



Honourable Yvette D'Ath MP
Attorney-General and Minister for Justice
Leader of the House

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Dear Senator

Thank you for your letter dated 28 June 2018 regarding the Environment and Communications References Committee's inquiry into gaming micro-transactions for chance-based items (otherwise known as loot boxes) and the invitation to make a submission.

Please find my submission enclosed.

I trust this information is of assistance.

Yours sincerely

 **YVETTE D'ATH MP**
Attorney-General and Minister for Justice
Leader of the House

Enc.

Submission to Environment and Communications References Committee's inquiry into gaming micro-transactions for chance-based items

As Attorney-General and Minister responsible for the regulation of gambling in Queensland, I am well aware of the recent community debate around video game features that resemble gambling. Generally, these features are offered through micro-transactions that are a side-element to the actual game. Micro-transactions of this nature may take many forms.

Chiefly relevant to the Committee's inquiry are micro-transactions that involve the purchase of a virtual container, generally referred to as a loot box, containing an item that is unidentifiable at the purchase point (alternately, the game may present the player with a loot box but require the purchase of a key to open it). The purchase may require real money (via a credit card transaction) or credits accumulated by achievements within the game, or a combination of both. Where loot boxes are accessed via the use of accumulated in-game credits, the player may be given the option of purchasing extra credits with real money in order to speed up the availability of loot boxes to the player.

In most cases, the virtual items obtained from loot boxes have no effect on gameplay and are purely cosmetic. For example, the item may be an article of clothing or a "skin" that alters the player's appearance, or the appearance of a weapon or vehicle, within the game. However, despite their generally cosmetic nature, these items can change the way the player is perceived by other players within the game, therefore adding to the player's prestige and status and creating something of value to the player.

In this regard, the potential association between loot boxes and gambling arises because the player is spending money to obtain what is essentially a prize chosen at random. While the mechanics of the particular game may provide that a prize will be awarded each time a loot box is opened, the digital item representing the prize may vary widely in its value to the player, regardless of whether that value can be realised in a real monetary sense.

I am also aware of a concern that the loot box features of some games may be designed around compulsion, and may therefore lead to harms similar to those experienced by some gamblers, especially in unregulated environments (for example, an inability to control or track expenditure). Players may, for example, be driven by compulsion to overspend (or spend more time playing games than they otherwise would) in pursuit of a particular chance-based item that would increase their in-game prestige. Accordingly, there is significant concern that some loot box facilities featuring chance-based items may normalise gambling behaviours, particularly in children, regardless of whether loot boxes are earned in-game or paid for with real money.

I note the issue driving loot boxes to national attention was the decision of American developer Electronic Arts (EA) to make non-cosmetic items (that is, items that could affect the outcome of a game) available to players through purchasable loot boxes within the game *Star Wars: Battlefront II*. This "pay to win" approach outraged the gaming community, which successfully influenced EA towards a solution in which paid loot boxes no longer form part of the game.

I am also aware of concerns regarding the use of loot boxes within the game *Fortnite*, which arose as a result of the unprecedented popularity of that game, particularly with people under 18. However, I am advised that *Fortnite's* developer has also responded

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to community criticism by removing the random element from loot boxes available within that game.

However, it cannot be assumed that similar market-led corrections will be adopted by all developers, or that more insidious uses of gaming micro-transactions that resemble gambling will not emerge in the future. Game developers are, after all, increasingly reliant on the use of micro-transactions to monetise gameplay and thus fund both the initial development of the game and the development of additional downloadable content to keep the game fresh and exciting.

I will therefore be monitoring the Committee's inquiry with significant interest, as I expect that the inquiry's outcomes, and the Australian Government's response, will assist in my own ongoing consideration of the extent to which loot boxes may represent gambling, and of any remedial responsive action that might necessarily be undertaken to protect young Queenslanders from potential gambling-related or gambling-like harm.

However, I am aware that some features of online multiplayer gaming may make the regulation of loot boxes at the state level impractical. For example, many game developers, including the developers of games at the centre of recent loot box controversies, are based overseas and have global markets. I am advised that games may be purchased, patched and played via digital distribution platforms located on servers outside the jurisdiction in which the player resides. Additionally, from an Australian perspective, multiplayer games, including those games involved in recent loot box controversies, are generally played on oceanic servers that combine players from multiple Australian jurisdictions (and the wider oceanic region) in a single game. In addition to the significant regulatory difficulty suggested by these cross-border scenarios, I understand that players desire fairness and equality in all aspects of the game, and would likely object strenuously to state-based legislation that potentially made a loot box facility available to some of the players in a game but not to others – even if chance-based items are purely cosmetic.

Accordingly, the Committee may wish to consider whether the Australian Government may be well placed to address the issue through amendments to the *Interactive Gambling Act 2001* (Cth). This is due to the online and cross-jurisdictional nature of video gaming, as discussed above, and the national application of that Act. The approach would appropriately reflect the Commonwealth's responsibility for online gambling and ensure consistent implementation of any relevant intervention across all Australian jurisdictions.

I also note that the Australian Government has legislative responsibility for the classification of publications, films and computer games through the *Classification (Publications, Films and Computer Games) Act 1995* (Cth). The Committee might therefore consider whether there is value in introducing an "R18+" rating for games with loot box facilities that resemble gambling. This would ensure that such games are categorised for an adult market in line with current restrictions on the age for gambling participation.

I thank the Committee for its consideration of this issue and await the Committee's report with interest.