

Infrastructure, Transport, Regional Development, Communications and the Arts

Committee Inquiries Question on Notice

Standing Committee on Social Policy and Legal Affairs

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

IQ22-000149

Division/Agency: DIV - Online Safety Media and Platforms

Hansard Reference: Spoken, Page No. 3 (30 November 2022)

Topic: Loot boxes

Chair, Peta Murphy MP asked:

CHAIR: I know the UK has looked at loot boxes. Are other jurisdictions grappling with this issue? How are they addressing it? Have there been any successes or failures? You can take it on notice.

Ms Sullivan: I was about to say that I'm happy to take it on notice and then we can come back to you.

Answer:

Internationally, a range of countries are addressing loot boxes through a mix of legislative reforms around consumer law and industry led consumer protection measures. Belgium is currently the only country to comprehensively ban loot boxes, however the Netherlands is also considering an outright ban through new legislation. Many international developments are either quite recent or awaiting finalisation, limiting the availability of evaluation information to determine the effectiveness of these approaches.

Japan

Japan has banned specific kinds of loot boxes under a law protecting consumers from deceptive practices on a case-by-case basis. In 2012, the Japanese Consumer Affairs Agency (CAA) banned a particular loot box mechanism, *Kompu Gacha*, in video games under existing consumer legislation: *Act Against Unjustifiable Premiums and Misleading Representations*.¹ This ban has been effective, although loot boxes that are not considered *Kompu Gacha* are still widely available. Japan has also had some success in implementing industry-led measures, such as transparent odds, which have been widely adopted by gaming companies. Although disclosing odds is voluntary and not mandated in Japan, misrepresenting these odds to be more favourable than they are is specifically banned under the same consumer protection legislation. Another example of an industry measure widely implemented in Japan is the restriction of in-game trading of loot box prizes to prevent the trading of virtual items for real world money.²

¹ VentureBeat, [Japan's Consumer Affairs Agency declares "complete gacha" illegal | VentureBeat](#), May 18 2012.

² Sebastian Schwiddessen & Baker McKenzie, Lexology, [Loot Boxes in Japan: Legal Analysis and Kompu Gacha Explained - Lexology - practical know-how](#), 2 August 2018.

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United Kingdom

Following its extensive two year inquiry into loot boxes in video games, the UK government selected improved industry-led protection measures as the preferred approach to regulating loot boxes.³ The inquiry found that although loot boxes have similarities with gambling, the ability to cash out rewards is an important distinction and that a loot box prize doesn't normally have real world monetary value.

The measures that the UK government expects to be implemented by industry include restricting loot box purchases to over 18's, transparent spending information and controls and improved access to video game data to inform evidence/research for future policy. The government decided to exclude loot boxes from an upcoming Review of the *Gambling Act 2005*.⁴ This decision was met with criticism from advocates and academics, including GambleAware, that has published research linking loot boxes with gambling harm.⁵ However, the UK government has warned that it will introduce new legislation if industry does not implement sufficient consumer protection measures.⁶

Spain

On 1 July 2022, the Ministry of Consumer Affairs of the Spanish Government released a draft bill designed to prohibit minors from accessing loot boxes. The proposed legislation would obligate game developers to set self-exclusion mechanisms, spending limits and a complete ban on advertising loot boxes on billboards, marquees, posters, monitors and screens. A draft bill 'Regulating random reward mechanisms associated with interactive leisure software products' was presented by the government for public consultation in July 2022. The bill is expected to be approved by the Council of Ministers and come into operation by January 2024.⁷

Germany

Germany also considered a regulatory approach to loot boxes through legislation and explored both a ban and restricting access by under 18's, but ultimately decided against both measures. In 2021, the government passed an amendment to the *Youth Protection Act*,

³ House of Lords Library, [Loot boxes in computer games: Are they a form of gambling? - House of Lords Library \(parliament.uk\)](#), 6 October 2022.

⁴ Department for Digital, Culture, Media and Sport, **Error! Hyperlink reference not valid.**

⁵ GambleAware, GambleAware responds to the call for evidence on loot boxes, 22 July 2022

[www.begambleaware.org/news/gambleaware-responds-call-evidence-loot-boxes-video-games](#), The Guardian, [UK will not ban video games loot boxes despite problem gambling findings | Gambling | The Guardian](#), 17 July 2022.

⁶ Department for Digital, Culture, Media and Sport, [Companies must do more to ensure safe and responsible gaming and take action on 'loot boxes' to protect young people - GOV.UK \(www.gov.uk\)](#), 17 July 2022.

⁷ Osborne Clarke, [Spanish government publishes draft bill on 'loot boxes' and proposes prohibiting their use to minors](#), 25 July 2022. DLA Piper, [Spanish authorities publish a Preliminary Draft Law regulating loot boxes in Spain](#), 7 July 2022.

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which updated classification rules around loot boxes. Under new rules, the classification of a video game should take into consideration if it has loot boxes, although this will not automatically change the game's rating to 18+.⁸ Currently, video games with loot boxes are still widely available without age restrictions in Germany.

United States

The US has implemented some industry-led measures for regulating loot boxes, such as transparent odds. Nintendo, Microsoft and Sony now disclose the odds on any loot boxes in their video games, while Apple and Google require disclosure of odds for all mobile applications with loot boxes. There is some debate as to whether transparent odds in loot boxes offer adequate protection to consumers. In 2019, Congress introduced a bill that would prohibit game publishers and distributors from offering pay-to-play features in games and digital entertainment products to consumer under 18 years.⁹ The bill was referred to the Committee on Commerce, Science and Transportation by the Senate, and has not progressed. In 2020, a Fair Trade Commission workshop raised the issue of loot box regulation.¹⁰ Despite this, there is currently no indication of efforts to further regulate loot boxes through legislation.

The Netherlands

Current regulations under the Dutch Gambling Act (Wet Op de Kansspelen or WOK) prohibits the offer of a game of chance without a licence granted by the Dutch regulator (Kansspelautoriteit). This previously included loot boxes, but a recent court ruling found that loot boxes do not necessarily violate local gambling laws.¹¹ As a consequence, loot box regulation is currently unclear in the Netherlands. In June 2022, a motion for stricter regulation and a possible outright ban through new legislation was submitted in the lower house of Dutch parliament. New legislation would amend the definition of gambling to include loot boxes in the Netherlands and clarify the current confusion around regulation. The motion has bipartisan support across the major parties.¹²

⁸ European Gaming Industry News, Germany Passes New Law for Games with Loot Boxes, <https://europeangaming.eu/portal//compliance-updates/2021/03/09/88153/germany-passes-new-law-for-games-with-loot-boxes/> 9 March 2021

⁹ United States Congress, S.1629 - A bill to regulate certain pay-to-win microtransactions and sales of loot boxes in interactive digital entertainment products, and for other purposes <https://www.congress.gov/bill/116th-congress/senate-bill/1629>, 23 May 2019.

¹⁰ Federal Trade Commission, Lesley Fair, Loot boxes: What's in Play? 14 August 2020 <https://www.ftc.gov/business-guidance/blog/2020/08/loot-boxes-whats-play>

¹¹ Clifford Chance, Orsolya Gondos, [The untimate loot drop: the Netherlands is planning to ban loot boxes in video games](#), 6 September 2022. Raad van State, [Penalty payment wrongly imposed: 'loot boxes' in computer game FIFA22 are not a game of chance - Council of State \(raadvanstate.nl\)](#)

¹² New Musical Express, [Six Dutch parties propose bill to ban loot boxes in the Netherlands \(nme.com\)](#), 4 July 2022.

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Belgium

In 2018, the Belgian Gaming Commission determined that a reward obtained from a gambling activity need not be of monetary value, and passed laws requiring computer gaming companies to remove loot boxes from games offered in Belgium or risk criminal prosecution.¹³ Some video game developers responded by removing their games from the Belgium market. A July 2022 study by the University of Copenhagen found that the 'ban' has not been effectively enforced, and game developers have been ignoring the regulation change, based on the wide availability of loot boxes amongst the 100 highest grossing mobile games in Belgium.¹⁴ The study also found game developers that have complied with the ban have felt disadvantaged, while technical measures taken by companies to comply with the ban have been found to be easily circumvented.

¹³ International Association of Gambling Regulators, [Exploring the link between loot boxes and gambling behaviour - IAGR - International Association of Gaming Regulators](#) 7 October 2022.

¹⁴ Leon Y. Xiao, IT University of Copenhagen, [OSF Preprints | Breaking Ban: Belgium's ineffective gambling law regulation of video game loot boxes](#) 28 July 2022.

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IQ22-000150

Division/Agency: DIV - Online Safety Media and Platforms

Hansard Reference: Spoken, Page No. 8 (30 November 2022)

Topic: Prohibition on gambling and sports betting during live sporting broadcasts

Chair, Peta Murphy MP asked:

CHAIR: I have a couple of quick questions. We have six minutes or so left. Obviously, with big football codes there's sports betting agencies, sponsor names advertised on jumpers, but also there is advertising around the grounds, which might not be an ad saying 'go and bet at the pub with your mates', but it's clear the agencies are doing it to get their name out there. Why is that not captured by the prohibition on advertising, gambling and sports betting during live sporting broadcasts?

Mr Carlon : That's a very good question. If I turn my mind back a few weeks to the consistent gambling messaging extensive consultation that DSS undertook with both gambling providers but also with the media industry—it became very clear that it's a complex environment and that there are aspects of interactive gambling that clearly the Commonwealth regulates through the IGA. There are elements of gambling regulated by the states and territories. But what was clear is that there is not necessarily specific clarity on how signage at stadiums, sponsorship on jumpers, someone holding up a sign in a crowd—how all of that's regulated. The naming of stadiums is something else you've mentioned.

CHAIR: Is there an argument that it actually currently is covered by the IGA and that approach has been taken, or is it just that there is something that means that it's not?

Mr Carlon: It's definitely not covered by the IGA, because it's not either a scheduling of broadcasting or a code contravention. So, it's not covered by the IGA or the BSA in those respects.

CHAIR: Could we tweak the IGA to say that any advertising of that form during live broadcast is prohibited in the same way that a scheduled ad is prohibited?

Ms Sullivan: I'd prefer to take that on notice, Chair. I'm conscious I'm not a lawyer and you are. It really would come down to the scope of the communications power in the constitution. I'm happy to take that on notice. Our power to regulate in this space is derived from that.

CHAIR: I'm very happy for you to do that.

Answer:

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department) recognises that the prevalence of gambling advertising, including during sporting broadcasts, has become a matter of public concern.

As set out in the department's 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 (the Inquiry), this is a complex regulatory area and goes

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to the interaction between the Commonwealth's law making power and that of the states and territories. The overlapping jurisdictional regulations covering gambling advertising, together with industry codes of practice, also further complicates matters.

The current rules on gambling advertising scheduling and content are:

- The *Interactive Gambling Act 2001 (Cth)* (IGA) prohibits the advertising of prohibited interactive gambling and unlicensed regulated interactive gambling services under Part 7A. This extends to broadcasting, online and publishing. We note there are also provisions around incidental advertising.
- Rules relating to the scheduling of gambling promotions on commercial and subscription television and radio are set out in co-regulatory codes of practice.
- Rules relating to the scheduling of gambling promotions during online live streams of sporting events are set out in online content service provider rules under Schedule 8 of the *Broadcasting Services Act 1992 (Cth)*, which is administered by the Australian Communications and Media Authority.
- The content of gambling advertising is largely regulated by the platform neutral advertising self-regulatory framework administered by the Australian Association of National Advertisers.
- Advertising in outdoor settings, including in stadiums and player jerseys, is the responsibility of states and territories.

The primary source for the Commonwealth to make laws in regard to these matters is the 'communications power' in the Australian Constitution (section 51(v)). The question as to whether the Commonwealth has authority under the Australian Constitution to make laws amending the IGA to limit what broadcasters can televise during live sporting events, for example, gambling sponsorship displayed as logos at sportsgrounds, on player jerseys and on scoreboards and the naming of stadiums, would require careful examination (including an assessment of the constitutional feasibility). This would occur in the course of developing a considered and detailed policy/law reform proposal if the proposal was supported by Government.

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IQ22-000151

Division/Agency: DIV - Online Safety Media and Platforms

Hansard Reference: Written question 9 December 2022

Topic: Regulation of online gambling

Chair, Peta Murphy MP asked:

The Committee has heard that regulation of online gambling is complex and involves several Australian government agencies and departments, in addition to the states and territories. Are there any barriers (constitutional or otherwise) to establishing national regulation and a national regulator for online gambling in Australia?

Answer:

As outlined in the Department of Infrastructure, Transport, Regional Development, Communications and the Arts' (the department) submission, online gambling in Australia is regulated by a combination of state and territory, and Commonwealth laws. The question as to whether the Commonwealth has authority under the Australian Constitution to make laws to establish national regulation or a national regulator would require careful examination (including an assessment of the constitutional feasibility). This would occur in the course of developing a considered and detailed policy/law reform proposal if the proposal was supported by Government.

That said, there are various examples of the jurisdictions working together in an effort to minimise gambling harm, most notably the establishment of a national gambling regulator in 2012 (repealed in 2014), and the current National Consumer Protection Framework for online wagering (National Framework).

In November 2012, the *National Gambling Reform Act 2012* was passed by the Parliament to reduce the harm caused by electronic gaming machines (EGMs or 'pokies'). The Act included the establishment of a national regulator with monitoring, investigation and enforcement powers. In 2014 the Coalition Government introduced the Social Services and Other Legislation Amendment Bill 2013 (passed 25 March 2014) which repealed these reforms in favour of the implementation of a voluntary pre-commitment scheme, and a focus on responsible gambling and industry self-regulation.

One of the recommendations of the 2015 Review of Illegal Offshore Wagering by the Hon Barry O'Farrell was to address the fragmented, inconsistent nature of online gambling regulation and to improve the effectiveness of legal protections for consumers. In November 2018 the Commonwealth, states and territories collaborated together to establish the National Framework following an 18 month consultation process involving the online wagering industry, sporting bodies, academia, the community and financial sectors, broadcasters and problem gamblers. The National Framework consists of 10 consumer

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protection measures to help mitigate the risk of gambling harm, which have been implemented through Commonwealth, State and Territory legislation.

The Department of Social Services is responsible for the National Framework.