



Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs

Inquiry into online gambling and its impacts
on those experiencing gambling harm

November 2022

We acknowledge the Traditional Custodians of Country throughout Australia and their continuing connection to the land and sea. We pay our respects to all Aboriginal and Torres Strait Islander peoples, their cultures and to their elders past, present and emerging.

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Executive Summary

IGEA appreciate the opportunity to provide a submission to the present Inquiry. Our submission focusses on the topic of 'loot boxes', noting that the Committee has been asked to consider whether the Interactive Gambling Act 2001 (Cth) (the IGA) should be amended to cover loot boxes and other simulated gambling in video games. It also briefly addresses games that contain incidental simulated gambling, but social casino games are outside of our scope.

We strongly oppose any amendment of the definition of 'gambling service' in the IGA to capture games with loot boxes. Defining loot boxes in this way would result in an unjustified *de facto* ban of this feature of games. There is no evidence that supports any such policy approach and doing so would have complex and wide-ranging negative consequences. It is also important that the Inquiry limit the scope of its consideration to purchasable loot boxes.

As a starting point, there are two critical differences between loot boxes and gambling that demonstrate why it is inappropriate for loot boxes to be regulated under the IGA. First, loot boxes are a prize mechanic that always provide a reward, while the risk of losing a bet or wager is a central and necessary aspect of gambling. Most significantly, loot boxes do not provide anything of real-world value, while gambling is always played to enable a person to win money.

Importantly for this Inquiry, the topic of loot boxes has already been specifically, forensically and comprehensively reviewed by the Australian Parliament and neither the Committee that undertook this review nor the then Australian Government in its response considered any need for further action. The Senate Environment and Communications References Committee reviewed loot boxes in 2018 and considered that no further regulation - whether through the IGA or otherwise - was needed, a position that the Morrison Government agreed with in 2019.

The UK Government also concluded a major review of loot boxes this year and came to the view that loot boxes should not be regulated by gambling legislation due to a range of compelling reasons that are directly applicable to the present Inquiry. These included the fact that there are material distinctions between loot boxes and gambling, the lack of evidence of a causal relationship between loot boxes and gambling, the major practical challenges and risks of unintended consequences should UK gambling legislation be extended to loot boxes and the significant additional cost of regulating loot boxes (estimated to be £20 million p.a.).

Loot boxes are not banned or regulated as gambling anywhere in the world except Belgium, and even the Belgian ban has not been legally tested and has been criticised for being ineffective. Some countries have examined loot boxes but have determined that they do not constitute gambling and have decided against amending their gambling laws to include them.

In response to concerns around some kinds of loot boxes, the local and global video games industries have implemented a range of measures to improve how they are designed, including by increasing guidance for consumers and by improving transparency around the probabilities of items obtainable via loot boxes. The industry will continually assess how loot boxes are designed and implemented in future in dialogue with consumers and stakeholders.

Finally, we also strongly oppose any amendment of the definition of 'gambling service' in the IGA to capture games that contain simulated gambling in parts of the game. Games with incidental or minor simulated gambling elements, such as games that include a casino level or a game of chance as part of a story, are different from so-called social casino games and not only should not be treated the same as them, but should be excluded from the Inquiry's scope.

Introduction & Overview

About IGEA

The Interactive Games & Entertainment Association (IGEA) is the industry association representing and advocating for the video games industry in Australia, including the developers, publishers and distributors of video games, as well as the makers of the most popular gaming platforms, consoles and devices. IGEA also organises the annual Games Connect Asia Pacific (GCAP) conference for Australian game developers and the Australian Game Developer Awards (AGDAs) that celebrate the best Australian-made games each year. IGEA has over a hundred members, from emerging independent studios to some of the largest technology companies in the world. A full list of our membership is available on [our website](#).

About our submission

IGEA appreciates the opportunity to provide a submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs (the Committee) to support its Inquiry into online gambling and its impacts on those experiencing gambling harm (the Inquiry). Our submission relates to the sixth item in the Inquiry's Terms of Reference, being:

The appropriateness of the definition of 'gambling service' in the Interactive Gambling Act 2001 (Cth), 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).

Our submission focuses on the topic of video games containing 'loot boxes' but also briefly addresses games that contain simulated gambling in parts of the game. Our submission addresses these two types of games in turn. However, games that the Inquiry's Terms of Reference refer to as 'social casino games' are outside of the scope of our submission. The developers of this category of games, being games that are intended to simulate casino mechanics but do not allow real money to be won, are represented by a separate industry association, the International Social Games Association (ISGA).

As requested by the Committee, we have limited our submission to (close to) ten pages.

Overarching position

As an initial threshold matter, any consideration of loot boxes by this Inquiry should be strictly limited to loot boxes that are directly or indirectly obtainable via in-game purchases only (ie. for-purchase loot boxes). While it may already be implied, any final report should clarify this.

Most importantly, our position on behalf of the video games industry that we represent is that we strongly oppose any amendment of the definition of 'gambling service' in the *Interactive Gambling Act 2001* (Cth) (the IGA) to capture games with loot boxes or video games that contain simulated gambling in parts of the game. Not only is there no evidence that such an approach is necessary, but it would lead to a range of wide-ranging negative consequences.

Defining loot boxes as 'gambling services' under the IGA would result in an unjustified and unreasonable *de facto* ban of the mechanic that is not based on evidence. There are clear intrinsic and practical differences between loot boxes and 'gambling services' and the IGA is not an appropriate framework for loot boxes. The Australian Parliament has already considered the topic of loot boxes recently and did not recommend that they be covered by the IGA (or that any other further regulation was needed). The UK Government this year also concluded that loot boxes should not be regulated by gambling legislation, acknowledging not only that such action was unjustified, but that it would lead to major risks and negative outcomes.

Only one country, Belgium, currently bans loot boxes, although there are questions around whether this ban is legally-binding and its approach has been criticised for its ineffectiveness. Various countries have examined loot boxes and have both determined that they do not constitute gambling and have decided against amending their gambling laws to include them.

While we acknowledge that there have been community concerns raised around some kinds of loot boxes, the Australian and international video games industries have implemented a range of measures to improve how they are designed and implemented, including increased transparency, and will continue to do so in dialogue with consumers and other stakeholders.

Further, while we leave discussion of 'social casino games' to the ISGA, we urge the Committee to exclude from the Inquiry's scope of consideration video games that simply include elements of simulated gambling in parts of it, such as a game with a level set in a casino or where the player must play a game of chance as part of the game's story. Simulated gambling is not a central feature of these games and these games must not be considered 'social casino games'.

Loot boxes

Understanding loot boxes

Defining loot boxes

To start, we would like to assist the Committee to better understand loot boxes, a topic that is often misunderstood. Loot boxes - sometimes called loot crates or prize crates - are features of some video games. There is no single definition of loot boxes, which can vary in form, but in general, a loot box is a virtual container of a random selection of virtual items. Many games with loot boxes only have loot boxes that are obtainable through gameplay, while in other games loot boxes are also obtainable through in-game purchases, either via direct purchase or indirectly through an in-game currency that is purchasable.

Loot boxes commonly have three central characteristics:

1. Loot boxes are a form of prize mechanic and will always provide a reward for the player. The exact contents of loot boxes will generally be randomised, with some loot boxes containing a combination of guarantee and randomised items.
2. The purchase of loot boxes is never essential for progressing through or completing the game. Many games also only contain loot boxes that provide purely cosmetic or aesthetic items that have no additional functional benefit in a game.
3. Loot boxes and items obtained from them have no use or value outside the game. They almost always cannot be sold legally, redeemed or traded for money or anything of worth. Examples of loot boxes and items being able to be converted into something of real-world value are extremely rare and, with very few exceptions, occur on third-party platforms in breach of a game's Terms of Service (TOS), End User License Agreement (EULA) and other contractual terms. These terms are actively policed and enforced.

Loot boxes and in-game purchases

Loot boxes and in-game purchases are often conflated, so we would like to briefly address this for the Committee. This matter is important as only loot boxes that are purchasable should be within the scope of this Inquiry.

In-game purchases - sometimes called microtransactions - refer to the ability of players to spend money within a game. In-game purchases can range from season passes to new

characters, outfits, items, worlds, in-game currency, lives and loot boxes. Not all in-game purchases are related to loot boxes. For instance, direct purchases of a new character or map within a game is an example of an in-game purchase that is not a loot box. Conversely, as explained above, not all loot boxes are obtainable by purchase. While some loot boxes can be purchased, some are only obtainable by gameplay and some can be acquired through either purchase or gameplay.

Loot boxes obtainable only by gameplay are virtually indistinguishable from other randomised prize mechanics in video games, such as finding randomised items in a game world or through defeating a foe or obtaining a reward from a non-player character following an achievement. These kinds of features have existed for decades, appearing in some of the earliest forms of video games, without any discussion or concerns. It is therefore our presumption that the mention of 'loot boxes' in the Inquiry's Terms of Reference relates only to loot boxes that are directly or indirectly obtainable via in-game purchases. The Committee should clarify this important definitional threshold matter in any future reporting.

Implementation and role

Since loot boxes are a common type of in-game purchase, it is important for the Committee to understand the context and role that in-game purchases, including loot boxes, play in games.

In-game purchases are not new and have existed for nearly two decades. They form an important part of the video game economic landscape for both free-to-play and premium games. As part of the free-to-play model, optional in-game purchases enable the vast majority of players to play games (which implement these mechanics) for little or no money, giving the rest of the player community a way to support game developers directly (if they choose), in turn providing games companies with vital revenue to sustain their businesses. This also lowers barriers to entry and allows more developers, including small development studios, to launch games, particularly on mobile devices, and increase the choice available to Australian players.

In-game purchases also play an important role in the premium game market, including for consoles and PC. One of the most noticeable characteristics of the video game economy over the past decade is that despite steadily increasing production costs and expanding content in games, the purchase price for games has generally stayed the same (or at least well below the inflation of development costs). Despite this, developers have continued to meet consumer demand for well-maintained servers and new game content, sometimes delivered daily or weekly, even within games that are many years old. This is an essential part of the modern gaming landscape as the game-playing community now expects games to be an ongoing service that is supported even years after their launch (often called 'games as a service'). This has only been achievable through business models like in-game purchases.

Some game developers have chosen to incorporate within in-game purchases the element of chance that already existed in games and in non-digital games such as trading cards.

Separating loot boxes from gambling

The Interactive Gambling Act

The starting point for this part of the discussion is the IGA. The IGA is a complex piece of legislation, but to draw from the simplified outline included within the legislation, the IGA essentially imposes the following prohibitions (among others):

- A prohibited interactive gambling service must not be provided to customers in Australia.
- Unlicensed regulated interactive gambling services must not be provided to customers in Australia.
- An Australian-based prohibited interactive gambling service must not be provided to customers in designated countries.¹

Among other things, 'online casinos' are illegal in Australia.² For the sake of simplicity and clarity, we have assumed in this submission that the question in the Inquiry's Terms of Reference around whether the definition of 'gambling service' in the IGA should be amended to capture loot boxes is a proxy for the question of whether loot boxes should be prohibited under the IGA similar to 'online casinos', which would be the practical effect.

In its submission to the Senate Environment and Communications References Committee's 2018 Inquiry into Gaming microtransactions for chance-based items (the 2018 Loot Box Inquiry), the Australian Communications & Media Authority (ACMA), which administers the IGA, confirmed that loot boxes are not 'gambling services' under the legislation.³

Critical areas of contrast

While we note that some games with loot boxes have been criticised for perceived similarities to gambling, in our view most of these criticisms are not balanced or fully informed. While loot boxes are sometimes compared to real-world gambling, the general defining characteristics of loot boxes, as discussed above, also clearly set them apart from real-world gambling.

First, loot boxes are a mechanic for delivering prizes, albeit in a randomised manner. By contrast, the failure to win any reward (ie. a loss) is a core element of gambling such as wagering, casino games or poker machines. Second, loot boxes do not provide anything of real-world value. By contrast, gambling is always played to enable a person to win something of real-world value (money). These are not semantic or trifling differences, but fundamental and contrasting distinctions between two very different and often incorrectly-conflated topics.

Chance-based mechanics

In our view, the only characteristic that loot boxes share with gambling is the element of chance. However, the element of chance is commonplace in the physical and digital consumer landscape, with examples including:

- Physical collectible and trading card boxes and packs (eg. tabletop collectible card games and collectible sporting cards and stickers)
- Blind boxes, mystery items packs and lucky dips, many of which are specifically marketed towards children (eg. L.O.L. Surprise! dolls)
- Mystery flights and hotels offers (eg. purchase of flights to 'mystery' destinations or bookings at undisclosed hotels)
- 'Spin the wheel' website mechanics (eg. for retailer offers and discounts)

¹ *Interactive Gambling Act 2001* (Cth), Section 3

² See www.acma.gov.au/about-interactive-gambling-act accessed 17 October 2022

³ ACMA, Submission to the Senate Environment and Communications References Committee, *Inquiry into gaming micro-transactions for randomised items*, August 2018

- 'Purchase for a chance to win' promotions (eg. as a spending incentive)
- Subscription services with periodic randomised products (eg. 'wine of the month' clubs)
- Prized-based arcade machines (eg. at arcade parlours, amusement parks and carnivals)

While loot boxes share the element of chance with each of the above, these examples above arguably also all provide items that, in contrast to game loot boxes, have real-world value. Further, unlike loot boxes, some of the rewards from the above examples can be of significant financial value, such as with mystery flights, or can be easily resalable, such as with physical trading cards that commonly have established secondary markets and transparent real world currency value. Even further, some of the above examples such as 'purchase for the chance to win' features and prize-based arcade machines also share the 'win/loss' mechanic of gambling.

While we note the argument that has sometimes been made that loot boxes may be easily purchased in multiples since they are digital, we would argue that trading cards, blind boxes and other similarly randomised physical items are also often purchased in multiples online. Mechanics like prize-based arcade machine attempts may also be purchased in quick succession. Therefore, we do not believe that there are any valid arguments or reasons for loot boxes to be treated differently from other randomised consumer products and offers.

Existing regulation of loot boxes

Video games that include loot boxes are classified under the National Classification Scheme. The existence of loot boxes in a game is currently a factor in the classification of video games (discussed in further detail below). Further, being digital purchases, loot boxes are subject to Australian Consumer Law, meaning that all relevant consumer protections and remedies are available to all consumers of loot boxes and other in-game purchases in Australia. The advertising of loot boxes is similarly subject to consumer laws, and any false or misleading information in advertising around games with loot boxes is prohibited. All in-game purchases including purchases of loot boxes made by any Australian for any game currently attracts GST.

The 2018 Loot Box Inquiry

Background

Given that the consideration of loot boxes only forms a fraction of the present Inquiry's Terms of Reference, it is important to note that the topic has already been specifically and thoroughly considered by a Senate Committee, the findings for which are obviously relevant to this Inquiry.

Specifically, the 2018 Loot Box Inquiry involved the Senate Environment and Communications References Committee being tasked with considering:

The extent to which gaming micro-transactions for chance-based items, sometimes referred to as 'loot boxes', may be harmful, with particular reference to:

(a) whether the purchase of chance-based items, combined with the ability to monetise these items on third-party platforms, constitutes a form of gambling; and

(b) the adequacy of the current consumer protection and regulatory framework for in-game micro transactions for chance-based items, including international comparisons, age requirements and disclosure of odds.

While these Terms of Reference are far broader than the present Inquiry's Terms of Reference, they inherently and fully include in their scope the question that the present Inquiry is currently

considering – being whether loot boxes should be brought under the IGA. The 2018 Loot Box Inquiry would necessarily have also spent far more time and resources interrogating this question than the present Inquiry can reasonably expect to be able to do given its broad scope.

Findings and recommendations

Following a six-month investigation that included a public submissions consultation process and two public hearings (IGEA made substantial submissions and appeared during one of the hearings), the Senate Environment and Communications References Committee handed down the final report of the 2018 Loot Box Inquiry in November 2018.⁴ While the Committee acknowledged that there were some community concerns around loot boxes, the final report decisively determined that there was no need for any further regulation, instead finding that:

- A range of regulation was already in place covering loot boxes, including monitoring by the ACMA, through the Classification Board and under consumer law.
- Loot boxes are not homogenous and any policy or regulatory responses would need to be sophisticated enough to take account of this.
- Research into the impact of loot boxes is still in its infancy and it would be inappropriate to draw inferences from existing research, so until further research comes to light, developing an evidence-based regulatory approach to loot boxes is challenging.⁵

In its final report, the Committee did not recommend changes to any existing regulatory settings or imposing any new regulations over loot boxes. This necessarily means that the Committee did not consider it appropriate for the IGA to be amended to cover loot boxes.

The Committee's only recommendation in its final report was for the Australian Government to undertake a review of loot boxes.⁶ The Australian Greens' representative in its additional comments made five recommendations, including one that the definition of 'gambling service' in the IGA be reviewed,⁷ but none of these were supported by any other Committee member. We highlight that even the Australian Greens did not consider there to be sufficient evidence for a stronger recommendation that the IGA be amended to include loot boxes.

The (then) Government's response

In March 2019, the Morrison Government released its response to the 2018 Loot Box Inquiry.⁸ In this response, the then Government chose to note (rather than to support) the Committee's recommendation to undertake a comprehensive review of loot boxes. The then Government responded that it "*considers that a formal departmental review of loot boxes in video games immediately after the inquiry is not warranted at this point in time*", noting however that relevant agencies would continue to monitor the topic.⁹ For the avoidance of doubt, the Australian Government agreed with the Committee's finding that no further regulation of loot boxes was needed or appropriate.

⁴ Senate Environment and Communications References Committee, *Final Report: Gaming micro-transactions for randomised items*, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Report November 2018

⁵ *Ibid.*, Chapter 5

⁶ *Ibid.*, Recommendation 1

⁷ *Ibid.*, Australian Greens Recommendation 1

⁸ Australian Government, *Australian Government response to the Senate Environment and Communications References Committee report: Gaming micro-transactions for randomised items*, March 2019, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Government_Response

⁹ *Ibid.*, p. 4

The then Government's response also addressed the recommendations made by the Australian Greens member, including the recommendation for the definition of 'gambling service' in the IGA to be reviewed. In its response, the then Government chose to note (rather than to support) the recommendation.¹⁰ In declining to support these recommendations, the Government acknowledged that the video games industry plays a significant role in protecting consumers, noting that:

Game developers and online gaming storefronts provide a range of consumer protection tools, such as parental controls, purchase restrictions and spending limits. The Australian Government notes that many games developers are responding to the debate around loot boxes, taking steps to remove loot boxes from games or choosing to release new games without loot boxes.¹¹

The outcome of the 2018 Loot Box Inquiry and the then Australian Government's 2019 response are definitive in their rejection of any idea to extend the IGA to loot boxes. We also do not consider that any developments on the topic of loot boxes have occurred or any high-quality evidence-based research released in the period since 2018-9 that would necessitate any changes to the positions adopted by the Committee and the then Government.

2022 UK Government response on loot boxes

Background

The most relevant, holistic and timely international consideration of regulatory policy on loot boxes occurred in the UK in July of this year when the UK Government issued a Response (the 2022 UK Government Response) to the call for evidence on loot boxes in video games that was launched by the Department for Digital, Culture, Media and Sport (DCMS) in September 2020.

The DCMS's call for evidence had been conducted alongside the UK Government's review of the *Gambling Act 2005* (the UK Gambling Act) and, therefore, considered the central question of whether loot boxes should be brought under the scope of the UK Gambling Act. This investigation included both a comprehensive review of existing research on loot boxes as well as a public consultation process.

Outside of the outcome of the 2018 Loot Box Inquiry, the 2022 UK Government Response is the most significant evidence on loot boxes that the current Inquiry must consider.

Outcome

Following a broad call for evidence, with heavy participation, and a commissioned review of existing research on loot boxes, the UK Government in its 2022 Response concluded that it would not be seeking to impose any additional regulation on loot boxes or to bring loot boxes under the UK Gambling Act. In reaching this conclusion, the UK Government found that there was no adequate evidence-base for regulating loot boxes and noted that any regulatory intervention would risk unintended consequences.¹²

The 2022 UK Government Response is comprehensive and outlines in detail many key reasons why extending the UK Gambling Act to cover loot boxes is not the solution, including evidence-based public policy reasons as well as more pragmatic, implementation-focussed reasons. This set of reasons should be of primary consideration by the Committee in conducting its Inquiry.

¹⁰ Ibid., p. 5

¹¹ Id.

¹² UK Government, *Government response to the call for evidence on loot boxes in video games*, July 2022, www.gov.uk/government/consultations/loot-boxes-in-video-games-call-for-evidence/outcome/government-response-to-the-call-for-evidence-on-loot-boxes-in-video-games, Ministerial foreword

The evidence-based public policy reasons against including loot boxes under the scope of the UK Gambling Act include:

- Despite the comprehensive call for evidence, no research has established any causal relationship between loot box purchases and problem gambling.¹³
- The lack of ability to legitimately cash out rewards in loot boxes is an important distinction between loot boxes and gambling products. The user experience of most loot boxes is materially different from gambling, noting that their contents do not have real-world monetary value and their utility is to enhance the in-game experience.¹⁴
- Existing UK consumer and data protection legislation and guidance provides a strong foundation for mitigating any risks of harms from loot boxes.¹⁵
- Banning children and young people from buying loot boxes may simply encourage them to use adult accounts, leading to more limited parental oversight of their play.¹⁶

The pragmatic, implementation-focussed reasons against including loot boxes under the scope of the UK Gambling Act are very different but no less compelling, and include:

- Amending or extending the scope of gambling regulation, including the UK Gambling Act, to cover loot boxes would come with significant limitations, making other policy solutions to achieve the same ends preferable.¹⁷
- There would be significant implementation challenges and risks of unintended consequences from changing the UK Gambling Act to cover loot boxes, including creating regulation that is too narrow and excludes other potential harms.¹⁸
- At the same time, widening the definition of gambling in the UK Gambling Act through a broad and principles-based definition may result in the regulation unintentionally covering other activities with similar randomisation mechanism (eg. trading cards). Even very careful legislative drafting may not be effective as loot boxes do not necessarily have defined boundaries that clearly set them apart from other products.¹⁹
- Amending the UK Gambling Act so that it covers loot boxes would amount to an unprecedented expansion of the UK Gambling Commission's remit and double the costs of the Commission's budget (the additional annual cost would be £20 million) as well as significant upfront delivery costs to equip the body to conduct the regulation.²⁰
- If loot boxes were to fall within the scope of the UK Gambling Act, their sales would be subject to gambling duties, which would be difficult to implement given that they are often purchased through virtual currencies (which may or may not have been purchased with real money) and prizes have no objective monetary value.²¹
- If loot boxes were to fall within the scope of the UK Gambling Act, video game publishers would simply redevelop their games or cease making them available in the

¹³ Ibid., p. 224

¹⁴ Ibid., p. 245

¹⁵ Ibid., p. 256

¹⁶ Id.

¹⁷ Ibid., p. 244

¹⁸ Ibid., p. 246

¹⁹ Ibid., p. 247

²⁰ Ibid., p. 248

²¹ Ibid., p. 249

market rather than obtaining a Gambling Commission License. Practically-speaking, while there might be some who would welcome this outcome, the high implementation and regulatory costs involved mean other approaches would be much more suitable.²²

In our view, each of these reasons, with the possible exception of the one relating to UK-specific gambling duties, are both persuasive and relevant to the present Inquiry's considerations and provide a range of evidence for why loot boxes must not be defined as a 'gambling service' under the IGA.

Other international approaches

In this section, we briefly summarise relevant approaches to loot boxes elsewhere in the world to support the Committee's consideration of the matter.

Belgium and the Netherlands

Belgium and the Netherlands are the two countries most often discussed in relation to national loot box policies. In 2018, the gambling regulators in both countries determined that certain loot box implementations violated their respective existing gambling regulations. Regulators in Belgium took the approach that the prize received from a gambling activity does not need to hold monetary value and so could include items confined for use in a video game - although this ban is based on an interpretation from the Belgian Gambling Commission that has not been reviewed by a court and there are questions around whether it is legally binding. In contrast, regulators in the Netherlands simply took a more liberal interpretation of what would constitute money's worth under gambling law.²³ In response, some video game companies amended the versions of their games available in those markets or withdrew from them.

Research has recently been published that suggests that the Belgian 'ban' on loot boxes has been neither effective nor effectively enforced,²⁴ leading to a range of negative effects including giving a commercial advantage to non-compliant companies over compliant companies.²⁵ The research also questioned the merits of even an effectively-enforced ban on loot boxes, highlighting risks including restricting players' choice and their accessibility to games, and providing players with a worse gameplay experience.²⁶ In addition, the study acknowledged that players would be easily able to circumvent any technical ban of games with loot boxes "using extremely basic and free methods" such as VPNs.²⁷ The study concluded that a blanket ban approach to loot box regulation could not be recommended to other countries and that other less restrictive approaches to loot box regulation are preferable.²⁸

In the Netherlands, the status of the regulator's interpretation is currently under question. In March this year, in the one case the regulator initiated against a video game company, the Administrative Jurisdiction Division of the Dutch State Council, the highest administrative court in the Netherlands, ruled that card packs in a certain game did not qualify as a game of chance because they formed an 'inseparable part' of a broader game of skill and therefore are not

²² Ibid., p. 250

²³ Ibid., p. 212

²⁴ Xiao, L, *Breaking Ban: Belgium's ineffective gambling law regulation of video game loot boxes*, 28 July 2022, doi.org/10.31219/osf.io/hnd7w, pp. 30-31; 47-48

²⁵ Ibid., pp. 30-31

²⁶ Ibid., pp. 37-8

²⁷ Ibid., p. 43

²⁸ Id.

regulated by the Dutch Gambling Act.²⁹ Legal commentary on the case suggests that as a result of the ruling, many if not most games with loot boxes are not subject to this law.³⁰

Rest of the world

Despite the media attention around the surprising Belgian and Dutch approaches to loot boxes in 2018 and consideration of the topic by gambling regulators and policy-makers around the world, we are not aware of any other country that has implemented any measures to prohibit, curtail or require to be licensed, video games that contain loot boxes or to update gambling laws to bring loot boxes into their scope. In fact, various countries such as France,³¹ Ireland,³² Denmark,³³ Poland³⁴ and Sweden³⁵ have examined loot boxes and have both determined that they do not constitute gambling and have decided against amending their gambling laws to include them.

At the broader European level, the European Commission recently updated its guidelines on unfair business-to-consumer commercial practices under the current Unfair Consumer Practices Directive, in which it highlights the need for transparency, including by disclosing loot box probabilities (ie. the probability of obtaining certain prizes in loot boxes) and ensuring that the presence of loot boxes is made fully clear and transparent to players.³⁶ Our members agree with the importance of transparency, as discussed in the following section, which is why our industry globally committed to displaying probabilities long before the European Commission published this guidance.

We are aware of only two other countries that have any other kinds of rules concerning loot boxes. In Japan, there is a prohibition around a very specific type of loot box, called ‘complete gacha’, that requires players to collect a specific set of items from loot boxes that are required to obtain other rarer items.³⁷ However, this regulation falls under consumer rather than gambling law and loot boxes generally are not prohibited. In China, there has been a requirement since 2016 for video game companies to disclose loot box probabilities.³⁸ However, once again loot boxes are not prohibited in any way.

Industry response

Overview

Our industry takes its responsibility to provide both a fun and safe environment for our players seriously, especially for children. We are committed to transparency and providing the right information for players and their parents and carers to support them in making informed choices. While we note the concerns raised over some loot boxes, our industry is continually

²⁹ Uitspraak [Ruling] 202005769/1/A3 (2022) Afdeling Bestuursrechtspraak Raad van State [Administrative Jurisdiction Division of the Council of State (The Netherlands)] (9 March 2022) ECLI:NL:RVS:2022:690

³⁰ Otto, R., ‘Dutch Gambling Authority vs Electronic Arts, and the future of loot boxes’, *gamesindustry.biz*, 25 April 2022, <https://www.gamesindustry.biz/dutch-gambling-authority-vs-electronic-arts-the-end-of-loot-boxes-as-legislative-black-boxes>

³¹ See <https://variety.com/2018/gaming/news/france-loot-boxes-1202865706> accessed 7 November 2022

³² See www.irishlegal.com/articles/government-shies-away-from-crackdown-on-loot-box-games accessed 7 November 2022

³³ See www.spillemyndigheden.dk/en/news/statement-about-loot-boxes-loot-crates, accessed 7 November 2022

³⁴ See <https://mediawrites.law/loot-box-issues-extend-to-poland> accessed 7 November 2022

³⁵ See <https://mediawrites.law/the-swedish-consumer-agency-publishes-report-on-loot-boxes-and-other-gambling-like-features-in-games>, accessed 7 November 2022

³⁶ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021XC1229%2805%29>, accessed 7 November 2022

³⁷ Schwidessen, S., ‘Loot Boxes in Japan: Legal Analysis and Kompu Gacha Explained’, *lexology.com*, 2 August 2018, <https://www.lexology.com/library/detail.aspx?g=9207df10-a8a2-4f67-81c3-6a148a6100e2>

³⁸ McAloon, A., ‘Online games will be required to disclose random loot box odds in China’, *gamedeveloper.com*, 8 December 2016, <https://www.gamedeveloper.com/disciplines/online-games-will-be-required-to-disclose-random-loot-box-odds-in-china>

seeking to listen and learn from our players and other stakeholders, and our industry individually and collectively has continually been responding to any community concerns.

'In-Game Purchases' and 'Includes Random Items' label

Globally, our industry is committed to providing transparency to players and parents on game features, including in-game purchases and randomised content such as loot boxes, as well as supporting the Australian Government's efforts to achieve the same objective.

Our industry has always been a strong supporter of the role of the National Classification Scheme as the primary framework for regulating and providing guidance to the community around content within video games. The Australian Classification Board (the Board) currently issues consumer advice of 'In-Game Purchases' to video games that it classifies that include loot boxes and other in-game purchases. To enable the Board to apply this consumer advice, applicants are required to declare what kind of in-game purchases are available within their games. We are supportive of the Board's approach and issue regular reminders and guidance to our members reminding them to provide as much relevant information as possible in their applications. We also note that the Board's approach is consistent with how our industry globally is providing labels of 'In-Game Purchases' through its industry-run ratings schemes.

Through the International Age Rating Coalition (IARC) system of classification for online and digitally-delivered games, which IGEA heavily lobbied Australia to adopt and which the Australian Government now co-governs globally, the video games industry has introduced feature descriptors that provide pre-purchase information on the availability of in-game purchases in Australia and around the world across most popular digital game platforms. Specifically in relation to games with loot boxes, we understand that the IARC system currently provides (or will shortly provide) the content descriptor of 'In-Game Purchases (Includes Random Items)' in Australia across all participating storefronts. This advice clearly signals upfront to the consumer prior to purchase that a game contains for-purchase loot boxes.

We supported the Department of Infrastructure, Transport, Regional Development, Communications and the Arts in its efforts in implementing this change in Australia. Our industry sees this additional consumer advice as a key way to strengthen transparency and to provide consumers with more specific information about randomised purchases. While it is a matter for the Board to decide whether it should also provide 'Includes Random Items' in the consumer advice that it determines for games that contain randomised purchases, IGEA would be supportive of this approach, and we have advised the Board of our views around this.

Increasing transparency around item 'drop rates'

The local and global games industry in 2019 announced new initiatives to help consumers to make more informed choices about their purchases by ensuring information is available on the relative rarity or probability of obtaining randomised virtual items.³⁹ Often referred to as probability or drop rate disclosure, these initiatives ensure that players in Australia and around the world are aware of the probabilities of virtual items available in loot boxes. The commitment has been made by the makers of all three video game consoles and Windows PC, who will require that games released on their platforms must disclose this information, as well as by most major game publishers. Google Play and the Apple App Store, the two largest

³⁹ IGEA, *Global video games industry commits to further inform consumer purchases*, 8 August 2019, [igea.net/2019/08/global-video-game-industry-commits-to-further-inform-consumer-purchases](https://www.igea.net/2019/08/global-video-game-industry-commits-to-further-inform-consumer-purchases)

mobile gaming platforms, have similarly also introduced probability disclosure requirements for their platforms.⁴⁰

Managing and restricting in-game purchases

For years, our industry has provided a range of family tools and features to provide a safe environment for game players and their families. Many of these tools, which continue to be strengthened year-on-year, are world-leading and unmatched by any other digital sector. In particular, all three video game consoles as well as all major smartphone operating systems enable parents to easily restrict, turn off, or require approval for spending on the platform, preventing their children from purchasing loot boxes or making other in-game purchases without permission. Some consoles have also developed companion apps that parents and carers can download on their smartphones to make these settings and controls even more accessible. Finally, many game developers and digital storefronts have improved the visibility of their refund policies and practices for in-game purchases, which we have heard from our members has reduced consumer queries around loot box purchases.

Public and community awareness-raising

We know that creating tools and features for managing spending is only half the mission. The other half is making sure parents and carers know about them and have the confidence to use them. This is why all the major consoles and devices manufacturers and many game publishers provide comprehensive but easy to understand resources and guides covering the tools and features they offer. Similarly, IGEA and the wider industry undertakes initiatives to help players and their parents and carers to understand video games better, what they contain, and the different ways to play them, with the critical priority being to bridge the digital divide for people less familiar with games.

For example, our website has a section on parental controls⁴¹ and we publish guidance for parents and carers to help them better understand games and how to manage their children's gameplay.⁴² Together with our fellow industry associations from around the world, we have also established *www.healthyvideogaming.com*, a portal aimed at families with information on the safety features and controls that they can use on the most popular platforms. The portal also provides industry perspectives on related issues like screen time and digital health.

We believe that one of the main reasons why there have been concerns raised around loot boxes is limited community awareness of what they are and how they work. To address this, many game developers are now providing more information to consumers when they include loot boxes in their games. For example, Microsoft has released a set of consumer-friendly policies that provide additional transparency about the manner in which loot boxes are offered within games developed by its Xbox Game Studios.⁴³ Some games publishers have also offered tools to help players monitor and manage their time and spending. For example, Electronic Arts provides players with the FIFA Playtime dashboard that allows them to track and manage the number of matches they play and FIFA Ultimate Team Packs they open each week.⁴⁴

⁴⁰ Robertson, A., 'Google's Play Store starts requiring games with loot boxes to disclose their odds', *The Verge*, 30 May 2019, www.theverge.com/2019/5/29/18644648/google-play-store-loot-box-disclosure-family-friendly-policy-changes

⁴¹ See igea.net/useful-links/parental-controls, accessed 17 October 2022

⁴² See list at: <https://igea.net/covid19> accessed 17 October 2022

⁴³ See www.xbox.com/en-US/for-everyone/responsible-gaming/loot-boxes, accessed 17 October 2022

⁴⁴ See www.ea.com/games/fifa/fifa-21/fifa-playtime accessed 6 November 2022

More broadly, most game developers and publishers engage in direct dialogue with their players in various ways, including via online forums and social media, by employing community managers and through closed and open beta testing. Through these channels, the industry interacts directly with their player communities on issues including loot box implementation. We believe these initiatives are working, and across the industry we believe we are observing far fewer complaints about loot boxes in the media and from players than we did in 2018.

Future of loot boxes

Two of the defining characteristics of the video games industry are its responsiveness to public opinion and its constantly evolving innovative practices. While loot boxes continue to play a role in the gaming ecosystem for some game developers, a focus on player-centric design is increasingly central to how they are implemented. This includes ensuring that loot boxes are a good fit with the design of the game, providing greater alternate avenues for obtaining items in loot boxes, the increasing use of loot boxes for purely cosmetic items and the reduction or removal of the chance element in some loot boxes. As the industry evolves, we are already seeing that many developers are choosing to move away from loot boxes entirely, with some preferring monetisation models like downloadable content, subscription and season passes.

The Australian game development industry

Finally, we would like to highlight the serious and existential risk that an inclusion of loot boxes as a 'gambling service' under the IGA would have on the local Australian game development industry, given that Australian-based prohibited interactive gambling services are not only unable to be provided in Australia but also to customers in designated countries.

Australia's video game development sector is a rapidly-growing and future-focussed creative technology industry. We believe that game development can become a crucial driver of the modernisation of Australia's economy towards a high-tech digital export base. According to our most recent industry survey, the Australian game development industry generated \$226.5 million in 2020-1, doubling in size over the past five years, while employing 1,327 fulltime workers.⁴⁵ Australian-made games have been among our country's most successful creative exports ever and some of these have incorporated loot boxes.

Any prohibition of games with loot boxes under the IGA would therefore not only prohibit such games from being played in Australia, but they would likely prevent them from being made in Australia entirely, severely cutting down our industry's ability to keep growing and generating digital exports. The practical impact on specific studios aside, such a prohibition would lead to a substantial chill in the investment attractiveness of the Australian video games environment that would cause an impact on local studios well beyond those that use loot boxes. It is no exaggeration then that a ban could lead to severe devastation across the entire local sector.

Games with incidental simulated gambling

As previously discussed, we have not addressed in our submission the kinds of games referred to by the Inquiry's Terms of Reference as 'social casino games', which we leave to the ISGA.

⁴⁵ IGEA, Australian Game Development Industry Snapshot 2020-21, 14 December 2021, <https://igea.net/2021/12/australian-game-development-industry-doubles-revenue-to-226-million-over-the-past-five-years>

However, some video games that are not 'social casino games' may nevertheless sometimes incorporate elements of simulated gambling, often as a part of the game's story or the environment of a level, but where these elements are not a predominant part of the game.

Examples of this kind of content may include:

- A level in a game set in a casino, allowing incidental play of devices in the game environment (a game level set on an abandoned cruise ship with poker machines with pullable levers).
- A part of a game where the player must play a game of chance to progress the storyline (eg. a game of dice against a villain or non-player character).
- A shopkeeper or merchant in a game environment that a player obtains items from, where the purchasing of mystery items may be offered.
- A game that includes a 'mini-game' with a simulated gambling element (eg. such as a poker table) that is not central to the broader game.
- Any other game that incorporates the element of chance (eg. a fishing game).

These examples are generally included by the game's developers for narrative, aesthetic or immersive effect and these kinds of games can be clearly differentiated from 'social casino games' where the simulated gambling element is a central part of the game's design. We recommend that regardless of the direction of the Inquiry, the Committee remove from the Inquiry's scope these kinds of games that have nothing to do with online gambling.

Any questions?

**For more information on any issues raised in this submission, please contact IGEA's
Director of Policy & Government Affairs, Ben Au, at [REDACTED]**

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