

**iBus Media Limited
Second Submission to Productivity
Commission**

Gambling Industry

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Executive Summary

On 21 October 2009, the Productivity Commission released its Draft Report on Gambling (Draft Report).¹ Chapter 12 of the Draft Report concerns online gaming and the Interactive Gambling Act 2001 (Cth) (the IGA).

This submission is further to iBus Media Limited's initial submission of 9 April 2009 (**Initial Submission**)² and addresses various matters which have been raised by the Productivity Commission in its Draft Report, including regulatory issues and the availability of harm minimisation measures.

The experience in various overseas jurisdictions, such as the United Kingdom, Isle of Man and Alderney, illustrates that online gaming can be regulated effectively. Many of the harm minimisation measures identified in the Draft Report are commonplace features on most of the major offshore online poker websites, which are subject to the strict regulatory and licensing regimes in the jurisdictions in which they operate.

Australia already has various online gaming regulatory frameworks in place, some of which are well-equipped to deal with online gaming and mandate the provision of responsible gambling services which focus on the minimisation of harm. If a policy of managed liberalisation were to be adopted in respect of online gaming, as the Productivity Commission recommends in Chapter 12 of the Draft Report, the existing regulatory framework at a State level, with very little adjustment, would be able to effectively regulate the provision of online gaming services.

Should a policy of managed liberalisation be adopted in respect of Australian interactive gaming regulation, any regulation should be proportionate to the risk posed by the online gaming activity. Online poker, being largely a game of skill whereby participants play against each other, poses a lower risk compared to other forms of online gaming activities.

In considering the form of regulation that should be adopted in this area, it would be prudent for governments and regulators to avoid over-regulation of the online poker industry to ensure that operators remain willing to obtain a local licence.

This further submission proceeds on the basis outlined in our initial submission, namely that there is a distinct online poker industry, potentially capable of distinct regulation in the Australian regulatory environment.

Productivity Commission Recommendations

Recommendations made by the Productivity Commission in its Draft Report in respect of online gaming included the repeal of the IGA and the initiation of a process for the managed liberalisation of online gambling in consultation with the States and Territories, with the new regime to mandate the following:

- *“strict probity standards, as for online wagering and venue-based gambling*

¹ *Productivity Commission Draft Report: Gambling*. See <http://pc.gov.au/projects/inquiry/gambling-2009> (Draft Report).

² See http://www.pc.gov.au/_data/assets/pdf_file/0005/87773/sub178.pdf.

- *high standards of harm minimisation, including:*
 - *prominently displayed information on account activity, as well as information on problem gambling and links to problem gambling resources*
 - *the ability to pre-commit to a certain level of gambling expenditure, with default settings applied to new accounts, and the ability to opt-out, with periodic checking of a gambler's preference to do so*
 - *the ability to self-exclude*
 - *automated warnings of potentially harmful patterns of play.*³

The Productivity Commission also recommended that the Federal government should consider the following:

- assessment of the cost effectiveness and feasibility of national self-exclusion and pre-commitment options;
- to what extent could self-exclusion be extended through software and payment systems; and
- can international standards in respect of harm minimisation and enforcement be agreed. If so, how?⁴

Australian Regulatory Framework

Whilst the IGA prohibits online gaming operators providing services to customers in Australia, Australia already has available legislative regimes in many States and Territories which contemplate a licensing system. These are capable of regulating the provision of online gaming services to Australian-based customers by operators based in Australia. In other words, many of the measures identified by the Productivity Commission are already addressed in existing legislation.

Specific internet gambling legislation exists in substantially similar terms (largely based on the "Draft Regulatory Control Model for New Forms of Interactive Home Gambling" (**National Model**⁵)) in the Australian Capital Territory (ACT), Queensland and Victoria. Generally, the legislation provides that a person must not conduct or participate in an interactive game, knowing the game is not an authorised game, unless licensed.⁶ In addition, existing gambling legislation in Tasmania and the Northern Territory contains provisions which clearly contemplate the licensing of interactive gaming operators in those jurisdictions.⁷

³ Draft Recommendation 12.1, Draft Report at 12.29.

⁴ Draft Recommendation 12.1, Draft Report at 12.29.

⁵ See http://www.aph.gov.au/Senate/Committee/it_ctte/completed_inquiries/1999-02/gambling/report/e06.pdf.

⁶ *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.

⁷ *Gaming Control Act 1993* (Tas), sections 5A and 76B; *Gaming Control Act 1993* (NT), Part 4, Division 5.

In general terms, the regulatory framework applicable to online gambling in Australia consists of the legislation identified above; the system of licensing which is in place in those States and Territories and Codes of Practice, all of which have been imposed on online gambling operators and which require operators to utilise various harm minimisation measures.

Furthermore, testing laboratories based in Australia have the expertise to ensure that systems comply with regulatory and harm minimisation requirements.

This regulatory framework, comprising legislation, a licensing system, and Codes of Practice, was in place before the enactment of the IGA in 2001. In 1997, the National Model was released by the Gaming Ministers from all States and Territories, who had agreed to a set of policy principles, which were reflected in the National Model. These 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.

Prior to the 2001 enactment of the IGA, various Australian-based operators were awarded licences to conduct online gaming activities, including but not limited to the following licences, which were issued before 2001:

- GOCORP Limited (ACN 083 201 923), which was licensed by the Queensland government;
- Lasseters Casino Pty Ltd (ACN 080 397 306), which was licensed by the Northern Territory government; and
- Tattersall's, which was licensed by the Tasmanian government and then in the Australian Capital Territory.

Other aspects of the Australian experience in regulating online gambling are discussed in further detail below.

Potential Harm Minimisation Measures identified in the Draft Report

The Productivity Commission notes that *"While the internet has the potential to increase the risks of gambling, it also has the capacity to deliver harm minimisation technologies much more easily and effectively than most forms of venue-based gambling"*.⁸ Measures identified in the Draft Report, which a regulatory framework could require, should online gaming be liberalised, include the following:

- automated monitoring of the players' behaviour and targeted interventions based on the detailed information about the spending patterns of clients, which is gathered by online gaming providers;⁹
- effective self-exclusion, whereby a player elects to exclude themselves from participating in the online gaming services provided by the operator;¹⁰

⁸ Draft Report at 12.21.

⁹ Draft Report at 12.21.

- limits on overseas credit-card use, which would potentially see users restricting their credit card usage to domestic purchases only (and ignores the use of PayPal and ClickandBuy, which are accepted by many online gaming websites);¹¹
- user-specific exclusion software, whereby a player's access to various websites is restricted by their use of a filtering system;¹²
- pre-commitment, whereby players can select an amount, which their account cannot exceed or limit the time they can spend on a website. Alternatively, players are able to set a daily and/or monthly maximum loss;¹³
- restricted use of credit cards, which was not recommended in the Draft Report because it is more costly for businesses to comply with a ban of this nature and it would be more inconvenient for consumers;¹⁴ and
- online counselling, which can be provided more cheaply than other forms of counselling and might also function as a referral mechanism. The Draft Report notes that early feedback in respect of this appears positive.¹⁵

In addition to the above measures identified by the Productivity Commission, the importance of brand recognition has also been noted by the Productivity Commission¹⁶. For online poker operators to succeed in a competitive marketplace, it is crucial that their brand is seen as reputable, reliable and not involved in encouraging harmful or problem gambling. This has partly been achieved by self-regulation and accreditation, both of which are discussed further below.

As noted in our initial submission and by other parties in their submissions to the Commission¹⁷, the inherent levels of harm resulting from online poker participation is lower than other forms of online gambling (e.g. online casinos). The attendant risks are lessened further in tournament poker due to the generally lower stakes, the considerable periods involved in participation without additional payments and the level of skill involved.

Online poker players play poker against other players (rather than the house) in real time games during which they are able to chat with one another. Online poker sites also have forums and chat rooms, which provide a means for players to chat with one another. Further, there are numerous other virtual chat rooms and hard copy publications in which poker players may share their online experiences, both good and bad. Therefore, if an online operator's site is seen as less than reputable or lacking in probity, a player's dissatisfaction or bad experience is rapidly shared online with existing and prospective players anywhere in the world.

¹⁰ As above at 12.22.

¹¹ As above.

¹² As above at 12.23.

¹³ Draft Report at 12.23.

¹⁴ Draft Report at 12.24.

¹⁵ Draft Report at 12.25 to 12.26.

¹⁶ Draft Report at 12.9

¹⁷ See submission of John Beagle, including comments made in his submission to the Commission in the Public Hearings in Melbourne on 7 December 2009.

Any perceived unscrupulous behaviour by an online poker operator would have an almost immediate detrimental impact on their reputation and brand. Accordingly, many online poker sites have been very willing to obtain licences in jurisdictions which provide a rigorous form of regulation. In addition, those operators are also very willing to self-regulate and obtain accreditation from independent accreditation bodies.

Harm Minimisation Strategies adopted by Offshore Online Poker Sites

iBus Media Limited supports the Productivity Commission's findings that:

- the online environment has the ability to deliver harm minimisation technologies *"much more easily and effectively than most forms of venue-based gambling"*;
- online technology allows internet-based operators to *"actively and cheaply provide a range of preventative and rehabilitative support"* to those at risk of becoming problem gamblers.¹⁸

Many of the harm minimisation strategies identified in the Draft Report are commonplace features in most of the leading off-shore online poker sites, including the significant operators discussed below. These operators are subject to strict regulatory and licensing regimes in the jurisdictions from which they operate.

In November 2009, we reviewed the websites of some of the largest and most well-known online poker operators with a view to determining what harm minimisation features are being utilised by the operators. The following websites were reviewed:

- www.partypoker.com (**PartyPoker**), which is licensed in Gibraltar;
- www.888.com (**888**), which is also licensed in Gibraltar;
- www.fulltiltpoker.com (**FTP**), which is licensed in Alderney and by the Kahnawake Gaming Commission; and
- www.pokerstars.com (**PokerStars**), which is licensed in the Isle of Man,

(collectively the **Poker Sites**). Examples of the harm minimisation strategies identified in the Draft Report and which are commonplace on the Poker Sites are set out below.

Access by Minors

Numerous harm minimisation features are being utilised by the Poker Sites to prevent and reduce access by minors.

When opening a new account, new players are required to confirm that they are of the legal age required to participate in online gaming. When agreeing to the terms and conditions on the Poker Sites, users are required to acknowledge that they are at least 18 years of age at the time the account is created. Furthermore, on the PokerStars Site, users are required to be 18 or the minimum legal age to participate in the user's jurisdiction, whichever is greater.

¹⁸ Draft Report at 12.4

Name, address and birth date data is collected to confirm personal details. FTP, for example, uses Integrity Age Verification Services (**Integrity**) to ensure that players are at least the minimum legal age. Integrity's software verifies standard issue driver licence details or other government issued ID in respect of citizens of 157 countries. 888 also uses verification software as does PokerStars. PokerStars initially restricts new players to low deposit limits. While playing on PokerStars' Site, verification may be required where a player wishes to increase their deposit limit, transfer funds to other accounts or makes a request to withdraw over a certain value.

Users of the Poker Sites with minors in their households are encouraged to keep their password details secure and not activate the "save password" function on any gaming sign-in screen, nor to leave their computers unattended. If unattended, users are recommended to secure their computer by use of a password.

Users are encouraged to create separate profiles for each user of their computer so that nobody else can access the user's information.

Users of the Poker Sites are also encouraged to keep their credit card and bank account details secured.

If a user is aware of a minor accessing the online gaming software, each Poker Site provides an email address so that the relevant details can be emailed to the operator, including the user's player name.

Each Poker Site also encourages users with minors in their households to consider voluntarily using protection or filter software on their computer to limit access to specific websites and programs for underage users, for example netnanny.com or safekids.com.

The PokerStars Site, for example, also states that underage players are not targeted by marketing and promotions.

The 888 Site provides parents with tips to prevent underage gambling and displays a link to an associated site, which focuses on responsible gaming and harm minimisation, www.888responsible.com. Online poker cannot be played on the site, which displays information about the possible causes of underage gambling; the identification and prevention of teen gambling problems; and how to support and communicate with teens with gambling problems.

Automated Monitoring of Player Behaviour and Targeted Interventions

Online operators have the capacity to automatically monitor players' behaviour as data concerning their wins, losses and so on is automatically captured and stored. Indicators monitored by the customer service or security departments of online operators include whether a person has lost a much larger amount than usual in a short time or is otherwise demonstrating an adverse and noticeable departure from past levels of activity. Should players on the PokerStars Site, for example, wish to increase their maximum deposit amount to participate in the highest level of games, they are first subjected to a stringent security examination during which, for example, their playing history is reviewed among other matters.

Monitoring of player behaviour is also required to ensure compliance with the anti-money laundering and funding of terrorism laws of the jurisdictions in which the online operators are licensed.

In instances where there is a marked departure from past behaviour, or where unusual patterns occur, the system will flag that activity and it is standard practice to refer the players to the responsible gambling departments of the operators for further investigation and/or intervention. Intervention activities may include a responsible gaming department staff member contacting the player and asking the player a series of questions to determine whether the player may be developing a gambling problem and/or to refer the player to assistance services.

Automated monitoring and targeted intervention, by way of technology, gives the player a degree of privacy and may be less confronting for the player. However, should online poker operators be required to provide players' gambling history details to a third party, there may be implications in terms of the operator's compliance with the privacy obligations in the jurisdiction in which they are licensed.

It is certainly feasible that online operators, if not already doing so, would be able to send players an automated message when the player is approaching the loss or deposit limit, which they have set. An automated message in respect of a time limit being reached is not so feasible or desirable for online poker operators (as opposed to operators of other interactive games). A player would not be likely to leave a table or tournament in the middle of a game, which may be quite lengthy (as opposed to a person playing an online casino-type game, such as roulette or black jack, which finish quickly).

In any event, many online operators have automatic deposit limits which apply to all new players. Requests for increases are considered only after a security examination which will include an analysis of past deposits (no chargebacks), further ID checks and a review of the playing history to ascertain that there are no obvious signs of problem activity.

The Draft Report at page 12.21 uses, as example of an automated monitoring of players' behaviour, the Swedish technology, "Spelkoll".

Briefly, "Spelkoll" translates into "player or gambling control" and is a resourceful technological advance particularly designed to identify gambling patterns that may imply a gambling problem surfacing in an individual. Svenske Spel, the Swedish company behind the technology, has made Spelkoll available as a voluntary aid, which players can use to monitor their playing activity and let them know of any indication of a developing problem.

Spelkoll checks over a hundred different parameters, such as rate of recurrence in play, habits, wagering levels and all indications of loss chasing. Users are divided into three different levels: green, orange and red. Each of the three levels has a corresponding response that will occur as someone moves through the ranks. The mid-range category of players, or orange players, are excluded from promotional activities and advertising. Those players who reach the red level will likely be invited to withdraw themselves from the site. The tool is a

first in the industry and is proficient at exposing, at an early stage, gamblers with a propensity to develop a problem.¹⁹

Effective self-exclusion

Each of the Poker Sites provides mechanisms whereby users are easily able, at any time, to exclude themselves from any further play on the site. The ability to self-exclude is a mandatory harm minimisation measure identified by the Productivity Commission, which it recommends that any new regime for the managed liberalisation of online gaming would be required to provide.²⁰

On the 888 and PokerStars Sites, users may request, for example, a cooling off period of 12 or 24 hours or 7 days; or self-exclusion periods of 30, 60 or 180 days or 6 months. During the period of self-exclusion, the user's access to their account is blocked. The self-exclusion period is irrevocable. In respect of the PokerStars Site, once a six month period of self-exclusion has ended, a player is required to request that their account be reactivated as reactivation is not automatic at the end of a six month self-exclusion period. However, reactivation occurs automatically at the end of self-exclusion periods of less than six months.

Users may request a period of self-exclusion by email, live chat or by phone at any time, day or night, seven days a week.

List of questions which would indicate that a user may have a gambling problem are provided for self assessment purposes on the Poker Sites. If a user's response is "yes" to a certain number of questions, it is recommended that they exclude themselves from the site and obtain professional help.

During the period of self-exclusion, the opening of any new accounts by the user is also blocked as soon as detected. Operators also take steps to ensure that users who have self-excluded do not receive promotional materials and offers during the period of self-exclusion. Self-exclusion may exclude a user not only from real money games, but also from play money games.

User-specific exclusion software

User-specific exclusion software is readily available for users to download from the internet and activate thereby preventing themselves from accessing online gaming websites. However, as acknowledged by the Productivity Commission at 12.23 of the Draft Report, at this point in time there is no software which is automatically installed and activated when a player agrees to exclude themselves from online gaming at a particular site. Software with this functionality might be available in the near future.

Software providers such as GamBlock produce a range of self-exclusion software, which may be downloaded from www.gamblock.com (**GamBlock Site**), which block all forms of online gaming. If a player, who has installed GamBlock software on their computer, were to try to access an online gaming website, a pop-up box appears which displays a 60-second

¹⁹ Svenske Spel 2009, *Weekly Budget for Internet and Mobile Gambling*

<https://svenskaspel.se/p4.aspx?pageid=518#pinfo=526%2CnewsID%3D121815>.

²⁰ Draft Report at 12.29.

countdown and, if the gambling site is not exited by the end of the countdown, the computer automatically shuts down. PokerStars, for example, provides a link to the GamBlock Site.

Pre-commitment Options

The Productivity Commission has recommended that any new regime for the regulation of online gaming mandate the ability to pre-commit.²¹ Pre-commitment is already a commonplace harm minimisation measure available on the major online poker sites.

Each of the 888, PartyPoker and PokerStars Sites allows users to set their own maximum limits over a period of time, usually daily, weekly and monthly deposit limits, adjustments to which can be requested at any time by phone, email or live chat. Usually the deposit limits vary according to the payment type. Some deposit limits are operator imposed, while others are mandated by the payment solution provider.

New accounts on the PokerStars Site are set at a default limit. Player requests to lower pre-commitment deposit levels are immediately activated. However, requests to increase pre-commitment deposit levels do not always take immediate effect and may be subject to a delay. An obvious effect of this delay is that online poker players are not likely (or able to) chase losses. When players are taking a "seat" at a virtual poker table, the PokerStars Site provides them with their account balance and the player receives a prompt to state the maximum amount they want to play for that game which, in any event, cannot exceed their pre-commitment level.

Therefore given the wide acceptance of pre-commitment levels by online poker operators; whether they are operator, user or payment solution provider imposed, it may not be necessary for these limits to be imposed by any regulator. However, to the extent those levels are presented, the leading online poker operators would enter into discussions to ensure that they will have the effect intended without derogating from the entertainment value of the game (e.g. some poker tournaments last for a considerable period without any further payment by players – it may be impractical to set time limits in certain circumstances).

Online counselling

The Productivity Commission has recommended that any new regime for the regulation of online gaming mandate high standards of harm minimisation, including in relation to problem gambling.²² All of the Poker Sites display a list of indicators, which may point to a user having a gambling problem.

The Poker Sites display links to organisations in various jurisdictions providing counselling services to those with gambling problems eg Gamblers Anonymous, Gambleaware.co.uk, GamCare.org.uk, and Gamblingtherapy.org. The 888 Site, for example, displays a link to a webpage on the Gambler's Anonymous website, which features a 20 question self-assessment test for users to determine whether they might have a gambling problem.²³

²¹ Draft Report at 12.29

²² Draft Report at 12.29.

²³ See

<http://www.888.com/new888/home.htm?page=fgrgambling&lang=en&S=581977649067469564&OS=581977649067469564&SR=104099&OSR=104099&flag=No&un=true&l=&ic=18&st=287&bc=123&anid=gau888eni>

In addition to the above, the Poker Sites provide other information which may assist users to keep out of debt and play poker responsibly. The 888 Site provides users with tips to keep out of debt, for example, not to play when depressed and not to borrow money to gamble. The PokerStars Site displays tips on how to play poker responsibly, for example, set deposit limits and not to play for higher stakes to try and recoup any losses.

The various Poker Sites have specific webpages dedicated to responsible gaming and many display a Responsible Gaming Mission statement.²⁴

Other Harm Minimisation Strategies

The Draft Report at 12.10 refers to the accreditation services provided by independent testing bodies such as e-Commerce Online Gaming Regulation & Assurance (**eCOGRA**), a non-profit organisation based in the United Kingdom, which is considered to be the independent standards authority of the online gaming industry.

eCOGRA has set a number of operational and player practice standards, which when met by an operator, enable the operator is able to display eCOGRA's "Safe and Fair" seal on the operator's website (and be listed on eCOGRA's website www.ecogra.org as an approved site), which is indicative that the operator's website is a quality and safe site.

eCOGRA's list of "Generally Accepted Practices" (**eGAP**)²⁵, with which operators' websites must comply to obtain a seal, include many practices which are of relevance to harm minimisation and which focus on minors and problem gambling. Some of the practices are considered minimum requirements, adherence to which is mandatory, whilst others are considered suggested practices (many of which are complied with by the Poker Sites) which, while contributing to the security of the environment, are not required to obtain a seal. Examples of these practices include but are not limited to the following:

- Payments to and receipts from players:
 - mandatory requirement: players must be able to access their account history for at least the last month²⁶; and
 - suggested practice: player account statements to be made available to players when requested²⁷.
- Minimum information requirements:
 - mandatory requirements: complete transaction history affecting players' balances must be maintained for 12 months²⁸; player transaction records in respect of transactions exceeding €10,000 (individually or cumulatively) must

888zppoker&se=104099&isus=false&istur=false&isau=true¤cy=USD&osadcampaign=&iframe=no, which displays a link to <http://www.gamblersanonymous.org/20questions.html>.

²⁴ See <http://www.pokerstars.com/about/responsible-gaming/>.

²⁵ See http://www.ecogra.org/docs/eCOGRA_GAP_-_Approved_14_September_2009.doc.

²⁶ eGAP 100.R.5.

²⁷ eGAP 100.P5.

²⁸ eGAP 101.R.1.

be kept for at least 5 years²⁹ and all changes to game parameters must be reported³⁰; and

- suggested practice: the system should generate the following information for all players: player details including verification method, account details, maximum bet levels, exclusion status, prior accounts and reasons for de-activation and session information.³¹
- Underage and illegal gambling: homepages are required to display a "no under 18's (or 21's) sign, which provides a link to a message regarding underage play³², the responsible gaming page is required to provide a link to a filtering program which is recognised to allow players to prevent minors accessing the site³³, a disclaimer must be displayed stating that no players under the legal age are legally permitted to gamble online³⁴, a policy dealing with processes when underage gamblers are identified must be included³⁵, there must be controls and technology which will prevent players from excluded jurisdictions registering to play³⁶, a disclaimer must be displayed stating that only players who are legally permitted in their home jurisdictions may participate in online gambling³⁷, all of which are mandatory requirements;
- Personnel training: the proper training of personnel in respect of problem gambling issues is a mandatory requirement;³⁸
- Self-exclusion requirements: procedures for self-exclusion must be clearly communicated on the operator's site for a minimum period of six months, a cooling off option of at least 24 hours must be in place, and reasonable steps shall be taken to ensure players do not receive promotional material during the exclusion period, all of which are mandatory requirements;³⁹ and
- Responsible gambling: operators' homepages must contain a clear link to a responsible gambling and player protection webpage which, at a minimum, displays a warning that gambling can be harmful, advice on responsible gambling and links to source of assistance, a simple and accepted self-assessment procedure to determine if at risk, the player protection measures (self-exclusion and deposits) which are available, the responsible gambling policy or a link to the policy⁴⁰, that players must be able to decrease their deposit limits on a daily, weekly or monthly basis with the decreases to be processed quickly whereas increases are only to be effective after 24

²⁹ eGAP 101.R.2.

³⁰ eGAP 101.3.

³¹ eGAP 101.P.4.

³² eGAP 103.R.1.

³³ eGAP 103.R.3.

³⁴ eGAP 103.R.4.

³⁵ eGAP 103.R.5.

³⁶ eGAP 103.R.6.

³⁷ eGAP 103.R.7.

³⁸ eGAP 103.R.9.

³⁹ eGAP 103..

⁴⁰ eGAP 103.R.11.

hours⁴¹, and a clock on the screen at all times⁴², all of which are mandatory requirements.

eGAP also sets out stringent minimum requirements and suggested practices in respect of player and game funds, player information, software development and maintenance, total gaming transaction review, server connectivity requirements, general gaming requirements, disaster recovery, system malfunctions; anti-money laundering, responsible advertising and promotions and probity checks.

In addition to eCOGRA, other organisations, such as GamCare, provide a range of services in respect of harm minimisation. GamCare (www.gamcare.org.uk) is a United Kingdom-based registered charity, links to which are provided on, for example, PokerStars and PartyPoker. GamCare provides free online and face to face support, information and advice to anyone with a gambling problem. GamCare also provides a help line, a forum and a chatroom.

In addition to the above, GamCare provides a range of services to online gaming operators. Social responsibility training sessions for staff of online gaming operators are offered. This one day course provides staff with an insight into understanding problem gamblers and the sort of help that they should be expected to provide. Training is conducted on the basis that all working within the online gaming industry should be equipped to respond to any customer requesting help.

GamCare also works with online operators, licensing bodies and the United Kingdom government to ensure that online gaming is conducted in a proper, fair and responsible manner and that online operators take steps to minimise the likelihood of harm.

GamCare proactively encourages online operators to engage in self-regulation and, in particular, encourages online operators to show their commitment to social responsibility by complying with a certification scheme, whereby operators are required to implement robust policies and practices relevant to their platform and gaming services. In this regard, GamCare provides assistance to operators to implement a range of systems, including age verification systems, responsive self-exclusion tools, and pro-active customer-led pre-commitment measures (session and deposit limits). The PokerStars, PartyPoker and 888 Sites have all been certified by GamCare.

Conclusion

As is apparent from the above harm minimisation practices already widely used in the online poker space, the availability of eCOGRA's eGAP compliance program and GamCare's services for operators and players, operators are already very conscious of having adequate harm minimisation and responsible gambling policy and procedures in place, which protect the integrity of the services they provide.

In addition, numerous jurisdictions, some of which will be discussed below, have stringent regulatory and licensing requirements in place, which many of the key operators, including some of the Poker Sites above, are required to comply with to maintain their licence.

⁴¹ eGAP 103.R.14.

⁴² eGAP 103.R.14 .

Overseas Regulation of Online Gaming

As the Productivity Commission acknowledges in Chapter 12 of the Draft Report, a large number of Australian-based players are accessing offshore online gaming websites because of the prohibition on Australian-based online gaming websites. Some of these offshore websites have unscrupulous business practices, poor security and little or no harm minimisation features. In addition, by prohibiting Australian operators from providing online gaming services, a possible large source of tax revenue is lost to foreign governments.⁴³

It would be relatively simple to have a rigorous national licensing regime with stringent controls in place. The aim of the regulatory system would be to encourage Australian users to use locally regulated operators, who would be required to provide harm minimisation features and better consumer protection, thereby minimising the potential for unethical behaviour and reducing the risks of and costs associated with problem gambling. Furthermore, any licensing regime would generate a new source of tax revenue.

Any determination of the regulatory framework appropriate for the regulation of online gaming in Australia, should consider the manner in which the licensing regimes in various overseas jurisdictions operate. The review below focuses on the harm minimisation requirements in the United Kingdom, the Isle of Man and Alderney, which have liberalised the provision of online gaming services within a stringent regulatory framework.

United Kingdom

As noted in the Initial Submission at page 26, the provision of online gambling in the United Kingdom (UK) is governed by the Gambling Act 2005, which is both technological and product neutral and which regulates licensing of all types of products, for example, wagering and online poker.⁴⁴ The Gambling Commission is responsible for licensing administration matters.

The provision of online gambling services in the UK is subject to various licence conditions and Codes of Practice, which have been issued under section 24 of the Gambling Act. The Codes of Practice are either:

- ordinary code provisions, which generally describe best practice measures and, whilst compliance is not mandatory, failure to take these provisions into account may be used as evidence in civil or criminal proceedings; or
- social responsibility code provisions, with which a licence holder must comply and which have the same status as licence conditions,

and cover such matters as harm minimisation, responsible gambling measures and player protection.⁴⁵

⁴³ Draft Report at 12.1.

⁴⁴ See http://www.opsi.gov.uk/Acts/acts2005/ukpga_20050019_en_1.

⁴⁵ Part 1: General conditions imposed by the Gambling Commission – Suite of general conditions to be attached to operating licenses under section 75 of the *Gambling Act 2005 (General Conditions)*. See <http://www.gamblingcommission.gov.uk/pdf/LCCP%20-%20Oct%202008.pdf>.

Access to Minors

As discussed above, all UK operators are required to implement the social responsibility code provisions, which include various provisions concerning the protection of children and other vulnerable persons. Operators, for example, are required to show that they are committed to (and the way in which they will contribute to) research into the prevention of problem gambling, public education on the risks, and the identification and treatment of problem gamblers.⁴⁶

Online operators, in particular, are required to show that they have put policies and practices into place which are designed to prevent underage gambling, the effectiveness of which is required to be monitored. In particular, in accordance with the mandatory social responsibility code provisions⁴⁷, operators must, among other matters:

- warn potential customers that underage gambling is an offence;
- require customers to confirm that they are old enough to legally gamble;
- regularly review age verification systems which are used and implement improvements, which are reasonable, as a result of technological advances;
- properly train relevant staff in the use of age verification procedures, particularly customer service staff who must be appropriately trained in using secondary identification forms when initial verification procedures do not prove that a user has attained the legal age;
- ensure that their websites permit filtering software to be used by adults (parents, carers, schools) so as to restrict access to relevant pages; and
- follow particular age verification strategies, with the strategy used being dependent on whether or not the customer is a UK resident. In any event, if age verification is not completed within 72 hours, accounts will be frozen, no further gambling allowed and if, on completion, the user is under the legal age, all deposits held by the operator are to be returned (and no winnings paid).

Responsible Gambling Information

All operators are required under the mandatory social responsibility code provisions to provide information, which must be readily available to customers, about responsible gambling and where to access information and obtain help in respect of problem gambling. The information made available to all customers must include:

- any features provided by the operator to help players monitor or control their gambling, including self-limitation restrictions on length of sessions or the amount of money to be spent;
- information concerning timers, reminders or other checks when available;

⁴⁶ Code: 2.1 – Combating problem gambling.

⁴⁷ Code: 2.2 – Access to gambling by children and young persons.

- options for self-exclusion; and
- information concerning where to obtain further help and advice.⁴⁸

In addition to the above, the ordinary code or best practice provisions (as opposed to the mandatory social responsibility provisions) state that, if an operator markets their services in one or more foreign languages, the operator should make available, in those languages, information on gambling responsibly and how to access help.⁴⁹

Customer Interaction

The social responsibility code requires all operators to have policies and procedures in respect of customer interaction when there are concerns a customer's behaviour is indicative of a gambling problem. Such policies and procedures must include:

- the types of behaviour which is logged / reported to the appropriate management level;
- the identification of the appropriate level of management who is able to initiate customer interaction and the procedures to be employed in doing so;
- the circumstances in which the refusal to provide service should be considered; and
- staff training so all know whose responsibility it is to deal with problem gaming issues.⁵⁰

Self-Exclusion Procedures

Online operators are required to comply with specific self-exclusion procedures. All reasonable steps are to be taken to prevent any marketing material being sent to those who have self-excluded themselves (for example by ensuring removal of a name from the marketing database within 2 days of receiving the self-exclusion notification), customer accounts must be closed, a register of excluded customers must be kept and a record of credit card numbers to be excluded and all customer service staff should be able to direct customers to a person who can immediately complete the self-exclusion process.⁵¹

Other self-exclusion procedures required to be complied with include operators providing a statement about the availability of software which can prevent a computer from accessing internet gambling sites and a link to where further information about this is available.⁵² Operators should also take all reasonable steps to ensure that the period of self-exclusion is a minimum of 6 months and provide customers with an option to extend this to 5 years at a minimum. The self-exclusion period is to remain in place unless the customer takes positive steps to recommence gambling after the period of self-exclusion has ended.⁵³

⁴⁸ Code: 2.3 – Information on how to gamble responsibly and help for problem gamblers.

⁴⁹ Code 2.3. as above.

⁵⁰ Code 2.4 - Customer interaction.

⁵¹ Code: 2.5 – Self-exclusion.

⁵² As above.

⁵³ Code: 2.5 – Self-exclusion.

As noted in the Initial Submission, the UK legislation complies with the European Union (EU) requirements. Therefore, if operators are licensed within the EU, Gibraltar or a white listed territory, which is provided for in section 331(4) of the Gambling Act 2004 (such as Tasmania, the Isle of Man and Alderney, each of which is discussed below), they can advertise within the UK. Given this ability to advertise in the UK, no major online poker operator has relocated to the UK, where they would also be subject to a 15% remote gaming duty⁵⁴ and corporate tax as high as 20%, which is significantly higher than the corresponding taxes in other white listed jurisdictions.

Isle of Man

The licensing of online gaming in the Isle of Man is predominantly governed by the *Online Gambling Regulation Act 2001 (OGRA)*⁵⁵, together with a number of regulations which cover such matters as anti-money laundering, disaster recovery, advertising and systems verification. The Gambling Services Commission (**GSC**) is responsible for licensing administration matters.

The Isle of Man requires online gaming operators to comply with various requirements, which are set out in the OGRA and/or the GSC document "Guidance for On-line Gambling" (**Guidance Document**).⁵⁶

Operators are required to submit a business plan with their licence applications, which sets out terms and conditions in respect of the use of the operator's website, player protection measures, the technical checks which have been conducted on the games offered, the customer due diligence which takes place and so on. The GSC would expect to see terms and conditions which include agreements on age limits and the legality of gambling in the jurisdiction from which the player originates.

Player Protection

In addition to the above, licensees are required to safeguard player deposits and ensure that players receive their winnings, for example, by setting up an independent trust fund, the amount of which is reviewed during the assessment of the application for a licence and on an ongoing basis. In addition, the OGRA stipulates that an online gaming licence shall not be granted to an operator unless the operator has adequate financial means available to conduct the online gambling sought to be provided: section 4(2)(d) of the OGRA.

All games which are offered are required to be tested by a testing house approved by the Isle of Man government.

Player Verification

The adequacy of the player registration checks to be conducted by the operator is assessed. Specific assessment is required of the mechanisms to exclude under 18s, requirements for a player's name, age and address to be collected at a minimum, the mechanisms for self-exclusion and to prevent self-excluded players from re-registering, the inability of players to

⁵⁴ Section 26B of the *Finance Act 2007* (UK) available at http://www.opsi.gov.uk/Acts/acts2007/PDF/ukpga_20070011_en.pdf.

⁵⁵ See <http://www.gov.im/lib/docs/infocentre/acts/ogra2001.pdf>.

⁵⁶ See <http://gov.im/lib/docs/gambling/externalguidancev3.doc>.

have more than one account at one time and the availability and use of additional identification verification procedures if a player's balance exceeds €3,000 (as an anti-money laundering precaution).

Comprehensive checks of the look and feel of the operator's website are conducted, for example, to ensure that there is a link to a statement barring those under 18 and to a statement that online gambling debts are enforceable in the Isle of Man.

Pre-Commitment

The *Online Gambling (Regulation and Accounts) Regulations 2008* contain requirements in respect of pre-commitment. Operators must provide players with one of two options to set pre-commitment levels. Players must be able to set a maximum deposit amount per session or, alternatively, a maximum deposit amount for a period not less than seven days.⁵⁷ Players are prohibited from increasing the maximum deposit limits unless they have first given seven days' notice.⁵⁸

Other additional features which the GSC would expect to be included in the Terms and Conditions and/or generally available on a website include details of self-exclusion mechanisms in respect of future participation, registration and the receipt of marketing material and the means by which an operator may be contacted at any time by a player.

Various details in respect of games maintenance are also required to be provided, for example, the identity of participants, the time at which games were commenced and completed, the player's account balance at the start and finish of each game, the amount won or lost and the currency.

There are currently twenty operators authorised by the Isle of Man to conduct online gambling, including Rational Entertainment Enterprises Limited, the operator of the PokerStars Site and Paddy Power Isle of Man Limited (www.paddypower.com).

Alderney

The Alderney Gambling Control Commission (AGCC) is responsible for the regulation of gambling. The principal legislation governing online gaming operators is the eGambling Ordinance 2006⁵⁹ and eGambling Regulations 2006⁶⁰. The AGCC only issues licences in respect of remote or online gaming conducted from a server or servers based in Alderney or Guernsey.

Player Protection

The AGCC's functions in respect of player protection include assessing the background of proposed operators (including funding and ultimate beneficiaries of the licensed entity), assessing internal controls and operating procedures in respect of risks associated with gambling, assessing the gambling systems to be used by the operator, in particular, whether

⁵⁷ Regulation 5.2(1) of the *Online Gambling (Registration and Accounts) Regulations 2008*. See <http://www.gov.im/lib/docs/gambling/Regulations/onlinegamblingregistrationandacc.pdf>.

⁵⁸ Regulation 5.2(2) of the *Online Gambling (Registration and Accounts) Regulations 2008*.

⁵⁹ See <http://www.gamblingcontrol.org/userfiles/file/95.pdf>.

⁶⁰ See <http://www.gamblingcontrol.org/userfiles/file/97.pdf>.

the systems are fair, secure and able to be audited, reviewing licensees' marketing and advertising policies; investigating complaints and granting and reviewing policies in respect of player protection and gambling by minors.⁶¹

Anti-Money Laundering

All licensees are required to have a money laundering reporting officer (**MLRO**), who receives reports of suspicious transactions or activities and must determine whether these are reported to the Financial Intelligence Service.⁶²

Licensees are required to prepare an internal control system document (**ICS**), which is a complete and detailed description of the licensee's business. The AGCC uses the ICS to assess whether the operator complies with the regulatory requirements and as a means of evaluating the operator's ongoing compliance. As part of the ICS document, licensees are required to show that they understand and have implemented a detailed system of checks and controls to prevent money laundering, to monitor customer behaviour and to identify and report any suspicious activity.

A business risk assessment (**BRA**) is required to be completed prior to the submission of the ICS and specifically concerns the procedures an operator has in place to address the risks of money laundering and the funding of terrorism. BRAs are required to address specific and general risks, controls that mitigate against the risks and recording an action which has been taken. BRAs are required to take into account the following:

- general risks associated with the industry;
- specific risks such as customers, products, services, banking methods, geographical areas of operation, and employees;
- controls or processes used to manage risks and to identify complex, unusual or suspicious transactions, thereby mitigating the risks;
- information which is held should be monitored, including information concerning players' financial and gambling habits; and
- the recording of the action which has been taken and how compliance with the regulations was achieved.

Operators are also required to undertake individual risk assessments of each customer at the time of registration or as soon as reasonably practical afterwards. This customer due diligence is to identify, for example, politically exposed persons or persons from jurisdictions where no or insufficient standards apply in respect of money laundering and terrorism financing. (This is no different to Australian AML/CTF procedures.)

⁶¹ See <http://www.gamblingcontrol.org/players.php>.

⁶² Regulation 21(d) of the *eGambling Regulations 2006*. See <http://www.gamblingcontrol.org/userfiles/file/97.pdf>.

Pre-Commitment & Self-Exclusion

Various pre-commitment and self-exclusion measures are required to be available for players. Players, by providing the operator with written notice, may set limits in respect of the amount which may be deposited during the period specified in the notice, the amount which may be lost (with reference to the number of transactions or the time period specified in the notice), or the amount which may be wagered.⁶³ Any player's request to increase or remove a limit will not take effect until 24 hours have passed other the request is made.

Players can also set wager amounts or a maximum limit at zero, (which has the same effect as self-exclusion).⁶⁴ Whilst a player's limit is set at zero, an operator is not able to directly or indirectly market or publicise its services to the player.⁶⁵

There are stringent record keeping requirements. Transaction and customer due diligence information must be kept for at least 5 years.

Virtue Fusion Alderney Limited (www.ladbrokes.com and www.williamhill.com) and Interactive Sports (CI) Limited (www.sportingbet.com), for example, are licensed under this regulatory regime. Further details of the Alderney licence regime are at www.gamblingcontrol.org. There are currently 46 online gambling operators authorised by Alderney to conduct online gambling including FTP.

Conclusion

These jurisdictions indicate online gaming can be licensed and regulated in a manner which emphasizes consumer protection and harm minimisation measures.

Indeed, the leading online poker sites welcome this form of regulation. Regulation of this nature assists operators in promoting the integrity of their brand by ensuring they are subject to, and comply with, strict regulatory measures.

Recent Regulatory Developments Overseas

Since the Initial Submission, a number of developments have occurred internationally in relation to the regulation of online gambling.

Italy

The Amministrazione Autonoma Dei Monopoli Dio Stata (**AAMS**) is responsible for regulating the gambling sector in Italy. Until very recently, Italy's market was largely closed to foreign competition. However, with the Abruzzo region being struck by an earthquake on 6 April 2009, coupled with the ongoing global economic downturn, the prospect of additional revenue prompted the Italian government to liberalise further the Italian gambling market and enact three pieces of legislation that introduced important changes to the gambling framework:

- Decreto Legge No 39 in April 2009 (**Decreto Abruzzo**);

⁶³ Section 340(2) *Alderney eGambling Regulations* 2006.

⁶⁴ Section 340(3).

⁶⁵ Section 340(4).

- Legge 7 de luglio 2009 in June 2009 (**Comunitaria 2009**); and
- Decreto Legge No 78 on August 2009 (**Decreto Anti-crisi**).

Prior to the enactment of the Decreto Abruzzo and Comunitaria 2009, only online poker tournaments (which were considered skill-based games by the AAMS), were authorised subject to certain strict conditions. As a result of the Decreto Abruzzo and Comunitaria 2009, Italy now permits the conduct of cash games for online poker subject to appropriate licences.⁶⁶

The Comunitaria 2009 established that the AAMS is responsible for the regulation of online gambling and has the power “to limit, according to the market’s needs, the number of licences it provides”.⁶⁷ The AAMS will provide online gambling licences to potential operators who comply with the following conditions, among others:

- operate a game of chance remotely in one of the states of the European Economic Area (EEA), based on a valid and effective licence issued under the provisions of that State, with a total turnover derived from such activity, of not less than €1.5 million over the last two financial years before the date of application;
- incorporate a legal entity with a registered office in one of the states of the EEA before the licence is awarded;
- have their technology infrastructure (both hardware and software) dedicated to the activities located within a state of the EEA; and
- make a down payment of €300,000 plus VAT (20 percent).⁶⁸

Following the recent liberalisation of the Italian online gambling market, eleven online gambling operators have been licensed to conduct business in Italy, including Gioco Digitale, Microgame, Lottomatica, PokerStars, Snai (an Italian poker operator) and Bwin.

Recent attempts overseas to control interactive gaming via controls placed on financial transactions appear to have failed to date. Indeed the Productivity Commission at 12.25 of the Draft Report acknowledges, for example, the difficulties in restricting the use of credit cards and does not recommend that the use of credit cards for internet gambling (wagering and gaming) be banned. Attempts to control interactive gaming through placing controls on financial transactions in various jurisdictions are discussed below.

USA

With revenues of US\$92.27 billion, the USA is the largest gambling market in the world and arguably the most significant.⁶⁹ As noted in the Initial Submission, the USA does not have a prohibition on online gaming. This is despite the Department of Justice’s interpretation of the *Wire Act* 18 U.S.C. § 1084 as prohibiting online gambling. The US Fifth Court of Appeals

⁶⁶ Article 12(f) of the Decreto Abruzzo.

⁶⁷ See Article 24 of the Comunitaria 2008.

⁶⁸ See Article 24 of the Comunitaria 2008.

⁶⁹ American Gaming Association; see

http://www.americangaming.org/Industry/factsheets/statistics_detail.cfv?id=7.

has ruled that the Wire Act applies only to sports betting and not other types of online gambling.

In recent months, there has been significant controversy surrounding the implementation date of the *Unlawful Internet Gambling Enforcement Act (UIGEA)*, which prohibits payments being processed, which relate 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.’⁷⁰

Those online gambling activities which were unlawful previously remain unlawful after the implementation of the UIGEA (and those that are 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. Furthermore, financial institutions are, in particular, burdened with the responsibility to identify and distinguish between unlawful and lawful gambling activities.

The UIGEA met considerable resistance from financial institutions and congress members, among others. Many of the objections made mirror the difficulties assessed in the IGA review (**IGA Review**)⁷¹ conducted by the Department of Communications, Information Technology and the Arts (**DCITA**)⁷² in 2003, which is discussed below. When the UIGEA regulations were implemented on 19 January 2009, financial institutions were given until 1 December 2009 to comply with the rules. However, financial institutions continued to make submissions that the obligation to monitor and identify internet gambling transactions represents an excessive compliance burden. Indeed, the US Treasury estimates compliance costs will amount to US\$88.5 million in staff costs.⁷³

As a result, on 25 November 2009, the Department of Treasury extended the compliance date to 1 June 2010. The primary reason for the implementation delay has been:

- (a) the ambiguity surrounding the distinction between unlawful and lawful internet gambling;
- (b) the scope of compliance costs and procedures required by financial institutions; and
- (c) the burgeoning use of the internet as a normal facet of commercial and social exchange.

⁷⁰ 31 USC § 5362(10)

⁷¹ Department of Communications and Information Technology and the Arts, *Review of the operation of the Interactive Gambling Act 2001 (DCITA Review)*, July 2004.

⁷² This department is now known as the Department of Broadband, Communications and the Digital Economy (**DBCDE**).

⁷³ : 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>.

Furthermore, the compliance requirement could lead to gambling transactions, which are lawful, inadvertently being blocked.

As a result, at this point in time, the UIGEA does not appear to have been either effective in curbing online gambling activity, nor in forcing financial institutions to assume responsibility for screening the legality of online internet gambling.

Norway

Norwegian law generally 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).

The Norwegian parliament has recently approved statutory amendments to the *Totalisator Act* (1927), *Gaming Schemes Act* (1992) and *the Lottery Act* (1995), which will make it illegal for payment processing companies to process financial transactions for online casinos, lotteries, sports books or interactive wagering providers, which have not been licensed in Norway. These amendments are yet to take effect.

Unlike the USA's UIGEA, the Norwegian government has sought to amend existing statutes to broaden the existing offence of “*accessory involvement*” in unlawful gambling, rather than create an entirely new act. This means financial institutions would be expected to identify gaming operators by their unique merchant code applied to transactions, and block transactions involving those operators without a valid licence. Given that only the state-run enterprises Norsk Tipping and Norsk Rikstoto hold permits, the legislation will mean transactions involving all other operators will be blocked.

Various criticisms from both within and outside Norway have been levelled at the implementation of the financial control blocks. Criticisms (many of which are similar to the comments made in the IGA Review) have included the following:

- The merchant code (MC 7995) used by licensed Norwegian gambling operators (i.e. Norsk Tipping and Norsk Rikstoto) is the same as other gambling operators worldwide. This means financial institutions cannot accurately differentiate between licensed Norwegian operators and unlicensed gambling operators (or in other words between lawful and unlawful online gambling activity). Numerous submissions, notably from the Norwegian Financial Services Association and the Norwegian Savings Banks Association, have noted that all transactions would need to be blocked to comply with the legislation.⁷⁴
- The burden of compliance rests with financial institutions, who 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.
- 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.

⁷⁴ See <http://www.gamblingcompliance.com/node/37807/hl/search/norway%3B>.

- On the face of it, the ban appears to place a restriction on the free movement of services, and is therefore in violation of Article 36 of the European Economic Area Agreement. The European Commission, which issued an opinion in April 2008, stated the proposed measures may be "ineffective, disproportionate and go beyond what is necessary to attain the legitimate aims pursued".⁷⁵ Of particular importance are:
 - the lack of credible evidence linking online gambling to problem gambling; and
 - the fact there is sufficient existing legislation limiting the risk of money laundering, such that the online payment controls are disproportionate and unnecessary. As a result, the 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".⁷⁶

In July 2009, the period of public consultation for the draft regulation ended and in September 2009, Norway held a general election. There is currently no indication as to if and when the amendments will take effect.

Germany

Germany's ban on internet gambling is contained in the *Staatsvertrag zum Glücksspielwesen (Interstate Gambling Treaty)*, which came into force on 1 January 2008.⁷⁷ The ban applies whether an operator is foreign, domestic, state-run or private. Advertising of gambling on the internet is also prohibited.⁷⁸ The treaty is binding across all 16 German states, and means uniform legislation is effective throughout Germany. Penalties for internet gambling include imprisonment for up to 5 years.⁷⁹ On 31 January 2008, the European Commission issued a formal infringement proceeding regarding the *Interstate Gambling Treaty*.⁸⁰

Section 9 of the *Interstate Gambling Treaty* authorises, inter alia, the German regulatory body to:

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

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

There is little evidence, however, that banks support the ban. Professor Hartmann Wendels, director of the University of Cologne's Institute of Banking Economics & Banking Law, considers that the financial transaction controls are practically impossible to monitor and

⁷⁵ See <http://www.gamblingcompliance.com/node/37807/hl/search/norway%3B>.

⁷⁶ See <http://www.gamblingcompliance.com/node/37807/hl/search/norway%3B>.

⁷⁷ *Staatsvertrag zum Glücksspielwesen (Interstate Gambling Treaty)* s 4(4): 'The establishment and provision of public gambling through the internet is forbidden.'

⁷⁸ Section 5 of the *Interstate Gambling Treaty*.

⁷⁹ Section 284 of the *German Criminal Code*.

⁸⁰ European Commission 'Free movement of services: Commission inquires into restrictions on gambling services in Germany' IP/08/119 (31 January 2008).

investigate in Germany and all online transactions cannot be monitored in order to filter out payments made to online gambling companies.⁸¹

Attempts to block internet service providers (ISPs) are similarly problematic, with ISP blocking measures bypassed very easily by new technical developments and through simple modifications by the providers and users.⁸²

Australia

Under the IGA, DCITA was required to conduct a review of interactive gambling in Australia prior to 1 July 2003.

Section 69A of the IGA provides the Federal Government with the power to make regulations which would block payments to internet gambling websites. The DCITA Review released in July 2004 found that:

*Regulations made in accordance with section 69A are unlikely to achieve the outcome intended by Parliament that was to discourage the provision of interactive gambling services to customers in Australia.*⁸³

The DCITA Review stated:

- The likely result of regulations would be that Australian card-issuing financial institutions would be liable for any dishonoured gambling-related debts under either of the major credit card associations (MasterCard and Visa). Online casino operators would be under little pressure to wind back their operations to Australians, and consumers may be attracted by their capacity to repudiate any debt incurred by such gambling.
- Australian card-issuing institutions would probably respond to the introduction of such regulations by blocking the use of their cards for all gambling-related transactions, including wagering and lottery services permitted under the IGA.⁸⁴

The DCITA Review found that three major loopholes existed in any attempt to implement a payment blocking regime, namely:

- failure on the part of gambling merchants to correctly code internet gambling transactions;
- use of online payment providers to “obscure” the correct coding of transactions; and
- use of alternative (non-credit card) payment systems. These echo similar findings in a US General Accounting Office report issued in 2002⁸⁵.

⁸¹ W Hambach, ‘German State Treaty on Gambling – Legislator Demands the Impossible’ <http://www.gamblinglaw.eu/actuality-112/german-state-treaty-on-gambling-legislator-demand-the-impossible.html>.

⁸² W Hambach, ‘German State Treaty on Gambling – Legislator Demands the Impossible’ <http://www.gamblinglaw.eu/actuality-112/german-state-treaty-on-gambling-legislator-demand-the-impossible.html>.

⁸³ DCITA Review, p viii.

⁸⁴ DCITA Review, p viii.

Finally, the DCITA Review concluded that, to achieve the purpose of section 69A, new regulatory mechanisms and additional information requirements in the card associations' financial transaction authorisation request process would be required. There would be significant efficiency costs, processing delays, and other burdens that would ultimately be borne by all Australian credit cardholders. Therefore, a case was not made to use financial payments to regulate the provision of interactive gambling services.⁸⁶

Given the experiences identified above, it appears that placing controls on unlawful internet gambling through financial transaction controls is very unpopular with financial institutions (which are required to comply and monitor transactions), technically difficult and costly in terms of compliance. Further, as acknowledged by the Productivity Commission at 12.25 of the Draft Report, the more costly it is for business to comply with any ban (in the event that credit card use is banned), the likelihood of operators seeking an Australian licence would be reduced.

Given the technical difficulties in enforcing controls on financial transactions, coupled with the lack of support from financial institutions due to the cost and administrative difficulties associated with compliance, it is submitted that the efficacy of placing controls through financial transactions is very low.

Australian Licensing Regimes

Australia already has in place a legislative regime which contemplates a licensing system for online gaming operators. This has the potential to provide the ability to regulate and grant licences in respect of online gaming services provided by Australian-based operators to Australian-based customers. Existing regulatory and licensing frameworks in Queensland, Victoria, Tasmania, South Australia, the Australian Capital Territory and the Northern Territory are discussed in further detail below.

Queensland

Queensland has legislation which specifically deals with online gaming services. *The Interactive Gambling (Player Protection) Act 1998 (Qld Act)* regulates online gaming services and was enacted in accordance with the National Model, which was released by the Gaming Ministers from each of the States and Territories in May 1997.

Section 16(1) of the Qld Act provides that it is an offence to conduct an unauthorised interactive game in Queensland or to allow a person who is in Queensland to participate in an unauthorised interactive game.⁸⁷ Section 16(2) provides that it is an offence to participate in,

⁸⁵ United States General Accounting Office, *GAO-03-89 Internet Gambling: An Overview of the Issues*, December 2002, <http://www.gao.gov/cgi-bin/getrpt?GAO-03-89>, p 26.

⁸⁶ DCITA Review, p viii.

⁸⁷ Section 6 of the *Interactive Gambling (Player Protection) Act 1998* defines an "interactive game":

(1) as one in which

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

(b) a player--

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

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

(c) the winner of a prize is decided-

or encourage or facilitate participation in, an unauthorised interactive game. Online casino games, which are played for money, would be captured by the definition of "interactive game".

Under the Qld Act, an interactive game can be approved either through a process set out in the Qld Act or by being an approved game in an Australian jurisdiction with a corresponding law.

Minors

When a player registers, they must produce evidence of their identity, place of residence and their age, the minimum age being 18.⁸⁸

Pre-Commitment

The Qld Act provides for player setting of pre-commitment levels and self-exclusion. Players must be able to set limits on amounts by giving written notice to an operator. Limits set must be able to be changed by players. However, whilst requests to reduce limits are effected immediately, requests to increase limits are required to not take effect for seven days. Should an operator allow a player to make a deposit in excess of their own limit which they have set, the operator may incur a penalty of 100 penalty points.⁸⁹

Self-Exclusion

Players must be able to self-exclude themselves from playing on a licensed operator's site by given the operator written notice. The operator is then required to provide the player with a self-exclusion order and the details of at least one entity which provides counselling services for problem gambling. Players can revoke the self-exclusion order but only if they request the revocation in writing within 24 hours of receiving the self-exclusion order from the operator. Otherwise, revocation can only take place at least 1 year after the player received the self-exclusion order from the operator.⁹⁰

Exclusion by Operator

The Qld Act also allows for licensed operators to issue an exclusion direction to a player prohibiting them from playing further games conducted by the operator if the operator believes, on reasonable grounds, that the player has a gambling problem. Players who have been prohibited by an exclusion direction issued by an operator may only apply for the direction to be revoked once a year has passed since the date the player was given the direction.⁹¹

(i) wholly or partly by chance; or

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

⁸⁸ Section 18(2) of *Interactive Gambling (Player Protection) Act 1998*.

⁸⁹ Section 136 of *Interactive Gambling (Player Protection) Act 1998*.

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

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

The *Queensland Responsible Gambling Code of Conduct (Qld Code)*⁹² has been developed by the Queensland Responsible Gaming Advisory Committee (**Qld Committee**), which is made up of members from the community, industry and the Queensland government. The Qld Committee consulted with key stakeholders when developing the Qld Code, which is supported by the *Queensland Responsible Gambling Resource Manual (Qld Manual)*. The Qld Manual sets out best practice across all codes of gambling and is a tool to assist with the implementation of the Qld Code.

The Qld Code is administered by the Queensland Office of Gaming Regulation. Compliance with the Qld Code is voluntary. However, the Qld Code does contain practices with which compliance is a legislative requirement, for example, the provision of pre-commitment and self-exclusion measures. Therefore, if an operator does not comply with a legislative requirement which is included in the Qld Code, then an action may be taken against the operator under, for example, the Qld Act.

Information Required

A wide variety of responsible gaming measures are covered by the Qld Code, which are relevant to online operators. Operators are required to provide certain information, including ensuring that a responsible gambling mission statement is clearly displayed. Information is also required to be prominently displayed concerning the potential risks of gambling and where to obtain assistance for problem gambling. Information alerting customers to the availability of the following on request must also be displayed: the nature of the games, their rules, odds and so forth; the operator's Responsible Gambling Policy document; information concerning exclusion; complaint resolution mechanisms and the key points of the operator's financial transaction practices.⁹³

Customer Interaction

Online operators are required to have a staff member perform a customer liaison role. That person must have been trained to provide information to customers to assist with gambling problems. In addition, there must be support staff to provide assistance to customers with gambling problems and to assist staff if they have a gambling problem. Complaint handling procedures must be in place and promoted which deal with gambling-related issues. Mechanisms are required to be in place, which ensure staff are provided with effective and ongoing responsible gambling training.⁹⁴

Additional Exclusion Requirements

The Qld Code requires online operators to comply with numerous measures in respect of exclusion provisions. Operators, for example, are required to provide exclusion procedures and documentation in support. Customers who seek contact information in respect of exclusion notification are to be offered support services for gambling-related problems. Where practical, operators are to support players in seeking exclusion from other operators (where the customer has been excluded from the operator). Operators are not to market or

⁹² See

<http://www.olgr.qld.gov.au/resources/responsibleGamblingDocuments/responsibleGamblingCodeOfPractice.pdf>

⁹³ *Queensland Responsible Gambling Code of Conduct (Qld Code)*, pages 7 and 20.

⁹⁴ Qld Code, pages 9 and 20.

promote their services to excluded customers or customers who have requested that they not be provided with this type of information.⁹⁵

Gambling Environment

The Qld Code also sets out requirements in respect of the physical gambling environment. In terms of online operators, requirements with which they are expected to comply include prohibiting minors from gambling, not encouraging gambling by providing gratuities and implementing practices so that players are aware of the passage of time and are discouraged from playing in intensive or extended periods of play.⁹⁶

In addition to these requirements, the Qld Code prescribes numerous measures in respect of the responsible gambling advertising and promotions practices⁹⁷ and financial transaction practices⁹⁸, with which operators are required to comply.

In June 1999, the Queensland government awarded the first interactive gaming licence under the Qld Act to GOCORP Limited (ACN 083 201 923). The licence was awarded for 15 years (until June 2014).⁹⁹ GOCORP subsequently merged with Lasseters Casino Pty Ltd, a Northern Territory-based operator.

Victoria

Victoria also has legislation specifically dealing with online gaming services. Chapter 7 of the *Gambling Regulation Act 2003* (Vic) (**Victorian Act**) sets up a regime for regulating such services, which is modelled on the National Model.

Many of these provisions are in substantially similar form to the Qld Act.

Section 7.2.1 of the Victorian Act provides that the conduct of an approved interactive game in accordance with Chapter 7 is lawful, while section 7.2.2 provides that the conduct of an unauthorised “interactive game” is unlawful. Given that the definition of “interactive game”, (which is the same as that under the Qld Act) includes “a competition or other activity” where the winner is determined wholly or partly as a result of the player’s skill, it is arguable that casino games, which are played for money would be captured by this definition of “interactive game”.

An interactive game can be approved either through a process set out in the Victorian Act or by being an approved game in an Australian jurisdiction with a corresponding law.

Minors

The Victorian Act stipulates various harm minimisation requirements with which interactive gaming licensees are expected to comply. An operator, for example, must not permit a registered player to play a game (which is also required to be approved) unless the player's identity has already been authenticated in accordance with the conditions of the licence. The

⁹⁵ Qld Code, pages 8 and 20.

⁹⁶ Qld Code, pages 10 and 21.

⁹⁷ Qld Code, pages 12 and 22.

⁹⁸ Qld Code, pages 11 and 21.

⁹⁹ GOCORP Limited *Prospectus* April 2007 at page 70.

penalty for a breach of this requirement is 600 penalty units for a first offence and, for a second or subsequent offence, 600 penalty units and/or two years imprisonment.¹⁰⁰

Pre-Commitment

Section 7.4.16 of the Victorian Act requires operators to allow players to set limits on the amount they wish to wager, which the player may change or revoke by providing written notice. Any written request to increase or revoke a limit will not take effect until 7 days have passed since the operator received the notice.

There are some additional requirements in the Victorian Act relating to self-exclusion.

Section 7.4.17 of the Victorian Act also requires licensed operators to acknowledge self-exclusion orders. If a player gives notice that they are not permitted to participate in the online gaming activities conducted by the operator, the operator is required to give a copy of the self-exclusion notice to the Victorian Commission for Gambling Regulation (**Victorian Commission**). The operator must not allow the player to play any online games on the site until the notice is revoked. The Victorian Commission is required to give copies of the notice to other licensed providers and the relevant authority in each participating jurisdiction. A player can revoke the self-exclusion order by given written notice, however, revocation will not take effect until seven days have passed since written notice was given. Should an operator accept a wager from a player who has self-excluded themselves in accordance with the Victorian Act or a corresponding law, the penalty is 240 penalty units.

In Victoria, it is a condition of an interactive gaming licence that the holder implements a Responsible Gambling Code of Conduct (**Victorian Code**), which has been approved by the Victorian Commission.¹⁰¹

For codes and self-exclusion programs to gain approval from the Commission, the documents are also required to comply with benchmarks set by the Commission, namely the *Criteria and Benchmarks for Approving Responsible Gambling Codes of Conduct* and *Criteria and Benchmarks for Approving a Self-Exclusion Program*.¹⁰²

Australian Capital Territory

The Australian Capital Territory (**ACT**) is another jurisdiction which has legislation specifically dealing with online gaming services. *The Interactive Gambling Act 1998 (ACT) (IGA (ACT))* regulates online gaming services and, like Queensland and Victoria, is modelled on the National Code.

Many of these provisions are in substantially similar terms to the Qld and Victorian Acts.

Minors

The IGA ACT requires those wishing to be registered as players to provide evidence of their identity, place of residence and age (being more than 18). Licensed operators are unable to

¹⁰⁰ Section 7.4.3 of the *Gambling Regulation Act 2003 (Vic)*.

¹⁰¹ Section 7.3.5A of the *Gambling Regulation Act 2003 (Vic)*.

¹⁰² See

<http://www.vcgr.vic.gov.au/CA256F800017E8D4/Gambling/94096D34333720CECA25757F0012E46C?OpenDocument>.

register players until their identity has been verified.¹⁰³ Furthermore, licensed operators must not allow minors to participate in authorised games, the maximum penalty being 200 penalty points.¹⁰⁴ Players themselves are also subject to penalties should they allow a minor to participate as a player, the maximum penalty being 40 penalty points.

Exclusion Order

Like Victoria, persons may apply to the ACT Commission of Gambling and Racing (**ACT Commission**) for an order that a player, who is resident in the ACT, be prohibited from playing an authorised game. Players themselves can seek an order or any other person who satisfies the ACT Commission that they have a close, personal interest in the welfare against whom the prohibition order is sought.¹⁰⁵

The ACT has a Code of Practice (**ACT Code**) in respect of responsible gambling, which was made under the *Gambling and Racing Control Act* 1999 (ACT) and which applies to, among others, operators authorised under the ACT Act.¹⁰⁶

Problem Gambling

The ACT Code sets out various requirements in relation to staff care and training, including a requirement that all staff members directly involved in providing gambling services successfully complete an approved training program within the previous 5 years.¹⁰⁷

There are also various requirements in respect of problem gambling.¹⁰⁸ There are specific requirements in respect of recording incidents of problem gambling and appointing at least one problem gambling officer per facility, the functions of which are set out in the ACT Code. Licensed operators must take reasonable steps to provide information about counselling and advisory services if a customer asks about problem gambling.

Advertising

The ACT Code also contains numerous requirements in relation to advertising. In connection with minors, for example, licensees must not publish advertising which shows people under the age of 25 gambling or which encourages people under the age of 18 to gamble (or which targets them). Other requirements, among others, is that advertisements must not be false or misleading or suggest that gambling is a form of financial investments.¹⁰⁹ There are also particular requirements in respect of promotions and inducements.¹¹⁰

As can be seen from the above, the legislation and regulatory framework in Queensland, Victoria and the ACT is largely the same, being based on the National Model and there are

¹⁰³ Section 18 of the IGA (ACT).

¹⁰⁴ Section 134 of the IGA (ACT).

¹⁰⁵ Section 102 of the IGA (ACT).

¹⁰⁶ *Gambling and Racing Control (Code of Practice) Regulation* 2002 (ACT) at <http://www.legislation.act.gov.au/sl/2002-28/default.asp>.

¹⁰⁷ Clause 1.4 of Schedule 1 Code of practice to the *Gambling and Racing Control (Code of Practice) Regulation* 2002 (ACT) (the **ACT Code**).

¹⁰⁸ Division 1.2.2 of the ACT Code.

¹⁰⁹ Part 1.4 of the ACT Code.

¹¹⁰ Clause 1.29 of the ACT Code.

stringent requirements in respect of the provision of responsible gambling services and harm minimisation measures.

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

Tasmania

Part 4A of the *Gaming Control Act 1993 (Tas) (GCA)* applies to online gaming. Section 76U of the GCA allows for a Tasmanian gaming licence to be endorsed with a simulated gaming endorsement, which authorises the operator to conduct online simulated games.¹¹¹

Casino games provided via an online gambling service would arguably fall within the definition of “simulated game”. Clarification could take place by a statutory amendment to enable online poker to be regulated in this manner.

The Tasmanian Gaming Commission (**TGC**), established under the GCA, is an independent body responsible for the regulation of gaming in Tasmania. The regulatory framework allows the TGC to issue gaming licences to applicants meeting the required regulatory, financial and probity standards for the conduct of approved gaming activities. The ‘approved gaming activities’ include race wagering, sports betting, simulated gaming, major lotteries, pools, betting exchanges, totalizator wagering and other activities that may be prescribed.

The GCA requires licensees to implement and comply with various player protection measures, including the ability of players to impose limits on their play and exclude themselves from participating in wagering activities, the ability of players to be subject to third party exclusion measures, a prohibition on the provision of credit by a licensed provider, and a complaints mechanism.

Pre-Commitment

Division 7 of the GCA concerns player protection measures in respect of gaming and wagering activities conducted by Tasmanian licensees. Players must be able to set their own net loss limit for wagers made in a calendar month. Similarly, with the other States referred to above, any written request to reduce a limit takes effect when received by the operator, whilst a request to increase a loss limit will not take effect until 7 days after the request was received by the operator.¹¹²

Exclusion Options

Similarly in respect of wagering, players must be able exclude themselves from participating in wagering and to be able to revoke their self-exclusion request. If a player requests self-exclusion, the operator must within 3 days remove their name from the register of players, ensure all customer support people are aware of the exclusion and give a written copy of the notice to the TGC. If an operator fails to take these steps, the maximum penalty is 10,000 penalty units. If a player provides the operator with a written request to revoke the self-exclusion, the operator must add the player's name to the register, inform customer support

¹¹¹ See http://www.austlii.edu.au/au/legis/tas/consol_act/gca1993156/s76u.html.

¹¹² Section 76ZK of the *GCA 1993*.

staff and provide the TGC with a copy of the written notice. In any event, a self-exclusion notice cannot be revoked for a least 6 months from the date upon which the notice was given.¹¹³ There is no reason why these provisions cannot be extended to online poker.

The GCA also includes a procedure which enables persons, with a close personal interest in the welfare of a player, to apply to the TGC for an order prohibiting the player from engaging in wagering. The player has an opportunity to make representations. If satisfied that the making of the order is in the public interest and the interest of the player, the TGC will make an exclusion order prohibiting the player from wagering with the licensed operator. If the operator fails to remove the player's name from the register of players and ensure all customer support staff is aware of the exclusion order, the maximum penalty is 10,000 penalty units.¹¹⁴ There are also provisions for the revocation of exclusion orders and a requirement that operators keep an up-to-date to date register of excluded players.¹¹⁵ Should a licensed operator accept a wager from an excluded player, or directly advertise their services to an excluded person, for a first offence the maximum penalty is 10,000 penalty units, whilst for subsequent offences the maximum penalty is 50,000 penalty units.

The TGC is also able to issue Player Protection Standards with which licensees must comply, which are designed to minimise the harmful effects of gambling, which may be experienced by some players.

As can be seen from the above, the Tasmanian requirements in respect of the regulation of online gaming and harm minimisation are prescriptive.

South Australia

The *Authorised Betting Operations Act 2000 (SA)* (**ABOA**) sets out a strict regulatory regime which requires online interstate bookmakers to be authorised to provide online wagering activities to South Australian residents.

Responsible Gambling Codes of Practice

Section 6A(1)(b) and (c) of the ABOA provides that the South Australian Independent Gambling Authority (SA IGA) may proscribe advertising codes of practice, responsible gambling codes of practice and requirements for systems and procedures, which are designed to prevent gambling by children. The codes of practice may apply to all betting operators, or only those within a specified class.¹¹⁶

In particular, section 6A(3) of the ABOA sets out various measures which a responsible gambling code of practice may address. These include:

- requiring information relating to responsible gambling and the availability of services to address problems associated with gambling to be displayed or made available to persons proposing to make bets;

¹¹³ Section 76ZNB of the GCA 1993.

¹¹⁴ Section 76ZNB of the GCA 1993.

¹¹⁵ Section 76ZND and 76ZNE of the GCA 1993.

¹¹⁶ Section 6A(2) of the *Authorised Betting Operations Act 2000 (SA)* (**ABOA**).

- the provision of staff training, which addresses responsible gambling practices and the services available to address problems associated with gambling;
- require accounts to be kept for persons who make bets by telephone, internet or other electronic means and for the accounts to be managed in a way that allows the amount available for betting at any given time to be limited;
- require account statements to be provided at regular intervals; and
- include other matters designed to reduce the incidence of problem gambling.

Under section 62C of the ABOA, an authorised interstate betting operator must ensure that its betting operations in SA comply with the applicable gambling codes of practice. Compliance with the *Responsible Gambling (Authorised Interstate Betting Operators) Code of Practice (SA Code)*¹¹⁷ is mandatory for authorised interstate bookmakers. The SA Code sets out a framework by which an interstate bookmaker can ensure the authorised services it provides are provided in a responsible manner consistent with community expectation.

Information to be Displayed

Authorised operators are required, for example, to display on their websites a message stating that their gambling operations are governed by a code of practice, a copy of which must be available on the website. When accounts are opened, operators must inform new registrants that its gambling operations are governed by a code of practice. Operators are also required to prepare and maintain documents in respect of any gambling website, which detail the way in which staff are trained and the way in which measures for problem gambling are implemented, as well as the role staff play in the implementation of the code.¹¹⁸

Operators are required to do various things to bring their responsible gaming policies to their customers' attention. Operators must provide their responsible gambling materials to new customers when new accounts are created and provide a responsible gambling warning statement to customers when the operators provides account statements to customers. Responsible gambling materials must include a helpline message and be made available Arabic, Chinese, Greek, Italian and Vietnamese, in addition to in English and in any other language the operator thinks appropriate. Operators must also take reasonable steps to ensure that customers who show difficulty in controlling their expenditure have their attention drawn to a problem gambling assistance service.¹¹⁹

Self-Exclusion

The provision of self-exclusion measures is mandatory under the SA Code. Customers must be able to exclude themselves for a fixed or indefinite period. If a customer requests self-exclusion via a phone call, the request must be dealt with while the customer is on the phone. If the request is lodged online, the operator must deal with the request within 24 hours. If a telephone service, a translation service must be provided if requested by the customer. When

¹¹⁷ See

[http://www.iga.sa.gov.au/pdf/Responsible/F19%20Responsible%20Gambling%20\(Authorised%20Interstate%200Betting%20Operators\)%20Code%20of%20Practice-V001.pdf](http://www.iga.sa.gov.au/pdf/Responsible/F19%20Responsible%20Gambling%20(Authorised%20Interstate%200Betting%20Operators)%20Code%20of%20Practice-V001.pdf).

¹¹⁸ Clause 2 of the SA Code.

¹¹⁹ Clause 5 of the SA Code.

customers request self-exclusion, the operator must immediately refer the customer to a gambling help service. Before a self-exclusion notice is rescinded, customers must have an opportunity to review the self-exclusion notice with customer service staff. Operators must ensure that excluded people are removed from loyalty mailing databases.¹²⁰

Staff Training

The SA Code also has a number of measures in respect of staff and training. All staff members involved in selling gambling products must receive problem gambling training. Staff are required to be provided with a refresher course at least every two years. Employee newsletters and magazines must include responsible gambling information. Responsible gambling information must also be provided in the workplace to remind staff of their responsibilities.¹²¹

Problem gambling training programs must be designed to provide information about the potential effects of gambling on customers. Information on the recognition and identification of problem gambling must be included in training programs. Approach, intervention, referral and follow-up procedures are required to be well understood by staff.¹²²

Pre-Commitment

Currently the SA Code states that gamblers must be allowed to set limits. The SA IGA proposes to amend the SA Code to set out more prescriptive requirements in relation to pre-commitment. The proposed pre-commitment requirements include requirements that customers must be able to set a pre-commitment level at a level of their choice, with the pre-commitment offered as a limit on net losses during a relevant period, a limit on deposits during the relevant period or both a net loss and deposit limit. The pre-commitment levels must be able to be set for fixed periods of 7 days.

Customers must be given the option of setting a pre-commitment level and accounts are not to be activated until a customer has made a conscious decision to set a pre-commitment level or to have no limit. Decisions to increase pre-commitment levels should not be effected for at least 7 days, while decisions to decrease limits should commence as soon as possible.

Conclusion

The provision of the ABOA and the SA Code extend to authorised interstate betting operators. These provisions are working in practice – there is no reason why consideration could not be given to extending those provision to the online gaming sector including online poker providers.

Northern Territory

Part 4, Division 5 of the *Gaming Control Act 1993 (NT) (NT Act)* provides for the licensing of internet gaming. Regulations have been enacted incorporating player protection provisions.

¹²⁰ Clause 9 of the SA Code.

¹²¹ Clause 10(1) of the SA Code.

¹²² Clause 10(2) of the SA Code.

Historically, one Northern Territory-based operator (Lasseters Casino Pty Ltd) was licensed in 1999 to carry on internet gambling operations. Restrictions applying to that operator were contained in a separate licence agreement. The licence required Lasseters Online to have numerous harm minimisation measures in place including measures to prevent access by minors, monthly deposit limits with any wagers being restricted to the amount of the deposit plus any winnings that might have been accumulated and the capacity for players to set their own bet limits and self-exclude, either for a seven day cooling off period or permanently.

Whilst the licence issued to Lasseters Online has now lapsed, the regime remains in place which enables internet gaming operators licensed in the Northern Territory to be licensed to conduct internet gambling operations.

The *Gaming Control (Internet Gaming) Regulations 2006 (NT Regulations)* stipulate various requirements with which licensed online gaming operators are required to comply. Matters for compliance include the approval of computer and control systems; the licensing of key employees; financial controls; player protection; and collusion, among other matters.

In respect of player protection, the NT Regulations provides mechanisms for the prohibition of specified people from registering as a player.¹²³ Licensed operators must not make a payment out of a player's account unless the player's identity, age and place of residence has first been verified by the operator's approved control system.¹²⁴ Operators must not provide credit to customers.¹²⁵

Pre-Commitment

The pre-commitment requirements in the Northern Territory are substantially the same as those in other States and the ACT, which have been identified above.

Minors

The NT Regulations also contains numerous provisions in respect of the protection of minors.¹²⁶ Licensees must ensure that people are able to access computer software on the operator's website which will enable a person to restrict or prevent access to the site by a minor using the person's computer.¹²⁷

In addition to the above, all operators are required to comply with the Code of Practice for Responsible Gambling (**NT Code**)¹²⁸, which has been developed between the Territory, the operators licensed in the Territory and counselling service providers.

Matters covered by the NT Code include the provision of information concerning potential risks, the clear display of a responsible gambling mission statement, mechanisms for dealing with customer complaints, the maintenance of responsible gambling records, training and skills development for employees, self-exclusion procedures and the prohibition of minors.

¹²³ Regulation 48 of the *Gaming Control (Internet Gaming) Regulations 2006 (NT Regulations)*.

¹²⁴ Regulation 452 of the NT Regulations.

¹²⁵ Regulation 56 of the NT Regulations.

¹²⁶ Regulations 59 to 61 of the NT Regulations.

¹²⁷ Regulation 61 of the NT Regulations.

¹²⁸ See http://www.nt.gov.au/justice/licenreg/sports_betting.shtml.

The Appendix to the NT Code identifies the particular practices with which online gaming operators are required to comply.

The Northern Territory's regulatory regime and the enforcement of licensing standards are administered by the Northern Territory Licensing Commission (NT Commission).

From an historical perspective, the NT Commission has considerable expertise in the regulation of online gambling services due to the licensing scheme it has administered in respect of online sports bookmakers. Many of Australia's largest online corporate bookmakers are licensed in the Northern Territory. These corporate bookmakers are subject to strict regulatory requirements, many of which address the provision of responsible gambling services, which focus on the minimisation of harm. This is in addition to the experience and expertise acquired through the NT Commission's role in administering one of the first interactive gaming licences, which was issued to Lasseters Casino in 1999. (Much of this expertise is transferable readily to the regulation of other forms of online gambling including online poker.)

Anti-Money Laundering and Counter-Terrorism Financing

In addition to the above State and Territory-based requirements, online gaming operators would be subject to the strict requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)*, which is administered by the Australian Transaction Reports and Analysis Centre (AUSTRAC). Any operator licensed under an Australian regime would be required to have in place AML/CTF programs which assist the operators with risk identification, risk management and ways of mitigating any risks. Requirements include ongoing customer due diligence and the reporting of suspicious activities to AUSTRAC.

Part 10.4 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules 2007 (AML/CTF Rules)* is applicable to online gambling operators. Operators cannot make payments to account holders until the account holder's identity is verified. If the account holder's identity is unable to be verified within 90 days of the account being opened, then the account must be frozen.¹²⁹

Australian Testing Laboratories

Australia has a long history of providing services in connection with the testing of gaming technology to ensure the technology's compliance with legislative requirements. The testing has addressed the issues of integrity and various responsible gambling measures. Indeed, two of the world's largest testing laboratories, BMM¹³⁰ and Technical Systems Testing Pty Ltd (TST)¹³¹, originated in Australia.

BMM and TST, as well as a number of other Australian testing laboratories, are members of the National Association of Testing Authorities (NATA), which is the Commonwealth government-endorsed provider of accreditation for laboratories. These operators have acquired considerable expertise since the late 1990s in providing testing services to operators

¹²⁹ Section 34 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*.

¹³⁰ See www.bmm.com.au.

¹³¹ See www.tstglobal.com.

in Australia and overseas. There are currently three facilities in Australia, which have been accredited by NATA, to test interactive gaming systems.

Conclusion

The IGA has failed to constrain the demand of Australian consumers for online gaming services. This demand is evident in the number of Australian-based consumers who access online gaming services provided by offshore operators and, in particular, by the increasing number of Australians playing online poker.¹³² Given the growth in demand for online gaming services, it is appropriate for a policy of managed liberalisation to be adopted so that Australian-licensed online gaming services may be provided to Australian-based consumers as an alternative to services provided by offshore operators.

Online poker can be clearly distinguished from other forms of interactive gaming. Online poker participation is tournament-based with players participating in games against other players. Furthermore, the outcome of a poker game is largely dependent on the player's skill. Chance or luck plays a very minimal role in the outcome in comparison with other interactive games, such as roulette. On this basis, the online poker sector considers that it is appropriate for online poker to be subject to separate regulation.

Since the enactment of the IGA in 2001, there have been significant developments in the online poker industry. The growth and success of the online poker industry is largely due to the manner in which the services have been delivered. As evidenced above, the leading online poker operators, who have been conducting business for a number of years within the strict regulatory frameworks where they are licensed, welcome strict regulation. Strict regulation has ensured that services are, for example, delivered with integrity and a strong focus on responsible gambling, which is a key point of the Productivity Commission's Draft Report. These online poker operators are prepared to meet all appropriate Australian regulatory requirements to ensure the effective operation of an Australian online poker industry and to protect and promote the integrity of their brands.

In Australia, there already exists a regulatory framework in many States and Territories which contemplates a licensing system for online gaming. This framework, consisting of legislation, licensing schemes and Codes of Conduct, is largely equipped to regulate the provision of online gaming services to Australian-based customers by operators based in Australia. Furthermore, many of the measures identified by the Productivity Commission are already addressed in existing legislation.

Furthermore, many of the regulators at State level, in particular the ACT, Tasmania, Queensland and Northern Territory, have prior experience in the regulation of online gaming, which was acquired before the 2001 enactment of the IGA. This experience has been further enhanced by the regulators' experience in connection with the regulation and licensing of corporate bookmakers in the ACT, Tasmania and the Northern Territory.

Accordingly, PokerNews supports, in principle, the Productivity Commission's Draft Recommendations 12.1 and 12.2.

22 December 2009

¹³² Initial Submissions, page 34.