

Chapter 4

Need for government response

4.1 It was argued that regardless of whether loot boxes meet the current legal definition of gambling under the *Interactive Gambling Act 2001* (IGA), the potential negative impact of loot boxes on users, particularly underage and vulnerable users, is such that some form of government intervention is required.

4.2 While submitters provided a range of suggestions, evidence largely focussed on three key strategies: ensuring adequate consumer protection frameworks are established, including enhancing educational material and improving parental controls or opt-out mechanisms; amending the classification framework to restrict underage access to games containing loot boxes; and improving the labelling of games containing loot boxes.

4.3 The video game industry also expressed its willingness to continue to work with regulators to ensure the protection of children and vulnerable users from harm eventuating from video games.

4.4 This chapter outlines the evidence received in relation to these matters.

Lack of homogeneity

4.5 Submitters highlighted that before government intervention is considered, it is important to note that loot boxes are not a homogenous mechanism and that the risk of harm to users varies according to both loot box characteristics, and user vulnerabilities. As such, any government response must be nuanced in its approach.

4.6 Ms Margaret Anderson, Director, Classification Board, stated that 'one of the important notions...is that this whole construct of a lot box is incredibly broad and...there is no easy clear definition'. Ms Anderson also told the committee that 'whether or not a loot box is akin to gambling is something [which should be kept]...separate from the other kinds of games where you have very clear simulated real life gambling taking place'.¹

4.7 It was suggested that the loot boxes most in need of a government response are those which meet the psychological criteria for gambling as outlined in Chapter 3, and which have the ability for users to 'cash out' items. It was suggested that other types of loot boxes also warrant a government response, but arguably less stringent regulation. For example, Dr James Sauer and Dr Aaron Drummond (Sauer and Drummond) recommended a 'two-tiered regulatory response' as described below.

1 Ms Margaret Anderson, Classification Board, *Proof Committee Hansard*, 17 August 2018, p. 37.

- Loot boxes which meet the psychological definition of gambling and the legal definition, or where loot boxes meet the psychological definition of gambling and where winnings can be 'cashed out', should be subject to regulation which restricts access to players over the legal gambling age. Further, games that allow players to cash out items via the distribution platform itself may 'warrant regulatory oversight as bona fide gambling operations'.²
- In addition, games which include loot boxes which meet the psychological definition of gambling but do not include the ability to cash out winnings, should be reviewed and classified with an increased recommended minimum age.³

4.8 Dr Sauer argued that any government response should consider the mechanics of the loot box system, and in particular how the system is accessed. Dr Sauer explained:

We've mentioned a couple of times this idea that not all loot boxes are created equal and not all loot boxes are homogenous. One criteria that we haven't mentioned explicitly yet but I think is import to consider is that, in the loot box mechanisms that we investigated, of the 22, there were four that didn't involve a cash purchase. Access to the reward mechanism was based on something other than payment. In informal conversations I've had with gamers and being a gamer myself...there's a difference with a reward that you get based on merit. You achieve something in the game. You complete a difficult task and you get access to a reward...Those are, I think, qualitatively different from mechanisms that you have to pay to access.⁴

4.9 Professor Elizabeth Handsley, President, Australian Council on Children and the Media (ACCM) told the committee that where loot boxes are accessed through skill, 'it seems to be quite a different issue' as the primary concern is the 'potential for money to be spent that people don't have'. Professor Handsley explained:

For example, it's no longer predatory monetisation because the company isn't earning anything from it. They're rewarding skill rather than providing something in return for money. That does change the dynamic somewhat.⁵

4.10 Dr Sauer concluded that in considering a response to loot boxes, the five psychological criteria of gambling could be used to determine 'which types of loot

2 Dr James Sauer and Dr Aaron Drummond, *Submission 3*, p. 7.

3 Dr James Sauer and Dr Aaron Drummond, *Submission 3*, p. 7. Games classification will be expanded later in this chapter.

4 Dr James Sauer, *Proof Committee Hansard*, 17 August 2018, p. 6.

5 Professor Elizabeth Handsley, Australian Council on Children and the Media (ACCM), *Proof Committee Hansard*, 17 August 2018, p. 23.

boxes are more or less likely to be problematic' and that 'the issues of an exchange of money seems to us to be the first to consider'.⁶

Need for regulation

4.11 Submitters argued that consumer protection and regulatory frameworks in relation to loot boxes are 'largely absent in Australia'⁷ though it was noted that some individual game publishers have voluntarily adopted age restrictions on major distribution platforms such as *Xbox Network*, *Steam* and *PS Store*. However, it is 'not clear how robust these restrictions are'.⁸

4.12 Mr Tony Phillips, Strategic Advisor, Knowledge and Policy, Victorian Responsible Gambling Foundation (VRGF), told the committee that 'there is a case for stronger regulation than there is currently'. In particular:

...there are very few regulations in place that seem to address or be built on assessments of matters such as whether or how children interact with loot boxes, the effects that this might have and the risk of features of loot boxes creating obsessive or loss-of-control harms among those who use them regularly or frequently.⁹

4.13 The Australian Institute of Family Studies (AIFS) recommended that loot boxes should be a 'key priority for regulation'. It submitted that the in-game loot box mechanism is a 'key functional element in allowing the inter-change between various forms of virtual and real currency, and it facilitates a wider 'skin' gambling economy'. Further:

In-game payment for the chance to open 'loot boxes containing random but potentially valuable virtual items should also be understood as a gambling practice. At present 'loot-box' games are available to players with no age verification, and without any harm prevention measures in place.¹⁰

4.14 It was recommended that regulation needs to consider two aspects: first, whether it is appropriate that minors are exposed to a mechanism that is psychologically similar to other forms of gambling, and whether restrictions of access should be implemented; and secondly, whether consumer advice and consumer protections are required to ensure that players, and the parents and guardians of underage players are able to make informed choices regarding exposure to loot boxes.¹¹

6 Dr James Sauer, *Proof Committee Hansard*, 17 August 2018, p. 6.

7 Dr James Sauer and Dr Aaron Drummond, *Submission 3*, p. 2.

8 Dr James Sauer and Dr Aaron Drummond, *Submission 3*, p. 6.

9 Mr Tony Phillips, Victorian Responsible Gambling Foundation (VRGF), *Proof Committee Hansard*, 17 August 2018, p. 14.

10 Australian Institute of Family Studies, *Submission 10*, p. 4.

11 Dr Drummond, *Proof Committee Hansard*, 17 August 2018, p. 4.

Consumer protection

4.15 It was argued that one of the key reasons for increased regulation is the need for improved consumer protection. In particular, ensuring: consumers are aware of the costs associated with loot boxes; that they are able to make rational decisions regarding purchases; and that players are provided with sufficient information to make informed choices. For example, Mr Phillips, VRGF, stated:

That's where we're really asking questions such as: are consumers properly aware of the prices that they're paying for what they're doing? Are they being sent appropriate price signals? Are they able to make rational decisions about whether they're getting value for their money, or is there an element of manipulation going on there? Is there an element of omission of telling people things that they need to know? For that matter, coming out of that consumer strand: should people have the right to choose, when they are playing games, not to be exposed to loot boxes and the conditioning effects that come from certain types of loot boxes? Should consumers have the ability to opt out?¹²

4.16 Some submitters concluded that currently, players have 'literally no idea what they are purchasing for their money'.¹³

4.17 However, the Interactive Games and Entertainment Association (IGEA) submitted that:

Loot boxes are no different than the many other "surprise" reward consumer products that already exist in the market, all of which are subject to the current consumer protection and regulatory framework. It would not be appropriate to impose a special regulation on the video game industry.¹⁴

4.18 IGEA submitted that the *Competition and Consumer Act 2010*, including the Australian Consumer Law, provides consumer protections that would apply to the sale of loot boxes in video games. In particular, game publishers are required to ensure that they do not engage in misleading or deceptive conduct (or conduct that is likely to mislead or deceive). IGEA argued that:

If there are concerns about the advertising and operation of loot boxes, including that such advertising and operation are misleading or deceptive, Australia's current consumer protection laws are well placed to address such concerns. The penalties for contravening the Australian Consumer Law are very significant (particularly thanks to recent reforms) and thus operate as an effective deterrent to misleading and deceptive practices.¹⁵

12 Mr Tony Phillips, VRGF, *Proof Committee Hansard*, 17 August 2018, p. 14.

13 Mr Glen Bruton, *Submission 19*, p.1.

14 Interactive Games and Entertainment Association (IGEA), *Submission 3*, p. 11.

15 IGEA, *Submission 3*, p. 11.

4.19 IGEA noted a suite of other laws, enforcement options and initiatives which would also apply to loot boxes including:

- the common law of contract, including in relation to the legal capacity of minors and children to enter contracts;
- laws relating to electronic transactions;
- state and territory sale of goods laws;
- state and territory laws relating to minors entering contracts;
- laws relating to pre-contractual conduct and disclosure obligations which may apply when accessing payment facilities on mobile devices; and
- the law protecting personal information collected by companies.¹⁶

4.20 Further, in 2013, the Commonwealth Consumer Affairs Advisory Council released its report 'App purchases by Australian consumers on mobile and handheld devices'. IGEA highlighted that:

This report did not identify the need for additional regulation, and acknowledged that the existing consumer laws and other regulatory frameworks were adequate to address any potential issues with in-game purchases, including micro-transactions (and by extension, loot boxes). Since this report, the video game industry has continued to improve the use of micro-transactions in games, including through the use of parental controls, disclaimers and detailed disclosures.¹⁷

Classification

4.21 The following sections outline the current classification arrangements as they apply to video games, and the recommendations made by witnesses that the National Classification Scheme should be amended to restrict or regulate access to loot boxes.

National Classification Scheme

4.22 The National Classification Scheme is a cooperative arrangement between the Australian and state and territory governments. The Australian Government is responsible for classifying computer games, while state and territory governments are responsible for regulating the sale, exhibition and advertising of those games.¹⁸

4.23 Under the National Classification Scheme, computer games must be classified before they are sold or published in Australia, unless the game is exempt from classification. The Classification Board is established under the *Classification (Publications, Films and Computer Games) Act 1995* (Classification Act), and is

16 IGEA, *Submission 3*, p. 11–12.

17 IGEA, *Submission 3*, p. 12.

18 Mr George Sotiropoulos, Assistant Secretary, Classification Branch, Department of Communications and the Arts, *Proof Committee Hansard*, 17 August 2018, p. 36.

responsible for classifying games submitted to it in accordance with the National Classification Code, and Guidelines for the Classification of Computer Games 2012. Both the Code and the guidelines are established under the Classification Act. It should be noted that any amendments to the Code or guidelines would also require the agreement of all participating ministers as the National Classification Scheme is administered under an intergovernmental agreement between the Australian and state and territory governments.¹⁹

4.24 Under the National Code and the guidelines, computer games are able to be assigned a range of classifications from G to R18+, and if a game cannot be accommodated in the R18+ category, it may be refused classification. Under the Classification Act, the Classification Board is required to assign consumer advice for each classification that is awarded.²⁰

4.25 Of particular relevance to this inquiry is the consumer advice that a game contains 'simulated gambling', however this is only used 'in relation to games where you are actually engaged in similar real life games, such as poker or slot machine style [games]'. In addition, the Classification Board may use the phrase 'gambling references', though this is only used occasionally and 'it depends very much on the context of the presentation of the game'.²¹

Classification process

4.26 In order for a game to be classified, an applicant can either supply the Classification Board with a copy of the game or they can provide a detailed written description of the gameplay footage. In addition, applicants must provide a 'contentious material statement' which addresses the six classifiable elements. These elements are: themes, violence, sex, coarse language, drug use and nudity. Gambling is considered under 'themes'.²²

4.27 Ms Anderson, Classification Board, told the committee that if an applicant applies using a detailed written description, they must answer a question which states 'Does the game contain gambling themes and/or elements (whether real or simulated)?' If the answer to this question is in the affirmative, then the applicant must provide a detailed description. Ms Anderson noted that the wording of this question does not provide any definition of what gambling may constitute and as such industry authorised assessors and applicants are likely to understand this question to mean

19 Mr George Sotiropoulos, Assistant Secretary, Classification Branch, Department of Communications and the Arts, *Proof Committee Hansard*, 17 August 2018, p. 36.

20 Ms Margaret Anderson, Director, Classification Board, *Proof Committee Hansard*, 17 August 2018, p. 36.

21 Ms Margaret Anderson, Director, Classification Board, *Proof Committee Hansard*, 17 August 2018, p. 36.

22 Ms Margaret Anderson, Classification Board, *Proof Committee Hansard*, 17 August 2018, p. 36.

'roulette, blackjack, poker, et cetera; they are not necessarily reading that question and then thinking of something such as the construct of a loot box, for example'.²³

4.28 Mr Sotiropolous, Assistant Secretary, Classification Branch, Department of Communications and the Arts, noted that that the department has recently commissioned qualitative research into the awareness, understanding and perceived impact of loot boxes; expectations of classification and government regulation for loot boxes; content with an element of chance; micro-transactions and games with simulated gambling. This research also examines the research that parents and carers undertake before allowing children to play games.²⁴

4.29 Mr Sotiropolous explained that though the department has not previously considered providing a definition of gambling, in light of 'what's been going on internationally and nationally around loot boxes and gambling, we commissioned the research to actually better understand the issues'.²⁵

4.30 In addition to providing a copy of the game or a detailed written description, Ms Anderson explained that applicants can have games assessed through the industry assessor scheme. Under this scheme industry participants are accredited by the Department of Communications and the Arts as authorised assessors of games. Ms Anderson told the committee that industry assessors provide the Classification Board with reports analysing games against the six classifiable elements, and including a recommendation that a game be classified at G, PG or M. Ms Anderson noted that industry assessors cannot make recommendations over the M rating.²⁶

4.31 Following the submission of an industry assessor report, the Deputy Director of the Classification Board reviews the report and determines whether the recommended classification and consumer advice is appropriate. If it is determined to be inappropriate, the game can be audited. In addition, the Board randomly audits between 10 and 18 per cent of applications per year.²⁷

23 Ms Margaret Anderson, Classification Board, *Proof Committee Hansard*, 17 August 2018, p. 38–39.

24 Mr George Sotiropolous, Department of Communications and the Arts, *Proof Committee Hansard*, 17 August 2018, p. 37.

25 Mr George Sotiropolous, Department of Communications and the Arts, *Proof Committee Hansard*, 17 August 2018, p. 39.

26 Ms Margaret Anderson, Classification Board, *Proof Committee Hansard*, 17 August 2018, p. 39.

27 Ms Margaret Anderson, Classification Board, *Proof Committee Hansard*, 17 August 2018, p. 39.

4.32 Ms Anderson told the committee that applicants are also able to have games classified by demonstrating the game to the Board. Ms Anderson explained that this is often utilised for 'very high-profile complex' games.²⁸

International Age Rating Coalition

4.33 Due to the volume of digital games being developed and published, Australia became a founding member of the International Age Rating Coalition (IARC), a partnership between Australia, Canada, Europe, Brazil, South Korea, and the United States of America. The IARC established a questionnaire to classify games in participating shopfronts including Google Play, Microsoft, Nintendo, Sony and Oculus. The questionnaire is completed by game developers and is processed using an algorithm which produces a classification rating for each of the member jurisdictions. Mr Sotiropoulos, Department of Communications and the Arts, explained that the IARC classification tool has classified over 800,000 games over the past two years.²⁹

4.34 Under the IARC system, there is also a global review process known as 'global overrides' where an alert is generated if a member country is assessing a game. Mr Sotiropoulos explained:

Typically, what happens in each year, at least the top 2000 or 3000 games by users will be reviewed by one or other of the participating countries. And, what happens is, once you assess the game, the original IARC rating for the country can be changed. So, if you do a review and the rating seems too low, we can lift that and we'll get that advice. So, each week, we get advice from all the countries of what reviews they've done. We'll go through each of those reviews, assess them and determine whether, based on that evidence, we should change our rating. Obviously, the board actually does have the power to revoke and replace any IARC decision, so we work with the board on those global overrides. Where there's something contentious, staff assessors will go in and play the game themselves and, based on that, they'll make an assessment. Then, they'll go and see the director and the board, and discuss that to make the change.³⁰

28 Ms Margaret Anderson, Classification Board, *Proof Committee Hansard*, 17 August 2018, p. 39.

29 Mr George Sotiropoulos, *Proof Committee Hansard*, 17 August 2018, p. 36.

30 Mr George Sotiropoulos, *Proof Committee Hansard*, 17 August 2018, p. 41.

Mandatory classification

4.35 The AIFS noted that the Classification Guidelines currently 'do not explicitly address gambling (although gambling appears to be classified under the category of 'themes' in a somewhat adhoc manner)'. Further:

The classification system currently treats games as content only, rather than recognising the way in which they constitute or facilitate specific practice, such as gambling in virtual currency.³¹

4.36 The committee heard recommendations that the Australian Classification Board should 'consider revising their guidelines to ensure all games with loot box systems that meet the psychological definitions of gambling are placed in an age-restricted category (either MA15+ or R18+)'.³² For example, the New South Wales Government suggested that the Australian Government could consider whether the Classification Board could award games which contain 'gambling like features' a higher age classification, even where the game itself does not constitute gambling. This would include:

...for example, where a game includes a loot box that involves features that mirror or are similar to those included in-game on electronic gaming machines, such as "slot-based" features to award prizes, or features that use sensory effects to encourage participation in the feature, such as flashing lights and reward-based sounds.³³

4.37 Sauer and Drummond argued that the guidelines should consider the prominence of loot box systems in a game, and the specific features of the system (e.g. the reinforcement schedules in operation and the odds of obtaining very high utility/desirability items).³⁴ Dr Drummond stated:

...anything that's got the ability to cash out and meets all five of those criteria that we've outlined psychologically to represent gambling would actually then be in a restricted category – possibly R18+. Where they were less similar – perhaps they don't meet all the criteria – perhaps it would be more appropriate to put them in an MA15+ restricted category in those cases.³⁵

4.38 Similarly, Professor Handsley, ACCM, told the committee that consideration should be given to 'the development of a rule which would automatically assign a classification of R18+ to any content that amounts to gambling or is similar to

31 Australian Institute of Family Studies, *Submission 10*, pp. 3–4.

32 Dr James Sauer and Dr Aaron Drummond, *Submission 2*, p. 7.

33 New South Wales Government, *Submission 33*, pp. 3–4. See also, Attorney-General and Minister for Justice (Qld), *Submission 1*, p. 3; Victorian Government, *Submission 35*, p. 2.

34 Dr James Sauer and Dr Aaron Drummond, *Submission 2*, p. 7.

35 Dr Aaron Drummond, *Proof Committee Hansard*, 17 August 2018, pp. 5–6.

gambling, because people under 18 are not allowed to gamble, and therefore, they should not be exposed to gambling content in the games that they play'.³⁶

4.39 However, Professor Handsley, like Sauer and Drummond, noted that consideration should be given to the mechanics of loot boxes when determining classification. Professor Handsley explained:

One might even have a graded system where certain kinds of loot boxes would be MA15+ and others would be R18+. We would draw the line, hopefully, based on the potential for psychological harm as well as the monetisation aspect. If not all loot boxes involved monetisation then that could be taken into account as well.³⁷

4.40 Classifying games containing loot boxes as MA15+ or R18+ was described as carrying a 'strong message to parents and also ultimately to young people and even children about the suitability of content and the need to be aware of that content'. Professor Handsley stated that:

We would be quite confident that a lot of parents and carers who wouldn't be so terribly concerned about their children playing games that they've accessed online if they became aware that those games were rated R18+ or MA15+ would wing into action and take more notice and take more care about that kind of content...Nothing is ever going to stop 100 per cent of children and young people from accessing inappropriate content but we know that it would greatly improve the situation as far as children accessing inappropriate content is concerned'.³⁸

4.41 Mr Alex Knoop argued that including loot boxes as a classifiable element with a mandatory R18+ rating would both automatically exclude minors from 'material likely to cause harm' and allow adults to 'play what they want', which are objectives of the Classification Board.³⁹

4.42 It was also submitted that 'the change in ratings may encourage games developers to reduce chance based content in their products'⁴⁰ and discourage 'developers and publishers from including them in games targeted at minors'.⁴¹ Mr Knoop told the committee that a mandatory R18+ rating would:

...force developers to make serious considerations as to who their target audience will be, namely if they choose to pursue loot crates they can only target adults, or they can remove the loot crates in favour of a lesser

36 Professor Elizabeth Handsley, ACCM, *Proof Committee Hansard*, 17 August 2018, p. 22.

37 Professor Elizabeth Handsley, ACCM, *Proof Committee Hansard*, 17 August 2018, p. 24.

38 Professor Elizabeth Handsley, ACCM, *Proof Committee Hansard*, 17 August 2018, p. 24.

39 Mr Alex Knoop, *Submission 12*, p. 34.

40 Connect Health and Community, *Submission 7*, p. 3.

41 Mr Julian Rzechowicz, *Submission 22*, pp. 5-6.

classification, such as MA15+ or M etc. potentially expanding their customer base.⁴²

4.43 However, Ms Anderson, Classification Board expressed concern regarding any proposal for 'blanket or sweeping' requirements that games containing loot boxes be classified at a particular rating. Ms Anderson told the committee:

I think the nuance and innuendo that sits in games is huge. I would be very concerned, if we were to suddenly go from having a degree of flexibility that we have in our current classification system to replacing that with a very black and white direction that all games with any kind of direct or simulated gambling content or reference in any shape, manner or form to gambling would automatically be R18+.⁴³

4.44 Ms Anderson suggested that it may be appropriate for some styles of loot box mechanisms 'to be in some kind of age-restricted classification' but suggested that this issue is 'very fertile ground for further discussion and research'.⁴⁴

Labelling

4.45 It was recommended that games which contain loot boxes should be clearly labelled as such.⁴⁵ For example, Sauer and Drummond recommended that the Australian Classification Board adopt the content descriptor 'Simulated Gambling', as the Entertainment Software Ratings Board (ESRB) in the United States of America has. Sauer and Drummond recommended that distributors be required to apply this descriptor to all games with loot boxes that meet the psychological criteria for gambling. The descriptor should be displayed next to the classification either on the box or the website of the game.⁴⁶

4.46 Dr Drummond told the committee that labelling would 'increase the consumer advice that's available'. Dr Drummond explained:

Currently, this information is not given to consumers on the box of the game when you go to purchase it or on the website of the game when you go to purchase it. This is something that could easily be done. This would just be additional information to the consumers saying there are loot boxes in this game, there is simulated gambling in this game – whatever the content descriptor is that you would like to use for that.⁴⁷

42 Mr Alex Knoop, *Submission 12*, p. 35..

43 Ms Margaret Anderson, Classification Board, *Proof Committee Hansard*, 17 August 2018, pp. 41–42.

44 Ms Margaret Anderson, Classification Board, *Proof Committee Hansard*, 17 August 2018, p. 42.

45 Australian Institute of Family Studies, *Submission 10*, p. 5.

46 Dr James Sauer and Dr Aaron Drummond, *Submission 2*, p. 7.

47 Dr Aaron Drummond, *Proof Committee Hansard*, 17 August 2018, p. 5.

4.47 Mr Blake Mizzi, Board Member, Game Developers Association of Australia (GDAA), noted that the ESRB had received an increased volume of complaints regarding loot boxes. Following an investigation, it found that:

...in almost all cases, parents and the aggrieved parties simply misunderstood what a loot box was or they misunderstood that in-game purchases were actually with real dollars. In many cases they had provide payment details to their children, not realising that their children could make repeat purchases and that their children didn't realise the value of these transactions.⁴⁸

4.48 The ESRB made a decision to include a description in the classification label that video games include in-game purchases, 'as you would if the game contained drugs or violence or adult themes'.⁴⁹ Mr Mizzi offered his support for the recommendation that games sold in Australia should be labelled if they include in-game purchases.⁵⁰

4.49 Mr Mizzi, GDAA, noted that some app stores have unilaterally begun changing the descriptions of games to include in-app purchases. For example, the Apple App Store has changed its description of 'free games' to 'free, offers in-app purchases'. Mr Mizzi told the committee that 'the reason behind this is not due to any regulation change around the world. It's in the process for game developers to look after their player base, because that's the greatest incentive there is'.⁵¹

Limits and exclusions

4.50 Submitters argued that players should be provided with the opportunity to control their interaction with loot boxes through self-exclusion or self-selected limits on loot box interactions. For example, Mr Phillips, VRGF, told the committee:

...players should be able to put a limit on the number of loot boxes that were made available to them...They might even be able to limit the amount that they could spend on loot boxes so that again, as is already the case with voluntary pre-commitment here in Victoria [for other forms of gambling such as pokies], someone can say, 'I want to put a limit; I don't want to spend more than \$100 in a week,' and they get told when they reach that limit. In fact, in the case of loot boxes you might want to consider even putting in a hard limit, where just that is what will happen, and then there'll be 24 hours before it resets.⁵²

48 Mr Blake Mizzi, GDAA, *Proof Committee Hansard*, 17 August 2018, pp. 10–11.

49 Mr Blake Mizzi, GDAA, *Proof Committee Hansard*, 17 August 2018, pp. 10–11.

50 Mr Blake Mizzi, GDAA, *Proof Committee Hansard*, 17 August 2018, p. 12.

51 Mr Blake Mizzi, GDAA, *Proof Committee Hansard*, 17 August 2018, p. 11.

52 Mr Tony Phillips, VRGF, *Proof Committee Hansard*, 17 August 2018, p. 15. See also Mr Julian Rzechowicz, *Submission 22*, p. 5.

4.51 Mr Phillips added that 'players should also be able to self-exclude or opt out of purchasing or being offered loot boxes'⁵³ and that this could be achieved through the provision of loot-box-free versions of games. Mr Shaw, VRGF stated that:

One thing we looked at was whether you could actually have a loot-box-free version of the game. You may have two versions, one where the loot boxes were included, for people who wanted to play that style of game. You might have another version where there is no loot box or payment for loot boxes involved. If people wanted to play in a different way they would be able to do so.⁵⁴

4.52 Similarly, Connect Health and Community submitted that game developers should be required to include a parental lock feature in the setting menu. Further:

Where this feature is made available it should require the reacceptance of terms following significant upgrades which change gambling features or reduce the likelihood of achieving the desired outcome.⁵⁵

4.53 Other suggestions to control spending, particularly by children, included that games should be required to notify an account holder such as a parent or guardian when a purchase is made,⁵⁶ or parents should be required to confirm purchases.⁵⁷

4.54 It was particularly highlighted that parents often do not understand video games and are seeking resources and more education on the issue, both for themselves and their children. Mr Stephen Dupon, Director, Institute of Games stated that:

In terms of parents: there is a great lack of understanding about what games are and the impact that they have on children. I think there is a lack of mature conversation on the impact of games, especially in the media or especially when you talk to people. Either they believe that all games are bad or all games are good. I believe there should be, or there is a need for, a broader conversation and more resources and information for parents so they can form better opinions and better understanding.⁵⁸

4.55 The development of public education campaigns to better inform gamers, parents and the general public was also recommended by the AIFS. It submitted that information regarding the harms associated with micro-transactions, and gambling more generally, in online video games should be made available.⁵⁹

53 Mr Tony Phillips, VRGF, *Proof Committee Hansard*, 17 August 2018, p. 15.

54 Mr Lindsay Shaw, VRGF, *Proof Committee Hansard*, 17 August 2018, p. 17.

55 Connect Health and Community, *Submission 7*, p. 3.

56 Mr Tony Phillips, VRGF, *Proof Committee Hansard*, 17 August 2018, p. 15.

57 Mr Isaac Leeder, *Submission 28*, p. 1.

58 Mr Stephen Dupon, Institute of Games, *Proof Committee Hansard*, 17 August 2018, p. 28.

59 Australian Institute of Family Studies, *Submission 10*, p. 5.

4.56 Similarly Mr Dupon stated that 'there needs to be more resources and prevention programs, and more education of children...I think they should be developed with the gaming industry in a co-designed way because, in my experience, the gaming industry has the best interests of children at heart as well'.⁶⁰

Disclosure of odds

4.57 As noted in Chapter 2, China made the decision to require games to display the odds associated with loot boxes in games. A number of witnesses recommended that the Australian Government implement a similar requirement. For example, Mr Phillips, VRGF submitted:

We thought that the odds of loot boxes containing any prizes on offer should be available, visible, and accessible. I think a point was made in an earlier part of this hearing that it should be at the time that you make the purchase. You should have a sense of how likely you are to actually get that purchase. That be done as odds, but it could also be done as it is in some of the pokies information...It could be something like 'the theoretical chances' or the 'theoretical amount of money you would have to spend to get this prize would be' based on what the odds would be. So you actually get a sense that this is not a \$1.99 purchase; in fact, theoretically it's much more likely you'll have to spend \$100 to get this, which would send you a better price signal.⁶¹

4.58 Mr Phillips conceded that in the case of poker machines, the disclosure of odds does not 'have much effect' on players at the 'severe end of harm' but that for players at a lower risk of gambling-related harm the information will be of assistance.⁶² Mr Shaw, VRGF, told the committee that the players at a lower risk of harm 'may not stop playing, but it [the knowledge of the odds] would temper the way that they do play'.⁶³ Mr Phillips concluded:

It's about people at an early stage being able to make a rational decision. You might say, 'I'd really like to win that prize', but then I tell you, 'Winning that prize will probably cost you \$100.' That changes what you think it's worth. That allows you to say what is the value in your head, as compared to the actual value you might have to pay, rather than pay \$1.99, pay another \$1.99, pay another \$1.99.⁶⁴

4.59 The AIFS described the introduction of such a disclosure requirement as 'an important response to addressing concerns regarding gambling in current 'loot box'

60 Mr Stephen Dupon, Institute of Games, *Proof Committee Hansard*, 17 August 2018, p. 27.

61 Mr Tony Phillips, VRGF, *Proof Committee Hansard*, 17 August 2018, p. 15. See also Mr Julian Rzechowicz, *Submission 22*, p. 5.

62 Mr Tony Phillips, VRGF, *Proof Committee Hansard*, 17 August 2018, p. 15.

63 Mr Lindsay Shaw, VRGF, *Proof Committee Hansard*, 17 August 2018, p. 16.

64 Mr Tony Phillips, VRGF, *Proof Committee Hansard*, 17 August 2018, p. 16.

games where the odds have not routinely been disclosed'. It submitted that it should be:

...mandatory that players are provided with the odds of selecting each possible in-game item in an easily accessible and understandable way. The variable odds of achieving low value versus highly desired in-game items, and the cost in actual dollar terms of each 'loot box' item, should be clearly shown.⁶⁵

4.60 In addition, it was submitted that the disclosure of odds would offer additional consumer protections including by allowing the Australian Competition and Consumer Commission (ACCC) to 'pursue developers who deliberately mislead consumers'. The publication of odds would also expose games with 'astronomically low odds with virtually no chance of winning'. It also argued that the disclosure of odds would allow parents and guardians to make more informed decisions regarding purchases made by children.⁶⁶

4.61 However, the disclosure of odds was rejected by other witnesses as being 'fairly meaningless' and which has resulted in 'no change in player behaviour'.⁶⁷ Professor Handsley explained that 'the concept of probability is a fairly complex one and one that a lot of even adults have difficulty understanding, particularly if they have some exposure to problem gambling'. As such, 'it would not help at all for children or young people or...possibly even many adults to be disclosing the odds of gaining a particular item from a box before the purchase is made'.⁶⁸

4.62 Similarly, the AIFS noted that the mandatory disclosure of odds 'is only a partial measure, which may have limited effectiveness and does not address young people's access to gambling activities in online video games'.⁶⁹

Industry commitment and cooperation

4.63 Throughout the inquiry, the video game industry reiterated its commitment to ensuring the minimisation of the risk of harm to children, and pointed to a number of measures which have been implemented, including parental controls and labelling. For example, Mr Ron Curry, Chief Executive Officer, Interactive Games and Entertainment Association (IGEA), told the committee that:

The video-gaming industry takes its responsibility to its players, parents and guardians incredibly seriously, and so video games consoles and platforms provide parents and guardians with extensive and robust tools they can use to ensure that children and young users are not allowed to

65 Australian Institute of Family Studies, *Submission 10*, p. 5.

66 Mr Alex Knoop, *Submission 12*, p. 34.

67 Mr Blake Mizzi, GDAA, *Proof Committee Hansard*, 17 August 2018, p. 11.

68 Professor Elizabeth Handsley, ACCM, *Proof Committee Hansard*, 17 August 2018, p. 24.

69 Australian Institute of Family Studies, *Submission 10*, p. 4.

make in-game purchases without obtaining approval in advance. These tools extend to the purchase of any game content and micro-transactions, including loot boxes...⁷⁰

4.64 IGEA highlighted that a number of gaming platforms such as the Nintendo Switch, Xbox One and PlayStation 4 allow parents and guardians to establish purchase restrictions. For example, the Nintendo Switch allows parents to disable purchases outright, and automatically hide content based on the player's age, which prevents the purchase of this content.⁷¹ Mr Curry explained:

I'll start with the major console platforms. Each of them have parental controls. Each of those parental controls, apart from controlling the actual content based on classification, can actually control the spend. You can set up accounts that do not allow spending or that allow you to set a limit to the amount that can be spent. You can insert a certain amount that can only be spent up to. The iteration is slightly different depending on the console, but they are all pretty much the same. When you set up your console, you set up as a parent and you set up an account for your child. You can nominate there whether they can spend, and if they can spend, how much they can spend. If they can spend so much, how frequently can they spend that?⁷²

4.65 The AIFS agreed that in principle, concerns regarding loot boxes could be addressed by publishers themselves. It stated that this could occur through self-regulation or through requirements applied to the industry by regulators. The AIFS expressed a preference for the latter as this would enable 'surveillance measure to be instituted and monitored by an independent government regulatory body'. However, the AIFS noted that both approaches have been observed in response to loot boxes. For example, Apple introduced a requirement for the disclosure of odds for games sold through its IOS Apple store which include randomised virtual items for sale. As noted above, China also imposed a similar requirement for games sold in its jurisdiction.⁷³

4.66 It was suggested that an ethical framework for the video games industry based on the principles of child safety could be developed. Mr Dupon, Institute of Games suggested there are a number of existing frameworks which could be used as a model. For example, the Australian National Principles for Child Safe Organisations which were developed in 2017. This framework includes principles such as 'products or organisations that engage with children, or provide services or products to children, need to design their products with the safety of children as a priority'. Mr Dupon stated that this is 'lacking at the moment in video games'.⁷⁴

70 Mr Ron Curry, IGEA, 17 August 2018, *Proof Committee Hansard*, p. 31.

71 IGEA, *Submission 3*, pp. 12-13.

72 Mr Ron Curry, IGEA, *Proof Committee Hansard*, 17 August 2018, p. 33.

73 Australian Institute of Family Studies, *Submission 10*, p. 4.

74 Mr Stephen Dupon, Institute of Games, *Proof Committee Hansard*, 17 August 2018, p. 26.

4.67 It was also recommended that there should also be better reporting mechanisms, and policies and processes for the games industry to respond to child safety standards. Mr Dupon noted that at present there aren't 'good risk assessments' being conducted on video games and as a result 'we don't really know what the risks are'. Mr Dupon highlighted that risk assessments would ensure that risks to children could be appropriately mitigated.⁷⁵

4.68 Despite the evidence that some companies have implemented parental control mechanisms, the committee also received evidence from parents expressing concern that the video game industry does not provide adequate support to parents. For example, Mr Glen Bruton, stated that while he is an experienced gamer and is confident in his ability to control his children's spending on loot boxes, he is 'concerned with the seemingly deliberate lack of controls implemented' to assist him in doing so.⁷⁶

4.69 The willingness of industry to cooperate in ensuring the protection of children from harms related to video games was acknowledged by witnesses. For example, Mr Dupon stated that 'there is a great commitment to the safety of children and their wellbeing'. However, Mr Dupon also noted that 'at the same time, they [game developers] run a business and they have pressures to make money, just like any business will do'.⁷⁷

4.70 Similarly, the VRGF acknowledged that the use of micro-transactions as a revenue stream for the video game industry is 'legitimate' and noted that 'in many of the questions we're raising, it is not so much about an attack on micro-transactions within a game or a game based on micro-purchases; it's about the way in which they're being delivered and whether that form of delivery is actually in some ways manipulative or might be causing harm'.⁷⁸ Mr Shaw, VRGF, concluded that one of the Foundation's key concerns is where 'there's a convergence between gambling and gaming for children, and again, some of those harms that arise from that'.⁷⁹

4.71 However, representatives of the games industry told the committee that it is important that the games industry is not considered part of the gambling industry. Mr Mizzi, GDAA stated:

There are also clear separations currently between the gambling industry and the games industry, which we are. We typically make games about narrative storytelling, problem solving, puzzle solving, escapism, role playing, sports games, games about superheroes, board games, card games, strategy and educational games. The GDAA does not represent any

75 Mr Stephen Dupon, Institute of Games, *Proof Committee Hansard*, 17 August 2018, p. 26.

76 Mr Glen Bruton, *Submission 19*, p. 1.

77 Mr Stephen Dupon, Institute of Games, *Proof Committee Hansard*, 17 August 2018, p. 28.

78 Mr Tony Phillips, VRGF, *Proof Committee Hansard*, 17 August 2018, p. 18–19.

79 Mr Lindsay Shaw, *Proof Committee Hansard*, 17 August 2018, p. 19.

gambling or betting games companies. We support this inquiry and we really want to stop children from being exposed to the mechanics of gambling.⁸⁰

Prohibition

4.72 Some submitters argued that micro-transactions for chance-based items should be prohibited in online games available in Australia. For example, the AIFS stated that such a prohibition would:

...alleviate the public health risks and associated costs with further normalising gambling in the Australian community through the provision of these items in video games.⁸¹

4.73 The AIFS argued that together with banning loot boxes, the provision of alternative non-randomised mechanics could provide players with a preferable way of obtaining desired in-game items.⁸²

4.74 The committee also received a number of submissions from individuals calling for loot boxes to be prohibited. For example, Ms Stephanie Gray stated that:

Please take a hard stand against this gambling in games and make it illegal. Again make the chance based winning of items in a "loot box" illegal. Let them sell the items individually for a set \$ amount. But the "chance of winning" element needs to be removed. Even more so when companies are using algorithms to encourage people to buy them and then positively reinforce the purchase. That is extremely dangerous territory.⁸³

4.75 However, other submitters acknowledged that micro-transactions are an important source of revenue for game developers and publishers, and that banning loot boxes would have significant financial implications for the video game industry. For example, Mr Kieran Walsh, despite advocating for some form of regulation, submitted that 'the banning of loot boxes would cause quite a lot of harm to the video game industry'. Mr Walsh stated:

On the point about banning loot boxes completely hurting the video game industry, most of the games that include loot boxes are free to play but include loot boxes so the company making the game can make money to pay for the servers that people play on worldwide and for the development costs of making and maintaining the game. If loot boxes were removed completely, that avenue of revenue for those companies would be gone

80 Mr Blake Mizzi, GDA, *Proof Committee Hansard*, 17 August 2018, p. 9.

81 Australian Institute of Family Studies, *Submission 10*, p. 5.

82 Australian Institute of Family Studies, *Submission 10*, p. 5.

83 Ms Stephanie Gray, *Submission 30*, p. 2.

completely, effectively removing their way to pay for the ongoing costs of developing and maintaining a video game.⁸⁴

4.76 It was also noted that in the event of prohibition, consumers can circumvent regulation by utilising technologies such as VPNs to modify their digital location and gain access to international stores where micro-transactions are unregulated. For example, Mr Rzechowicz highlighted that:

...when consumers start to move to alternative regions to access digital goods, all local protections and requirements for transparency would be lost. Australia is a small market and in some cases developers may consider Australian law too costly (or without enough of a profit) to justify continual engagement. If this were to happen, and people were to start shifting regions to continue purchasing these goods, then local protections will have achieved nothing.⁸⁵

84 Mr Kieran Walsh, *Submission 16*, p. 2. The importance of micro-transactions as a revenue stream is outlined in Chapter 1.

85 Mr Julian Rzechowicz, *Submission 22*, p. 6.

