

Australian Senate
Committees on Environment and Communications

Inquiry into
gaming micro-transactions
for chance-based items

Formal submission

by Greg Tannahill

(private citizen)

Summary of submission

- * Gaming micro-transactions for chance based items are, or should be considered to be, gambling.
- * The Australian Government's practical capacity to regulate these transactions is poor.
- * The likely results of strong controls over these practices hurt more Australian consumers than they help. They may also have unintended further harms to vulnerable consumers.
- * The Australian Government can and should use mechanisms attached to the existing Australian Classification Board to require publishers to disclose odds and provide warnings at point of sale and within the game.

Who am I?

My name is Greg Tannahill. I make this submission as a private Australian citizen and voter.

I am 38 years old. I have been a player and critic of videogames for much of my life. I have written extensively on game design and the game industry and my work has appeared on a range of commercial videogaming websites. In 2008 I campaigned for the addition of an R rating for videogames in Australia's classification system, allowing games previously banned in Australia to be released with suitable R-rating markings. I am well-versed in the state of videogaming in Australia and worldwide and hope my insights may be of some help to the inquiry in understanding this area.

Background - game creators

Throughout this submission I refer to "game creators". This term includes:

- * developers - the people and companies that design, code, and generally create the game;
- * publishers - who publish, distribute and market the game;
- * commercial online hosts - who commercially host and maintain servers for online play of games, which may be the developer, the publisher, or a third party;
- * localisers - who localise an existing title for an international release, arranging translation and altering aspects of a game for the legal and cultural sensitivity of regional markets. (Their business model generally does not allow them the time, money or access to make extensive changes to a game beyond the translation of text and alteration of some art assets.)
- * port developers - who are developers who alter or re-implement an existing title for a platform other than the one it was developed for (such as taking a Windows game and developing it for an iPhone release).

Background - nature of "loot boxes"

- * A range of videogames available in the Australian market and worldwide offer the ability to expand or enhance their gameplay through purchases made in-game, or through online storefronts. The product purchased in this way is collectively known as "downloadable content" (DLC).
- * DLC, when purchased, is tied to an account (digital identity) owned by the purchaser. Depending on the game and the storefront, this account may be the player's account with the storefront, the publisher of the game, the online service of a console platform, a phone account, or an account

created within the game itself. When the player is logged into the relevant game through the account they have purchased DLC for, they will have access to the benefits of the DLC in game.

* DLC can take a variety of forms, including:

- significant new “chapters” of gameplay in which the player visits new areas or encounters new challenges or additional story;
- new gameplay mechanics, such as access to new abilities for your character or new gameplay subsystems;
- new maps or arenas of play, particularly in competitive online games;
- in-game items that enhance or modify the player’s relative powers within the game, such as new weapons (also known as “power-ups” in some circumstances);
- “cosmetic items”, that do not substantially change gameplay, but alter the appearance of the player or aspects of the world for the aesthetic pleasure of the player or to connote status or prestige to other players;
- “time savers”, that grant the player additional points, play-time or in-game currency that they could have otherwise accrued slowly within the game over time, effectively allowing the player to spend money to save time;
- meta-currencies - that is to say, the player uses real money to buy “publisher dollars”, which can be used to buy some or all of the other types of DLC listed above, but (theoretically) cannot be converted back into real money;
- “loot boxes”, detailed below.

* DLC is occasionally offered by publishers for free for a variety of reasons probably not relevant to this inquiry.

* The extent to which DLC is incorporated into a game varies. Many games have none. Some games have DLC which is trivial or extraneous. Some games have it incorporated to such a degree that the purchase of DLC is to some extent necessary to play the game “as intended”. Some multiplayer games require the occasional purchase of DLC (particularly maps and characters) for players to stay competitive and continue playing in the same environment as their friends and rivals. The sale of this DLC funds the continued engagement of the developer and publisher in supporting the game, further developing it, and maintaining online servers and customer support for it.

* Paid DLC has existed since at least the late 90s without any special regulation by the Australian Government.

* “Loot boxes”, or chance-based microtransactions, are a relatively recent development, meaning in this case they have been around for about 10 to 15 years.

* There has been recent media attention on the topic of loot boxes following the release of the game Star Wars Battlefront 2 (2017), which had a particularly mercenary implementation of loot boxes which disappointed and frustrated many fans. However, the practice and implementation of loot boxes is not significantly different today than it has been at any point since their inception. The issues that brought media attention to Star Wars Battlefront 2 do not specifically raise issues around gambling any more than loot boxes do in general.

*The “loot box” model usually involves a player buying a piece of DLC often labelled as a “box” or “pack”. Upon completion of the purchase, the box or pack “opens”, informing the player that their account has been credited with some number of small pieces of DLC, most commonly power-ups, cosmetic items, time savers or meta-currencies. These DLC purchases are non-unique and a player may buy an unlimited number of such boxes, getting new items (or duplicates of ones they already have) from each one.

* The player will not know prior to purchase what is “in” the box. Box contents are randomly assigned by the game or storefront when the box is “opened”. The contents are drawn from a table of possible contents (also known as a “loot table”). Generally some items on the table have a higher probability of appearance than others, making some items rarer (and potentially more valuable). Alternatively, contents may be drawn from multiple tables, so that each box is guaranteed to have one item from a “rare” table and three items from a “common” table.

* Often, these loot tables are not publicly disclosed by the game creators, so that there is no official game creator information on what can be gained from a loot box. Sometimes game creators will publish what items can come from a box, but not their relative probabilities. Sometimes creators may publish both item lists and probabilities. Players and fans sometimes attempt to create such tables either by accessing in-game files or by observing a large range of box-openings but these may not always be fully accurate and require players knowing how to access fan communities to find them.

* China (a very large and influential videogaming market) currently requires the publication of loot tables under some circumstances and some companies who operate in that jurisdiction publish loot tables accordingly. Extending that requirement for the Australian market should not be onerous.

* Game creators can and do change loot tables without notifying players.

* The “loot box” model is also used in games in a variety of ways in which a player pays for it other than by direct purchase, including but not limited to:

- The player pays for limited access to a map, area, or tournament, in which loot boxes can be obtained by the tournament winner or by players who successfully overcome a challenge, or just given to players for taking part;
- Loot boxes are accrued over time by all players without expenditure simply by playing the game, but the player can pay to make them appear more frequently or improve the distribution of loot within them (in essence paying to be “luckier”);
- Loot boxes are given out upon reaching certain milestones in a game simply by playing normally, but only once per milestone per player; a player can purchase new copies of the game or new accounts in order to replay those milestones and receive new loot boxes;
- Loot boxes may be given out as prizes in free-to-play tournaments, or for overcoming certain challenges, but being competitive in those tournaments or overcoming those challenges requires purchase of other (non-random) DLC;
- Loot boxes are given out in the normal course of play, but the player is limited in how much time they are allowed to play per day, and can pay to play more frequently;
- Loot boxes are given out in the normal course of play, but the game displays in-game commercial

advertisements;

- Loot boxes are given out when the player recruits a new friend to start playing the game.

Background - real world loot boxes

* The loot box model has been used for physical items for at least a century. Collectible random baseball trading cards were sold in cigarette packets from the late 1800s, and the blind-bagged trading card model was well established by the 1940s, and began to be packaged with gum to market to children by companies such as Fleer and Topps from the late 1950s.

* The advent of Magic: The Gathering in 1993 saw an explosion in collectable card games. Not only were collectable cards of varying rarity sold in blind-bagged packets, but you could play games with those cards. Tournaments were (and are) held with cash prizes. Being competitive in tournaments required having access to the majority of available cards, either through finding them in blind-bags or buying or trading them from people who had. Other well-known brands in this space include Pokemon cards and Yu-Gi-Oh.

* The success of the Magic model led to the development of boardgames and wargames featuring collectable miniatures sold in blind boxes, where, again, the consumer knew they would find a certain number of miniatures in the box, but not which ones.

* All these products were marketed to children and have not thus far led to any significant call for regulation of that market.

* Many of these brands also have presence in the digital space. Magic: The Gathering, for example, regularly releases videogame versions of its mechanics where players must buy loot boxes featuring randomised cards, mimicking the physical card packs. The popular videogame Hearthstone uses this collectable card game model online without having any analogous real-world cards.

Monetisation

* A central question is, do the contents of loot boxes have real-world monetary value? The answer is unambiguously yes.

* Scenario A - Some game creators and storefronts allow items obtained through loot boxes to be traded between accounts through digital marketplaces that involve either real-world money or digital currencies that can be used to purchase things that have real-money value. Publisher/developer Valve, for example, allows loot box items in its games Team Fortress and DOTA 2 to be traded between users through its Steam storefront for store credit which can be spent on games by other publishers. In some cases the currency itself can be indirectly traded between users.

* Scenario B - Some games allow items obtained via loot boxes to be traded between accounts within the game itself, often through in-game marketplaces. In theory no real-world money is involved in this transaction. However, in practice, user A and user B may communicate, where user A agrees to pay user B real money outside the game in exchange for the transfer of an in-game item owned by user B at a peppercorn price in-game. The existence of such a market realistically creates a monetary value for the items.

* Scenario C - Some games lock items obtained via loot boxes to the account of the player buying them, preventing them from being traded to another account. In this scenario, a player who obtains a particularly rare or valuable item via a loot box may offer (in a similar manner to scenario B) to sell their entire account (by handing over passwords, et cetera) to another player, giving the buyer the ability to play on an account with the rare item available.

* There are commercial third-party companies based around quickly obtaining in-game value and selling it to other players for real-world value. These are colloquially known as “gold farmers”, as one of their earliest activities was selling in-game currency (gold) in online games. They usually (but not always) do this against the express wishes of the game creators. This activity can be exceptionally profitable, particularly when run from companies with low wages for workers. The products offered by gold farmers may include the contents of loot boxes at any time where the cost of efficiently obtaining loot boxes is lower than the average selling price of their contents. Because gold farmers are not interested in “normal play”, or having fun during play, they can often obtain resources in game faster than regular players because regular players would lack the experience or become bored.

* Many games explicitly prohibit transactions such as those in Scenario B and Scenario C through their End User Licence Agreement and/or Terms of Service. Where the game creator detects such a transaction, they may reverse it, or cancel the accounts of either or both parties involved, effectively deleting the items being sold. However, generally game creators only detect and decisively act on a small percentage of such transactions, and sellers and consumers are creative in finding new ways to monetise and new ways to avoid detection. This means the market nevertheless exists, but illicitly, with very few protections or avenues of support for buyers or sellers, and a high incidence of fraud and other coercive conduct.

* The value of items from loot boxes varies and is most commonly measured in amounts of a similar scale to the cost of the boxes, but there are instances of items in some cases being transferred for sums of well over \$1,000 AUD. As with economics generally, the value of an item is what a person is willing to pay for it, and the nature of videogames means that some people become exceptionally invested in them, and some of those people have large disposable incomes that they are happy to use to have exactly the experience they want in a digital space.

Who buys loot boxes?

* Everyone who plays videogames may be a consumer for loot boxes. It would be inaccurate to say that buyers are primarily adults or primarily children. It is unarguable that many children buy loot boxes. Loot boxes are particularly widely used in games aimed at a teen market.

* Children may obtain the ability to buy loot boxes in a variety of ways, including but not limited to:

- They may purchase them directly with their own money, or with the aid of their parents.
- They may acquire valuable in-game items through normal play, and trade or sell them for loot boxes or the currency to buy loot boxes.
- They may use real-world money to buy a gift card at a real-world shop that grants in-game currency

which can then buy loot boxes.

- They may be given money or in-game currency or loot boxes by other people online, such as friends, or even strangers.

* There are unfortunate but common cases of children being given games, in-game items, in-game currency or money by adults encountered online as part of grooming behaviour. The marketplace around in-game items creates a unique and dangerous environment for grooming, in that:

- It creates a space where adults and children legitimately interact, but anonymously and privately;
- It occurs in a space where children have a clear and compulsive desire for in-game items and adults have the means to provide them in exchange for favours or attention;
- It (often) occurs in an illicit marketplace that incentivises children to be secretive about their interactions to avoid having their account banned for terms of service violations.

* Reducing the ability of children to legitimately interact with the virtual goods marketplace would make them more vulnerable to this behaviour as their reliance on unscrupulous adults proxying for them would increase and their inclination to openly report such interactions would decrease.

* It should also be noted that there are also (arguably) more legitimate reasons for an unrelated adult to purchase content for a child online - such as where they are both players on a shared team in a game, and the adult wishes the child to have access to a piece of DLC so they can stay competitive.

Gambling

* It is arguable whether loot boxes are currently covered by the terms of federal legislation. The Interactive Gambling Act 2001 (Cwth) covers lotteries and wagers, and games of chance played for rewards of monetary value.

* As noted above, items obtained from loot boxes have monetary value, in the sense that people will pay (often quite large) sums of money to acquire them. Sometimes (but not always) this value can only be realised on an illicit market.

* Loot boxes contain most of the potential dangers associated with gambling activities, including:

- random reward schedules that promote and reinforce addictive behaviour;
- bright lights, sounds, and audiovisual reward stimuli that reinforce addictive behaviour;
- ability to buy quickly on impulse;
- abstracted transactions (often in abstracted currencies) distancing the consumer from real-world cost;
- no external monitoring of player spending patterns, time spent gambling, total amount gambled;
- gambling is performed in non-social environments with little capacity for friends or loved ones to observe or check the behaviour;
- no built-in breaks in gambling behaviour to let the consumer achieve distance from the feedback loop and reconsider their actions.

* Many of these are unique to loot boxes in the digital space and arguably provide a distinction between this area and products such as real-world collectable cards or miniatures.

* There is little functional difference between many loot box schemes and physical poker machines, except for the inability to immediately and legitimately obtain a real-world cash payout.

Consumers generally

* As a general proposition, many consumers enjoy interacting with well-designed loot box schemes. When done well, they can enhance the game they are part of, provide entertainment to players, and are a legitimate use of people's money and leisure time.

* As with any activity, though particularly so with gambling, there will be a subset of consumers who interact with it in unhealthy ways, whose ability to safely manage that interaction will be poor for reasons beyond their control, and it is appropriate for the government to consider how its regulatory, legislative, and educational powers might be used to assist and protect those people.

* There also exists a set of consumers who do not have problem behaviours, who wish to realise the practical monetary value of their digital goods, and are at risk of harm by doing so in an unregulated illicit marketplace.

Gambling addiction versus gaming addiction

* I would advise the inquiry to carefully distinguish the words "gambling" and "gaming" in its discussions, and use "gaming" only in the sense of "videogaming".

* I note also that gaming/videogaming addiction, or "gaming disorder", is a condition recognised by the World Health Organisation. It is not simply "playing videogames too much" but rather a particular (rare) addictive disorder which is distinct from, but bearing similar characteristics to, gambling addiction.

*The inquiry should therefore also be careful to distinguish the concept of problem gambling and gambling addiction (very relevant to this inquiry) from the concept of gaming addiction or gaming disorder (also serious but probably not relevant to this inquiry).

Power of Australian government to act

* The Australian federal government has fairly weak power to regulate in this space, for the following reasons:

* While some loot boxes are directly purchased, the wide variety of ways that a game creator can monetise a player's interaction with loot boxes, some of them exceptionally indirectly (as described above), mean that it is exceptionally difficult to fully capture these interactions in legislation without having a definition so broad as to include much unintended activity.

* The vast majority of game creators engaged in this activity are based outside of Australia. Many of them have no meaningful presence within Australia.

* The vast majority of online storefronts who sell these games are based outside of Australia, although the largest have some footprint in Australia and have been successfully regulated in other ways in the past.

* Many of these games feature online interactions between Australian players and international players. It can be difficult to regulate the activities of Australians, or the experience offered to Australians, without:

- (a) having those regulations circumvented by the actions of international players; and/or
- (b) putting Australians at a competitive disadvantage (or potentially advantage) versus international players; and/or
- (c) creating a situation where Australians can no longer interact online with international players.

* The Australian market for videogames is comparatively small enough that many game creators will choose to not release games for the Australian market rather than comply with onerous regulations. We have seen this in the situation of some games that are refused classification, which choose to not sell in our market rather than make alterations to meet classification, and in the case of storefronts that choose to not offer some services in Australia rather than make broad changes to their business to meet Australian law.

* The Australian government has a poor history of understanding videogaming and the internet generally, and it may be limited in its ability to craft agile legislation that protects consumers while promoting the industry and the art, or have limited ability for relevant agencies to enforce that legislation deftly and effectively.

* Any scheme that sets limitations on Australian consumers based on their location in Australia is not only (a) probably an unwarranted interference with their freedoms, but (b) will in any case be circumvented by a significant proportion of consumers using VPN services and other mechanisms, with the result that they are then interacting entirely outside the Australian marketplace and the government loses its ability to regulate and protect those consumers entirely.

Priorities of government activity

Given all of the above, the priority of government activity in this space should be:

- * Inform consumers about their purchases of loot boxes, and of games that implement loot boxes.
- * Protect vulnerable groups, such as children and problem gamblers, without unnecessarily impeding their ability to exercise their right to enjoy their money and leisure time as they see fit.
- * Protect consumers engaging in this marketplace.

How can the government do this?

* Videogames in Australia are currently required to be classified by the Classification Board before sale, receiving a rating such as “M” or “R” which must be displayed on the game packaging on online store pages for sale in Australia. The Classification Board largely relies on information self-reported by game creators in making these decisions. The government could, and should, require game

creators to submit information about the existence of directly or indirectly purchasable loot boxes within their game, leading to a warning such as “Warning: Contains Real-Money Gambling” being displayed on the game’s packaging.

* It will be difficult to fully capture the range of all monetisable loot box activity, as random rewards are an integral part of almost every videogame and most of these do not need to be regulated.

*The key marker in defining regulated behaviour should be whether the player can pay money to directly or indirectly increase the availability, frequency, or value of loot boxes. This should cover all the implementations of loot boxes which most directly fit the patterns that we know are associated with high risk of gambling harms.

* The government should commit to review any legislation in three years as game creators will likely quickly adapt loot box models to fall outside these laws and may create new problematic interactions not previously covered.

* As part of the Classification Board process, game creators should be required to publicly notify the contents and frequency of loot tables for loot boxes that fall within the regulated behaviour, so that consumers are informed of odds.

* Ideally, they should be required to, upon request, provide access to game code that would allow the Classification Board (or more likely an expert contracted by them) to confirm the veracity of the loot tables. The industry argues that such a requirement would be onerous, that the Classification Board is unlikely to have the necessary skill to perform the task, and that it would nevertheless be impossible to prove that the code provided was the particular code operating at any point in time. A compromise might be to have code inspectable upon complaint, rather than as standard procedure.

* Games sold in Australia that have a gambling warning could be required to display gambling helpline numbers on packaging and storefronts. They arguably could also be required to display this information in-game, but the government should generally try and avoid requiring a “local version” of the game code itself (which this would involve) as this can be a more a significant impost for the game creators than it initially seems, leading to withdrawal from the market (and consumers following it outside the market via VPNs).

* The government should run a public education campaign, emphasising that videogames are positive, fun and legitimate, but that some people may have problematic interactions with them. This campaign would educate problem users on sources of help, parents on their children’s interactions, and people generally on ways to help and protect friends and loved ones.

*Lastly, the government should investigate in more specific detail a means of bringing *all* trading of virtual goods within the scope of Australian consumer protection law where at least one of the parties, or the platform on which the transaction takes place, is subject to Australian law. This should apply *whether or not* the transaction is permitted under the terms of a game creator or storefront’s Terms of Service (TOS) or End User Licence Agreement (EULA).

* In the current situation, the reality is that transactions of valuable virtual goods are taking place, and consumers are being exposed to dangerous websites, malware, theft and identity theft, fraud,

grooming, extortion and other harmful practices as a result. Many of these consumers are children. At present the only real regulators in this space are the game creators and storefronts, and by washing their hands of the marketplace by excluding it in their TOS or EULA they are leaving consumers uninformed and unprotected. It is analogous (in a policy sense) to the situation of a person who has been badly assaulted but is scared to go to the police because they are worried the police will arrest them for possessing marijuana; the potential harms to these consumers are of a higher order than any policy about how consumers interact with terms of service agreements.

* The Australian government should look at specifically how it can extend protections to these consumers, inform them, and give them avenues of help where they are victims of predatory behaviour.

Conclusion

Thank you for considering my submission.

I would be very happy to assist the inquiry further with any matter should they be interested.

With thanks

Greg Tannahill