

## Introduction

The International Social Games Association (ISGA) welcomes the opportunity to provide the following submission to the Senate Economics Legislation Committee inquiry into the Treasury Laws Amendment (Delivering an Efficient and Trusted Tax System) Bill 2026. The primary issue addressed in our submission is the eligibility of games for the Research and Development (R&D) Tax Incentive.

## Executive Summary

- The ineligibility of games for the R&D Tax Incentive has come as a complete surprise to the games industry, as it has never been announced as government policy.
- Games are not gambling.
- For a game (or any other activity) to be defined as gambling, it must be a game which is played for money/anything else of value (i.e. offer a prize), be a game of chance (i.e. have the element of chance) and be a game where the player agrees to give consideration to play the game (i.e. consideration is required).
- Games may have the elements of consideration and chance, but they never have a prize and therefore, they cannot be defined as gambling.
- The final report of the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into online gambling (the “Murphy Report”) did not find that free-to-play casino-themed games should be defined as gambling, after this issue was specifically among the terms of reference for this inquiry.
- The bill and government-announced policy is seeking to exclude gambling – not games – from being eligible for the R&D Tax Incentive.
- As games – including games which are casino-themed – are not a form of gambling, the bill should be amended to delete all references to games, including references to games with gambling-like practices.
- R&D activities for games – including games which are casino-themed – are completely separate from R&D activities for land-based real-money gambling games (noting that online real-money gambling games are prohibited in Australia).
- An unintended consequence of the legislation is it’s possible that R&D relating to many games played by Australian game-players will no longer be eligible for the tax credit, even games which do not contain casino themes.
- As no other country has a similar exclusion of games and that previous Australian legislation has directly resulted in a reduction in the number of positions in ISGA member companies being based in Australia, failing to ensure that games are still eligible for the tax incentive will result in further chilling of international investment and jobs being moved to sites outside of Australia.

- The ISGA is a global leader in developing and promoting responsible standards to ensure the highest levels of consumer protection among game-players, including game-players in Australia.

### **About the ISGA**

The ISGA is a global non-profit industry association representing social games companies. Established in 2013 to educate and inform global policy-makers, regulators and other stakeholders, the ISGA represents a full cross-section of social games companies, including HUUUGE Games, Product Madness, Playstudios, Playtika, SciPlay and Zynga.

The ISGA believes in fostering greater trust in mobile games and is committed to industry best practice to achieve this.

Snapshot of games offered by ISGA members:

Tetris <https://www.playstudios.com/tetris/>

Solitaire <https://www.playstudios.com/solitaire/>

Sudoku <https://www.playstudios.com/sudoku/>

June's Journey <https://www.junesjourney.com/>

Redecor <https://www.redecor.com/>

Game of Thrones Legends <https://www.zynga.com/games/game-of-thrones-legends/>

Words With Friends <https://www.zynga.com/games/words-with-friends/>

Heart of Vegas

[https://play.google.com/store/apps/details?id=com.productmadness.hovmobile&hl=en\\_AU](https://play.google.com/store/apps/details?id=com.productmadness.hovmobile&hl=en_AU)

### **Legislation is misaligned with government announcements/policy**

On behalf of the mobile games industry, the ISGA has concerns about the legislation, which is seeking to change R&D Tax Incentive eligibility in Australia.

The addition of games to the exclusion list under this legislation has come as a complete surprise to the games industry, as it has never been announced as government policy.

When announcing these reforms, Treasurer Chalmers made no mention of games and Assistant Treasurer Mulino made no mention of games in the media release where he announced consultation had opened on the exposure draft of this legislation.

Further, the 2024-25 Mid-Year Economic and Fiscal Outlook made no mention of games where eligibility changes were outlined.

In addition, making games ineligible has never been referenced in any media statement, media coverage, ad hoc comments by government and any other public forums, which is further evidence that the legislation and explanatory materials are misaligned with government policy.

If the legislation is to be consistent with government-announced policy, then the policy is to exclude gambling from being eligible for the tax incentive – not games.

Given all of this, it appears that the decision to add games to this legislation had its genesis in the bureaucracy.

Therefore, it is the submission of the ISGA that the bill should be amended to delete all references to games being ineligible for the tax incentive.

### **Games are not gambling**

It must be stressed that in Australia – as well as in other countries – “games” can never be defined as “gambling”.

Games are not defined as gambling under the Interactive Gambling Act, nor in any Australian state or territory statute.

For a game or any other activity to be defined as gambling, it must be a game which is played for money/anything else of value (offer a prize), be a game of chance (chance) and be a game where the player agrees to give consideration to play the game (consideration).

Even games which resemble real-money gambling games, such as social casino games, have consideration and chance, but they never have a prize and therefore, they cannot be defined as gambling.

Australian law prohibits real-money gambling games (i.e. online casinos) being licenced within Australia – and therefore, they are already ineligible for taxation incentives in Australia.

Other concerning aspects of the legislation are that games are seemingly viewed by the government as being as harmful to Australian consumers as tobacco and gambling, and that game-players risk being stigmatised by the inference that they are gamblers by playing games.

This is especially concerning given that in all games offered in Australia, no player is able to win or lose money.

There is no credible public policy evidence which demonstrates that there is a causal link between social games and real-money gambling games (remembering that, as per above, real-money online gambling games are prohibited in Australia under the Interactive Gambling Act).

### **Murphy Report: Games are not gambling**

One of the terms of reference of the House of Representatives inquiry which delivered the Murphy Report was:

*“The inquiry will have regard to...the appropriateness of the definition of ‘gambling service’ in the Interactive Gambling Act 2001 and whether it should be amended to capture additional gambling-like activities, such as simulated gambling in video games (e.g. ‘loot boxes’ and social casino games).”*

The inquiry conducted a comprehensive public policy analysis of this issue and after doing so, its final report did not include a recommendation that games with loot boxes and social casino games should be included in the definition of “gambling service” under the Interactive Gambling Act.

On this, the Murphy Report stated:

*“The evidence suggests that regulating loot boxes as gambling could result in circumvention and may challenge the capacity of regulators to enforce the law. It can also stigmatise the activity and the players who engage in it.”*

The findings of the Murphy Report represent compelling recent public policy evidence that games are not gambling and therefore, this legislation should be amended so that it is consistent with this evidence.

### **R&D activities for games**

R&D activities conducted by ISGA member companies are completely separate from R&D activities for land-based real-money gambling games. This means that R&D activities for games with gambling-like features are markedly different from R&D for real-money land-based gambling games.

In the online domain, as the legislation stands, R&D for real-money online games is not eligible for the tax incentive because – as per above – real-money online games are prohibited in Australia.

It should also be taken into consideration that R&D activities conducted by ISGA members are very similar for games which contain gambling-like elements and games which don't. Therefore, an unintended consequence of the legislation is that R&D relating to many mobile games played by Australian game-players will no longer be eligible for the tax credit because the “gambling-like practice” ineligibility phrase in the bill could render games which are not slot machine simulators nor casino-themed as no longer being eligible for the R&D incentive.

This could unintentionally capture many games because many games contain elements of chance and/or mixed chance, including games which look nothing like real-money gambling games.

### **Chilling effect on Australian jobs/international investment**

As the leading global representative organisation for the mobile games industry, the ISGA is well versed on similar legislative frameworks to the bill (and explanatory materials) in other jurisdictions.

The ISGA is not aware of any other country in the world where a similar exclusion of games is in existence.

Therefore, any further significant change to the regulatory/legislative environment in Australia will have a chilling effect on the level of investment in Australia by global mobile

games companies, which directly corresponds to reductions in the number of employment positions in these games companies being based in Australia.

The ISGA understands that the references to “gambling-like practice” in the bill correspond to legislation which was passed in Australia in 2023 for the introduction of the Digital Games Tax Offset.

As a direct result of the segmentation of games in the Digital Games Tax Offset legislation, there has been a reduction in investment by global mobile games companies in the Australian market. This has equated to ISGA member companies basing fewer employment positions in Australia.

### **Industry Key Facts**

- 82 per cent of Australians play video games.
- There are more than 400 games businesses across Australia which employ more than 3200 full-time equivalent staff, generating \$284.4 million annually for the national economy.
- Australians spend an average of \$1.22 per person, per day on in-game purchases; however, most video-game players in Australia do not make in-game purchases.
- The global percentage of people aged under 18 who play social games is 0.22 per cent of players and 0.008 per cent of all players who make in-game purchases while playing social games are under 18.
- 75 per cent of Australian parents have rules around game-play.

### **Industry Best Practice**

The ISGA is a global leader in developing and promoting responsible standards to ensure the highest levels of consumer protection. For example:

1. The ISGA has developed a set of Best Practice Principles ([www.i-sga.org/best-practice](http://www.i-sga.org/best-practice)), which are based on the core values of consumer protection, accountability and transparency. The principles extend to areas such as in-app purchases, advertising practices, privacy compliance and player safeguards. First developed in 2013, the Best Practice Principles are regularly updated to maintain pace with changing technology, business models and consumer behaviour. The latest set of principles have been released in 2026.
2. The ISGA promotes player education through our Smart Mobile Gamers website, ([www.smartmobilegamers.org](http://www.smartmobilegamers.org)). This resource has been developed with some of the world’s most respected digital safety organisations, clinical psychologists and games researchers, and it aims to provide gamers with the tools and advice they need to have a positive experience.

## **Fresh Regulation of Games in Australia**

Since Australia's new classification scheme for the regulation of games in Australia came into effect on 22 September 2024, the ISGA has been regularly engaging with its members around the world to ensure they understand and comply with these new classification measures.

ISGA members have installed self-declaration age gates and other age assurance measures for games which are now classified as M15+ and R in Australia. This means players must confirm their age and meet the game's classification criteria before they are able to access the game or any of its content.

At the device/software operating system level, application stores also implement age verification measures and parental controls to guarantee that users have access to age-appropriate material.

This is in line with Australia's eSafety Commissioner recommendation that all game developers use their best and most reasonable endeavours to comply with Australia's new classification requirements.

Age assurance measures for online games played by Australians will continue to evolve and improve as technology advances.

Games in Australia are also regulated by online safety codes and standards, which are approved by the eSafety Commissioner.

## **Further Information**

If the committee requires further information about this submission, the ISGA's primary representative in Australia is: Mr Hamish Arthur (Canberra-based), [REDACTED], [REDACTED]

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