Commission Report

5.1 During 2009 and 2010, the Productivity Commission conducted an inquiry into Gambling. In particular, the Productivity Commission had been requested by the Australian Government to report on various matters 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.

5.2 iBus Media made two submissions to the Productivity Commission's inquiry into gambling in 2009 and 2010.<sup>26</sup> In particular, iBus Media's second submission dated December 2009 (**Second Productivity Commission Submission**) discussed in detail the harm minimisation requirements for online poker operators licensed in the United Kingdom, Alderney and the Isle of Man. In addition, the harm minimisation measures utilised on a number of the world's largest online poker websites were reviewed in the Second Productivity Commission Submission. Particular measures identified and discussed included:

- (a) measures employed to restrict access by minors<sup>27</sup>;
- (b) automated monitoring of player behaviour and targeted interventions<sup>28</sup>;
- (c) effective self-exclusion, including user-specific exclusion software<sup>29</sup>;
- (d) the availability of a range of pre-commitment options<sup>30</sup>;
- (e) the availability of online counselling services<sup>31</sup>; and

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<sup>24</sup> DCITA Review at viii.

<sup>25</sup> DCITA Review at viii.

<sup>26</sup> First Productivity Commission Submission and iBus Media Ltd, *Submission to Productivity Commission: Gambling Inquiry*, December 2009) (**Second Productivity Commission Submission**) 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 12 July 2011.

<sup>27</sup> *Second Productivity Commission Submission* at page 5.

<sup>28</sup> *Second Productivity Commission Submission* at page 6.

<sup>29</sup> *Second Productivity Commission Submission* at page 8.

<sup>30</sup> *Second Productivity Commission Submission* at page 9.

<sup>31</sup> *Second Productivity Commission Submission* at page 9.

- (f) the use of accreditation services which certify that an online operator meets certain operational and player safety standards provided by, for example, e-Commerce Online Gaming Regulation & Assurance (**eCOGRA**).<sup>32</sup>
- 5.3 The PC Report which was subsequently 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.<sup>33</sup>
- 5.4 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>34</sup>
- 5.5 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. Australian consumers are able to access online gaming sites based overseas and growing numbers of Australians are playing online poker despite the prohibitions contained in the IGA.
  - (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>35</sup>
- 5.6 The clear demand for online poker suggests that its liberalisation and regulation could deliver considerable consumer benefits.<sup>36</sup> Furthermore, the Productivity Commission considered online poker to be the form of online gaming which involves the least risks because:

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<sup>32</sup> Second Productivity Commission Submission at page 10.

<sup>33</sup> <http://www.pc.gov.au/projects/inquiry/gambling-2009/report> (**PC Report**). Accessed on 25 May 2011.

<sup>34</sup> PC Report 15.17.

<sup>35</sup> PC Report, 15.1.

<sup>36</sup> PC Report 15.31.

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

5.7 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>38</sup>

5.8 Among other matters, the Productivity Commission recommended that, in respect of online poker<sup>39</sup>, 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:

- (a) strict probity standards; and
- (b) high standards of harm minimisation including:
  - (i) the prominent display of information on account activity and information on problem gambling and links to problem gambling resources;
  - (ii) the ability of players to pre-commit to a certain level of gambling expenditure;
  - (iii) the ability of players to self-exclude; and
  - (iv) the display of automated self warnings arising from potentially harmful patterns of play.

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<sup>37</sup> PC Report, 15:31.

<sup>38</sup> PC Report, 15:31.

<sup>39</sup> PC Report, 15.34 to 15.35.

## **6. Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011**

6.1 The Bill contemplates the insertion of a Part 2B into the IGA which would regulate financial transactions which are considered "interactive gambling payments" made by Australian-based online poker players. In essence, under the proposed section 15B, any Australian-based player will be able to request a financial transaction provider to:

- (a) suspend; or
- (b) cancel,

any payment they initiate by credit card or electronic funds transfer (or any other transaction which may be prescribed) provided that the payment has not been completed. Furthermore, provided the financial transaction provider suspends or cancels the transaction in accordance with a request under section 15C, then the provider will not be liable in respect of any proceeding commenced by an online operator concerning the suspension or cancellation.

6.2 The proposed Part 2B amendments do not take into account:

- (a) the manner in which online poker businesses are conducted;
- (b) the way in which financial transactions are completed online; or
- (c) the complexity of the relationships between the parties involved in online transactions, nor the location of those parties.

6.3 Online poker operators require players to deposit sufficient cleared funds in advance to cover game or tournament entry. In other words, the financial transaction has been completed before a player participates in an online tournament or game.

6.4 Online financial transactions may be conducted in any number of ways, including through the use of credit or debit cards, electronic fund transfers or the use of electronic accounts, such as PayPal or ClickandBuy.

6.5 In any online credit card transaction, for example, there are typically five participants: the cardholder, the card issuer (for example a bank or other financial institution), the payment card system (for example, Visa, MasterCard or American Express), the acquirer (for example the bank that will hold the funds on behalf of the merchant) and the merchant (such as an online poker operator).

6.6 These parties will have entered into contractual agreements with one another which govern their relationships. The cardholder will have entered into an agreement with the online operator, who in turn will have entered into an agreement with the acquirer. The acquirer will have entered into an agreement with the payment card system, which in turn will have entered into an agreement with the credit card issuer. The credit card issuer will have entered into an agreement with the cardholder. Accordingly, despite an online gaming transaction appearing quite simple or straight forward, there is a complex web of contractual relationships, each governed by a

different contract which may or may not contain a clause in respect of the suspension or cancellation of transactions prior to completion in the manner anticipated in the Bill.

- 6.7 The proposed Part 2B amendments ignore that a significant proportion of online gambling transactions involve parties located in multiple countries. In circumstances where electronic accounts are used and payments facilitated by, for example, intermediaries located overseas, such as Moneybookers, Click2Pay, ClickandBuy or Neteller, it is doubtful whether Part 2B would extend to offshore intermediaries. This situation is similar in respect of money transmission services. Therefore, it is unclear which jurisdictions' laws will apply when the parties are in different countries.
- 6.8 Transactions conducted by credit cards are required to be authorised and guaranteed. Once the card issuer has authorised the transaction, it is guaranteeing to the acquirer that the online operator will be paid, which allows the online operator to complete the transaction. In the online environment, the transaction process from commencement to completion typically takes only two or three seconds. In other words, it is not feasible in the online environment that a consumer will have any real window in which to make a request to its financial transaction provider to suspend or cancel the transaction once the transaction has commenced.
- 6.9 If there were a longer period between the commencement of a gambling transaction and its completion, such that a consumer would know the outcome of their wager or poker game before completion, this would be contrary to public policy. A scenario like this would encourage online gambling because consumers would have the ability to suspend or cancel any losing wager.
- 6.10 For the reasons outlined above, the proposed Part 2B amendments are problematic and are not likely to minimise any harm associated with online gambling.

## **7. Overseas Measures**

- 7.1 To date, overseas measures regulating financial transactions in respect of online gambling appear to have largely failed.

### **United States**

- 7.2 With revenues of US\$92.27 billion, the USA is the largest gambling market in the world and arguably the most significant.<sup>40</sup>
- 7.3 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.

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<sup>40</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).

- 7.4 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 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>41</sup>*

- 7.5 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.
- 7.6 The UIGEA has been criticised on a number of grounds, some of which are outlined below.
- (a) The UIGEA has met considerable resistance from financial institutions and members of Congress, among others. Many of the objections made mirror the difficulties assessed in the 2004 DCITA Review. 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 estimated compliance costs would amount to US\$88.5 million in staff costs.<sup>42</sup>
  - (b) While US credit card companies and/or US payment processors may have blocked the transmission of online wagers placed by US-based consumers, US-based consumers are still able to access offshore sites, many of which are unregulated and may not have harm minimisation measures in place, such as age verification procedures, pre-commitment measures, self-exclusion measures and responsible gambling policies, all of which are minimum requirements in various jurisdictions where online gambling is licensed.
  - (c) Critics have also noted that the UIGEA has resulted in publicly-listed, transparent and heavily regulated United Kingdom-based online gambling

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<sup>41</sup> 31 USC § 5362(10)

<sup>42</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>.

companies no longer accepting funds from US-based consumers.<sup>43</sup> When the passage of the UIGEA was announced, shares in United Kingdom-based Sportingbet, the operator of [www.paradisepoker.com](http://www.paradisepoker.com), fell 60%.<sup>44</sup> A practical effect of this US policy has been to allow some unregulated operators to increase their market share in the US. Being unregulated, the services provided by such operators have the potential to cause greater harm than regulated and/or publicly listed operators.<sup>45</sup> Policies of this nature may also have unintended consequences leading to the development of black markets or operations which encourage or facilitate money laundering.

- (d) Furthermore, rather than relying on financial institutions to process payments, consumers at e-commerce sites are now using electronic accounts or e-wallets to a much greater extent. 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.

7.7 Since the UIGEA took effect on 1 June 2010, there have been a number of proposed legislative changes, both at the US Federal and State level which would, if passed, result in a licensing regime for the provision of online poker. At a Federal level, the following legislative changes have been proposed since the UIGEA took effect:

- (a) On 28 July 2010, during the 111th 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 would have authorised the US Secretary of the Treasury to create a regulatory system for the licensing of internet-based online poker, among other matters.<sup>46</sup> However, HR 2267 has since lapsed.
- (b) More recently, in March 2011 the proposed *Internet Gambling Regulation, Consumer Protection and Enforcement Act (HR 1174)* was introduced into the current 112th 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>47</sup>
- (c) 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

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<sup>43</sup> Press release of Sportingbet plc dated 12 October 2006 at [http://en.paradisepoker.com/s/pdf/press\\_sbet.pdf](http://en.paradisepoker.com/s/pdf/press_sbet.pdf). Accessed on 11 July 2011.

<sup>44</sup> [http://www.foxnews.com/printer\\_friendly\\_story/0,3566,217039,00.html](http://www.foxnews.com/printer_friendly_story/0,3566,217039,00.html). Accessed on 11 July 2011.

<sup>45</sup> Alexander, G. "The US on Tilt: Why the Unlawful Internet Gambling Enforcement Act is a Bad Bed", (2008) *Duke Law & Technology Review* No. 5, para 38.

<sup>46</sup> <http://www.govtrack.us/congress/bill.xpd?bill=h111-2267&tab=summary>. Accessed 25 May 2011.

<sup>47</sup> <http://www.govtrack.us/congress/bill.xpd?bill=h112-1174>. Accessed 30 June 2011.



when HR 1174 becomes law and the licensing of Internet gambling activities is permitted.

- (d) 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>48</sup>

7.8 A number of US State jurisdictions have introduced legislation that will liberalise online poker. These include Nevada, California, New Jersey and Washington D.C.

- (a) In January 2011, New Jersey became the first US jurisdiction to pass legislation to regulate online poker. The State Assembly voted 63 to 11 to approve the bill which would have permitted Internet wagering and online poker for residents of New Jersey. The State Senate had previously voted 129 to 5 to pass the bill.<sup>49</sup> State Governor Christie subsequently vetoed the bill (which had been overwhelmingly supported by both chambers) and would have created the first intrastate US gambling market on the grounds that he believed a voter referendum was required first.<sup>50</sup>
- (b) In April 2011 Washington D.C. became the first US jurisdiction to legalise internet intrastate poker.<sup>51</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>52</sup> The legislation contemplates 10 to 20 “hot spots” where people over the age of 19 can play games on their laptop.<sup>53</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 redeemable for participation in games provided by the D.C Lottery.<sup>54</sup>
- (c) 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

<sup>48</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>49</sup> <http://www.pokernews.com/news/2011/01/legislation-passes-in-new-jersey-to-license-and-regulate-online-poker-9630.htm>. Accessed on 21 July 2011.

<sup>50</sup> <http://www.pokernewsdaily.com/chris-christie-vetoes-new-jersey-internet-gambling-bill-18240/>. Accessed 21 July 2011.

<sup>51</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>52</sup> See [www.gamblingandthelaw.com/blog/html](http://www.gamblingandthelaw.com/blog/html), entry made on 29 June 2011.

<sup>53</sup> See [www.gamblingandthelaw.com/blog/html](http://www.gamblingandthelaw.com/blog/html), entry made on 29 June 2011.

<sup>54</sup> See [www.gamblingandthelaw.com/blog/html](http://www.gamblingandthelaw.com/blog/html), entry made on 29 June 2011.



California. On 16 May 2011, SB 40 was read a second time and re-referred to the Committee on Governmental Organisation.<sup>55</sup> On 6 July 2011, SB 40 was amended to remove a cap placed on the number of licences thereby providing more opportunities for operators to apply for licences. The amendments also created new penalties for operating or playing on an unauthorised website, which includes a fine and seizure and forfeiture of personal and real property used in or derived from playing on an unauthorised website.

- (d) In addition to SB 40, a rival bill (SB 45) has also been introduced in California. SB 45's focus is the creation of a framework for the licensing of online poker. SB 45 contemplates three licences being granted.
- (e) On June 10 2011, Nevada approved AB 258, providing a regulatory framework for interactive gaming.<sup>56</sup> However, AB 258 authorises only intrastate interactive gaming. AB 258 specifies that licences for interstate interactive gaming operations will not become effective until federal legislation has been passed authorising interstate interactive gaming.

7.9 Therefore, despite the UIGEA, there has been a trend towards the introduction of legislation at both a Federal and State level which permits the licensing of online poker. This indicates that the UIGEA has not been as successful as anticipated.

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

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<sup>55</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).

<sup>56</sup> See <http://www.leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=561>. Accessed on 1 July 2011.

## Norway

- 7.11 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).
- 7.12 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>57</sup>
- 7.13 Unlike the USA's UIGEA, the Norwegian government 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 are required 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, in theory transactions involving all other operators should be blocked.
- 7.14 Various criticisms from both within and outside Norway (many of which are similar to the comments made in the DCITA Review) have been levelled at the implementation of the financial control blocks, including but not limited to the following set out below.
- (a) Online gamblers continue to use credit cards to pay for stakes despite the ban and there has not been a significant reduction in the numbers of Norwegians gambling on unlicensed sites. 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>58</sup> The NGFA did not “see any significant change in the number of players gambling on non-licensed online gaming sites”.<sup>59</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>60</sup>

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<sup>57</sup> Anne Mette Hjelle, 'Norway: Payment Blocking and Online Gambling: First Results', *World Online Gambling Law Report* Vol 10 Issue 03, March 2011.

<sup>58</sup> Anne Mette Hjelle, 'Norway: Payment Blocking and Online Gambling: First Results', *World Online Gambling Law Report* Vol 10 Issue 03, March 2011.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

- (b) Financial institutions cannot differentiate accurately between licensed Norwegian operators and unlicensed gambling operators (or in other words between lawful and unlawful online gambling activity) because 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. 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>61</sup>
- (c) 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.
- (d) 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.
- (e) In addition the above, the ban appears to be at risk of being in violation of Article 36 of the European Economic Area Agreement, which provides that there shall be no restrictions on freedom to provide services within the territory of the Contracting Parties in respect of nationals of the European Community Member States and the European Free Trade States (one of which is Norway).<sup>62</sup> 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>63</sup> Of particular importance are:
  - (i) the lack of credible evidence linking online gambling to problem gambling; and
  - (ii) the fact there is sufficient existing legislation limiting the risk of money laundering, such that the online payment controls are disproportionate and unnecessary.
- (f) 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 contrast with illegal operators established in Member States and third countries".<sup>64</sup>

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<sup>61</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>62</sup> <http://www.efta.int/legal-texts/~media/Documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf>. Accessed on 11 July 2011.

<sup>63</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>64</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)

- 7.15 Clearly the Norwegian attempts to reduce online gambling participation by making it illegal for payment processing companies to process financial transactions for unlicensed online casinos, lotteries, sports books or interactive wagering providers, has not been the success originally contemplated.
- 7.16 Given the experiences in the United State and Norway and the growing demand for online poker in Australia, despite the prohibitions contained in the IGA, the licensing of online poker in Australia, as recommended by the Productivity Commission, is more likely to be a practical means of providing greater consumer protection and minimising harm.

## 8. Australian Regulatory Framework

- 8.1 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 effectively online gaming services provided by Australian-based operators to Australian-based customers.
- 8.2 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>65</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.
- 8.3 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>66</sup> In addition, Tasmania and the Northern Territory both have existing gambling legislation which contains provisions which contemplate clearly the licensing of interactive gaming operators in those jurisdictions.<sup>67</sup> These legislative frameworks are discussed in further detail below.
- 8.4 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.
- 8.5 In addition, testing laboratories based in Australia have the expertise to ensure that systems comply with regulatory and harm minimisation requirements

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<sup>65</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>66</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.

<sup>67</sup> *Gaming Control Act 1993* (Tas), sections 5A and 76B; *Gaming Control Act 1993* (NT), Part 4, Division 5.

- 8.6 This regulatory framework (comprising legislation, a licensing system, and Codes of Practice) was in place before the enactment of the IGA in 2001.
- 8.7 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>68</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).
- 8.8 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>69</sup>

## 9. Australian Harm Minimisation Measures

- 9.1 The existing legislation in Victoria, Queensland and the ACT, which is based on the National Model, has numerous harm minimisation measures including but not limited to the following:
- (a) When a player registers, they must produce evidence of their identity, place of residence and their age: the minimum age being 18.<sup>70</sup>
  - (b) Players are able to set pre-commitment levels and exclude themselves from the online services. 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.<sup>71</sup>
  - (c) Players must be able to self-exclude themselves from playing on a licensed operator's site by given the operator written notice.<sup>72</sup> 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

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<sup>68</sup> Second Productivity Commission Submission page 25 to 36.

<sup>69</sup> PC Report 15.22 to 15.28.

<sup>70</sup> Section 18(2) of *Interactive Gambling (Player Protection) Act 1998* (Qld). Section 7.4.16 of the *Gambling Regulation Act 2003* (Vic). Section 18 of the *Interactive Gambling Act 1998* (ACT) (**ACT Act**)

<sup>71</sup> Section 136 of *Interactive Gambling (Player Protection) Act 1998* (Qld). Section 7.4.16 of the *Gambling Regulation Act 2003* (Vic).

<sup>72</sup> Sections 137 to 137B of the *Interactive Gambling (Player Protection) Act 1998* (Qld). Section 7.4.17 of the *Gambling Regulation Act 2003* (Vic). Section 102 of the ACT Act.

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>73</sup>

- (d) Licensed operators are able 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>74</sup>

9.2 In addition to the above, each of Victoria, Queensland and the ACT has a *Code of Practice* in respect of responsible gambling, which applies to operators authorised under the respective legislation of these States and Territory.<sup>75</sup> The Codes, for example, set out various requirements in relation to staff care and training in respect of problem gambling, including reporting incidents, the appointment of at least one problem gambling officer and the provision of counselling and advisory services to customers whom ask about problem gambling.<sup>76</sup>

9.3 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. Furthermore, there are stringent requirements in respect of the provision of responsible gambling services and harm minimisation measures.

9.4 Whilst Tasmania, South Australia and the Northern Territory do not have specific legislation authorising online gaming, current legislation and codes of practice in these jurisdictions apply to online gaming.<sup>77</sup> These legislative frameworks, which include various harm minimisation and player protection measures, are a condition of holding a licence in these jurisdictions, are discussed in detail in section 7 of iBus Media's First Select Committee Submission. Each of these harm minimisation and player protection measures can be extended readily to the licensing of online poker.

9.5 In addition to the above, 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;

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<sup>73</sup> Sections 137 to 137B of the *Interactive Gambling (Player Protection) Act 1998* (Qld).

<sup>74</sup> Sections 137C to 137E of the *Interactive Gambling (Player Protection) Act 1998* (Qld).

<sup>75</sup> See

<http://www.olgr.qld.gov.au/resources/responsibleGamblingDocuments/responsibleGamblingCodeOfPractice.pdf> (Old Code). Accessed 25 May 2011. *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>76</sup> Qld Code, pages 8 and 20. Clauses 1.2.2 and 1.4 of Schedule 1 Code of practice to the *Gambling and Racing Control (Code of Practice) Regulation 2002* (ACT) (the **ACT Code**).

<sup>77</sup> Part 4A of the *Gaming Control Act 1993* (Tas) (**GCA**). *Authorised Betting Operations Act 2000* (SA) (**ABOA**). Part 4, Division 5 of the *Gaming Control Act 1993* (NT) (**NT Act**).



- (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.

9.6 Furthermore, the experience and expertise acquired by the relevant State and Territory gambling regulators can be extended readily to the regulation of online poker.

## **10. Conclusion**

- 10.1 Without doubt there has been an enormous increase in the popularity of poker, both terrestrial and online, in the last decade. Poker is a popular form of entertainment for which there is great consumer demand, both in Australia and overseas. Increasing numbers of Australians are playing poker online despite the prohibition on online poker services contained in the *Interactive Gambling Act 2001* (the **IGA**).
- 10.2 The PC Report recognised that online poker may be distinguished readily from online casino-type games on the basis that poker involves skill and is played peer-to-peer in a social setting. 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.
- 10.3 Countries which have tried to regulate the growth of interactive gambling by attempting to restrict financial transactions, such as the United States and Norway, have largely failed with their attempts to date.
- 10.4 Regulation of financial transactions in the manner contemplated in Part 2B of the proposed Bill is problematic. Part 2B fails to take into account the manner in which online poker businesses are conducted and the ways in which financial transactions are completed in an online environment. Furthermore, Part 2B does not acknowledge the complex web of contractual relationships between the numerous parties to one transaction.
- 10.5 Online poker has been regulated effectively in a number of jurisdictions overseas with effective harm minimisation measures being easily and widely utilised by online poker operators, both voluntarily and as a requirement of licence conditions. 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.
- 10.6 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. Such legislation would be far more effective in providing consumers with a safer playing environment than the manner of financial transaction regulation contemplated in the Bill.



10.7 iBus Media looks forward to the Select Committee's findings.

10.8 In any event, iBus Media would be pleased to attend any public hearing convened by the Select Committee to answer any questions relating to this submission which the Select Committee may have.

**21 July 2011**