



SUBMISSION TO THE SENATE ENVIRONMENT AND COMMUNICATIONS REFERENCES COMMITTEE JULY 2018

Inquiry into gaming micro-transactions for chance-based items

1. Introduction to ACCM

ACCM is a peak not-for-profit national community organisation whose mission is to support families, industry and decision makers in building and maintaining a media environment that fosters the health, safety and wellbeing of Australian children.

ACCM membership includes ECA (Early Childhood Australia), ACSSO (Australian Council of State Schools Organisations), APPA (Australian Primary School Principals Association), AHISA (Association of Heads of Independent Schools Australia); AEU (Australian Education Union), Parenting Research Centre, Council of Mothers' Union in Australia, NSW Parents Council, SAPPA (South Australian Primary Principals Association), and other state-based organisations and individuals.

ACCM's core activities include the collection and review of research and information about the impact of media on children's development, and advocacy for the needs and interests of children in relation to the media.

This submission has been prepared by Prof. Elizabeth Handsley and Ms Barbara Biggins OAM on behalf of the Board of ACCM.

2. Terms of reference for this Inquiry

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

- a. whether the purchase of chance-based items, combined with the ability to monetise these items on third-party platforms, constitutes a form of gambling; and*
- b. the adequacy of the current consumer protection and regulatory framework for in-game micro transactions for chance-based items, including international comparisons, age requirements and disclosure of odds.*

3. The principles on which this submission is based

- 3.1 Article 17(e) of the UN Convention on the Rights of the Child imposes an obligation on signatories, including Australia, to encourage the development of guidelines to protect children and young people under 18 from material that is injurious to their well-being. Gambling content, and encouragement to gamble, should be treated as relevantly injurious. The obligation in article 17(e) is to be implemented 'bearing in mind' article 18, which provides, among other things, that signatories should provide support to parents and legal guardians in the performance of their responsibilities.

Promoting healthy choices and stronger voices in children's media

3.2 In Australia children under the age of 18 yrs are not permitted to gamble. It is generally accepted that minors should neither be encouraged to gamble nor allowed to do so.

4. Summary statement

Loot boxes are indistinguishable from traditional forms of gambling, from a psychological perspective. Both put pressure on participants to spend money for an uncertain reward, and considering the high engagement of children in video games, attention needs to be paid to ensure their protection. It is not to the point that the items to which one has access after purchasing a loot box have no money value (though we note that those items can sometimes be cashed out). The point is that the items are of value to the player – often a high value considering the importance of gaming in the lives of some players.

Therefore ACCM submits that, if the current legal definition of gambling does not include loot boxes, it should be amended so that it does, and loot boxes should be included in any gambling regulations. We submit also that gambling should be added as a classifiable element under the National Classification System; and, in principle, games with gambling elements should be classified R18+.

5. Comment on Terms of reference (a)

5.1 The role and growth of micro-transactions in online games.

In his 2017 research paper, Tomic documents the reasons for the growth of micro-transactions in games, the role of the internet in the development of mobile applications, and also in enabling the payment for micro-transactions within games and some of the social issues raised by this. He finds that

Micro-transactions denote payments for purchasing applications for mobile phones or payments for purchasing the additional content for video games.... Today they form the basis of the business model of mobile applications publishers

Although selling the entire game has never been abandoned as a business model in video games publishing, ...publishers, following the example of mobile application developers, have begun to allocate their cash flows to micro-transactions. This trend is less expressed on the consoles market, more on PC games market, and in particular on mobile games market.

..... mobile games rely on micro-transactions It is impossible to charge the same price for mobile games as for PC or console games. In that situation, developers were not able to put a game on the market without losses, no matter how well it was designed. The solution was found in the freemium approach, wherein users were offered a basic version of the game completely free. As the average user spends more time during the day using a mobile phone than a computer, the chance that he would play these games is much higher. Depending on the game genre, a lot of optional content could be offered for sale, and potential revenue exceeds the earnings of a single charge for the full version of the game.

A wider commercial use of the Internet has changed publisher-user relation. The role of the Internet in the rise of micro-transactions is twofold: on the one hand it provides the infrastructure for selling and distribution of games directly to users, on the other hand it serves as a payment channel, because most of the micro-transactions are performed through online electronic payment systems. In a broader sense, the Internet

use influenced the growth of mobile phones performances, and the functioning of mobile market.

Also, the internet changed the way in which players interact with each other by introducing the concept of multiplayer gaming from home. Games designed for single player have not disappeared, but the innovations led to the changes in users' preferences which turned the market more towards multiplayer games. Publishers notice that the players are more willing to spend their money on these games than on single player games.

The mechanism for micro-transactions execution is integrated into online service for distribution of games to the end customer. For mobile games, micro-transactions are performed via the stores of applications (App Store in the case of iOS system and Google play in the case of Android system).

Additional confusion is often created by the use of so-called in-game currency, which is used for calculation purchases of various improvements. This means that the improvement prices are not expressed in convertible currency, but in virtual money, which is considered to be a specific game currency. It may be crystals, gold coins, hearts, or any other denominator which is considered to be appropriate for the specific genre. The effect of virtual money use is the dematerialization of payment, because the feature prices are expressed in in-game currency, while its particular price in convertible currency is expressed on another page. In this way, the user often has no clear idea of actual cost of the feature he buys. (Tomic 2017)

5.2 What are loot boxes?

Loot boxes within mobile games are one form of micro-transaction. They have been described as an in-game reward system in which players can repeatedly buy a random selection of virtual items in the hope of advancing themselves. Loot boxes require no player skill and have a randomly determined outcome or prize, and so they function similarly to scratch tickets or gambling slot machines.

Some researchers call loot boxes and similar schemes 'predatory monetisation' because they encourage repeated spending using tactics that may involve limited disclosure of the product, unavoidable solicitations, and manipulation of reward outcomes to encourage purchasing behaviours over skilful play. They liken some of these schemes to a form of psychological 'entrapment' where players spend an escalating amount of money because they believe they have invested too much to quit. In this, the dynamic bears a striking resemblance to that of "traditional" problem gambling. There are also sometimes pressuring tactics incentivising purchases, such as so-called 'limited time' offers.

5.3 What have Australian Governments said about loot boxes and gambling?

5.3.1 There few clear definitions of gambling in Australian law.

Under the *Interactive Gambling Act 2001* a "gambling service" is defined to include the conduct of a game where:

- the game is played for money or anything else of value;
- the game is one of chance (or mixed skill or chance); and
- the player/customer gives or agrees to give consideration to play or enter the game.

5.3.2 State and federal agency positions on loot boxes:

According to Addisons' Gambling Law & Regulation Newsletter December 20, 2017:

The Victorian Commission for Gambling and Liquor Regulation (VCGLR)... clarified that it "has not made a determination that 'loot boxes' are an unauthorised form of gambling under Victorian legislation" but that it is aware of the issue of loot boxes and is working with other agencies and jurisdictions to address this complex issue and the risks involved.

Following the initial statement from the VCGLR, the Queensland gambling regulator, the Queensland Office of Liquor and Gaming Regulation (the QOLGR) provided its own views, considering the issue by reference to whether loot box mechanism would constitute a gaming machine under the Gaming Machine Act 1991 (Qld). The QOLGR stated that it was "not in a position to definitely advise whether loot boxes or similar video game features would constitute "gambling" ... however ... video gaming which provides for loot boxes would not fall within the meaning of a gaming machine as defined under the Gaming Machine Act". The representative for the QOLGR confirmed that he did not consider loot boxes to constitute gambling and, therefore, they fall outside the legislative authority of the QOLGR to regulate. Finally, the ACMA confirmed that, from a Federal gambling law perspective, it does not consider loot boxes to constitute a "gambling service" under the IGA because they are not "played for money or anything else of value"

<http://www.addisonslawyers.com.au/knowledge/assetdoc/958c3aa6a97dc539/Gambling%20Law%20&%20Regulation%20Newsletter%20December%202017.pdf>

5.3.3 E-Safety Commissioner information:

The E Safety Commissioner's website has parent information about loot boxes in which it says

There is some community debate and concern that the loot box feature can normalise spending behaviour in a gaming context and potentially act as a precursor to problem gambling behaviour.

<https://www.esafety.gov.au/education-resources/parent/staying-safe/online-gambling>

5.4 What positions in regard to loot boxes have been taken up by international jurisdictions?

New Zealand:

NZ Classification adviser Paul Hung reports in late 2017 that:

'We contacted the gambling unit at the Department of Internal Affairs after receiving enquiries, and they said:

"Gambling, as defined in the Gambling Act, means paying or staking consideration, directly or indirectly, on the outcome of something seeking to win money (or money's worth) when the outcome depends wholly or partly on chance. The Department considers 'loot boxes' as a marketing tactic within computer games that use psychology to reward players and encourage them to spend more on the game. While the exact contents of a loot box may be unknown at time of purchase, the payment of the charge does purchase a box. This does not appear to meet the definition of gambling.

"Even if this was gambling, only the gambling that is conducted in New Zealand is subject to the provisions of the Gambling Act. New Zealanders are able to lawfully gamble on overseas websites but they do so at their own risk."

<https://www.stuff.co.nz/business/opinion-analysis/99080950/a-beginners-guide-to-loot-boxes--harmless-fun-or-gambling>

UK

The UK Gambling Commission has investigated loot boxes and concluded that they don't meet the UK definition of gambling. They say:

In early 2016 we identified loot boxes as a potential risk to children and young people as part of a wider review on our concerns around video games and gambling themes, resulting in publication of a [position paper](#).

Our starting point in deciding our position with any product is to look closely at whether or not it falls under UK gambling law. The definition of what is legally classed as gambling is set by Parliament rather than by us. Our role is to apply that definition to activities that we see and any changes to that definition need to be made by Parliament.

The law sets a line between what is and is not gambling. As the regulator we patrol that line and where an activity crosses it and presents a risk to people, especially children, we have and will take robust action....

A key factor in deciding if that line has been crossed is whether in-game items acquired 'via a game of chance' can be considered money or money's worth. In practical terms this means that where in-game items obtained via loot boxes are confined for use within the game and cannot be cashed out it is unlikely to be caught as a licensable gambling activity. In those cases our legal powers would not allow us to step in.

<http://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2017/Loot-boxes-within-video-games.aspx>

More detail is found in the Commission's Position paper, 2016, para 3.18))

<http://www.gamblingcommission.gov.uk/PDF/Virtual-currencies-eSports-and-social-casino-gaming.pdf>

Belgium

Belgium recently (April 2018) found that loot boxes did constitute gambling and is also pushing the European Commission to find similarly.

<https://www.theguardian.com/games/2018/apr/26/belgium-is-right-to-legislate-against-video-game-loot-boxes>

The Netherlands

has found similarly in June 2018.

<http://www.abc.net.au/triplej/programs/hack/loot-box/9895340>

Europe's game classification system PEGI

PEGI says that it depends on the European Commission to define whether loot boxes are gambling.

<https://wccftech.com/pegi-loot-boxes-cant-define-gambling/>

Canada

As of March this year there is no proposed legislation in Canada to ban loot boxes.

<https://www.cbc.ca/radio/spark/387-alto-s-odyssey-loot-boxes-workplace-harassment-bot-and-more-1.4558228/are-loot-boxes-part-of-the-video-game-or-illegal-gambling-1.4559151>

USA

Some individual states of the US have opposed loot boxes for those under 21.

These include Hawaii (Feb)

<https://arstechnica.com/gaming/2018/02/no-video-game-loot-boxes-for-buyers-under-21-says-proposed-hawaii-bills/>

and Minnesota (April)

A bill [introduced in Minnesota ...](#) would prohibit the sale of video games with loot boxes to people younger than 18 and require a stern warning: "This game contains a gambling-like mechanism that may promote the development of a gaming disorder that increases the risk of harmful mental or physical health effects, and may expose the user to significant financial risk."

<https://www.nytimes.com/2018/04/24/business/loot-boxes-video-games.html>

However, this NY Times report also reports that : *Politicians in California, Hawaii, Indiana and Washington State have also targeted loot boxes Most of those bills have stalled, though, sparing for now a substantial revenue stream for the video game industry, which is eager to counter rising production costs*

The ESRB, US game classification agency claims that under its criteria, loot boxes are not gambling.

<http://au.ign.com/articles/2017/10/12/esrb-does-not-consider-loot-boxes-to-be-gambling>

5.5 What do researchers in the field say?

5.5.1 Australia

Prof Paul Delfabbro and Dr Daniel King have an impressive research record in the field of games and gambling (see references). In their 2018 paper on loot boxes they comment:

Game monetization schemes have become increasingly sophisticated and have been featured more prominently within popular on-line games. In our view, some of these schemes could be considered predatory. Predatory

monetization schemes typically involve in-game purchasing systems that disguise or withhold the true long-term cost of the activity until players are already financially and psychologically committed. Such schemes are designed to encourage repeated player spending using tactics or elements that may involve, either singularly or in combination, limited disclosure of the product; intrusive and unavoidable solicitations; and systems that manipulate reward outcomes to reinforce purchasing behaviors over skillful or strategic play.

Some of the top-earning game publishers (e.g. Activision and Electronic Arts) have registered patents for micro-transaction systems that incentivize the player to spend money ...Of particular relevance is the monetization scheme known as the 'loot box'. A loot box refers to an in-game reward system that can be purchased repeatedly with real money to obtain a random selection of virtual items. The low probability of obtaining a desired item means that the player will have to purchase an indeterminate number of loot boxes to obtain the item. Loot boxes resemble gambling slot machines because they require no player skill and have a randomly determined outcome (i.e. prize).

Such predatory monetization schemes can be understood with reference to the concept of 'entrapment' (i.e. the belief that one has invested too much to quit). In situations of this nature, players will often spend an escalating amount of money that begets further spending on the game. The investment of an irretrievable sum of money in pursuit of desirable virtual items may be seen by players as an investment to the extent that it will increase the likelihood of obtaining these items. In this connection, spending more and more money on loot boxes may have a 'sunk cost' effect that serves to justify continued expenditure. Entrapment by microtransactions may occur because the costs are less salient, because these transactions are represented as virtual credits or credit card debt. Sunk cost effects may also operate vicariously via exposure to proximal on-line players who are entrapped and make maladaptive purchasing decisions. Observing other players' spending and opening of loot boxes with favourable outcomes may provoke counterfactual comparisons (e.g. 'if only I had spent more ...') that sustain players' spending.

Another noteworthy aspect of predatory monetization is the collection and use of individual player data to manipulate the nature and presentation of purchasing offers in ways that maximize the likelihood of the player spending money. Some schemes may exploit an information asymmetry (i.e. the game system knows more about the player than the player can know about the game) to adjust the prices of virtual items for players depending on their playing and spending habits in the game. Players may not be aware or informed of the odds of receiving desired items from micro-transactions, and the game may use pressuring tactics to incentivize purchases (e.g. so-called 'limited time' offers). These schemes may entice some players with access to credit cards to spend more money than they can afford. Younger players may be particularly less equipped to critically appraise the value proposition of these schemes.

<https://onlinelibrary.wiley.com/doi/full/10.1111/add.14286>

5.5.2 New Zealand

Dr Aaron Drummond and Dr James Sauer, Massey University (see Refs), comment that:

Research investigating the exposure of adolescents to simulated gambling suggests that risks such as peer pressure and a dilution of monetary value through the exchange of real currency for virtual currency might facilitate migration to monetary forms of gambling. Moreover, adolescents tend to have poorer impulse control than adults, potentially increasing their vulnerability to gambling mechanics and behaviours learned from these mechanisms.

On face value, loot boxes present a number of striking similarities to real-world gambling. Players often purchase loot boxes for money and receive rewards of varying value based on chance. Thus, over multiple purchases, players will receive a high-value item on average every X number of times they open a box (where X represents a number of openings determined by a pre-defined algorithm). For example, a game with a 10% chance of a high-value item in a loot box, may result in success, on average, once for every ten boxes purchased. Critically, however, due to the random nature of rewards, the exact number of boxes that require purchase to obtain a valuable item varies. This kind of reward structure is termed a variable ratio reinforcement schedule, and underpins many forms of gambling. Variable ratio reinforcement results in people quickly acquiring behaviours and repeating these behaviours frequently in the hopes of receiving a reward. Research has long shown that behaviours acquired with variable ratio reinforcement are extremely persistent.

Drummond and Massey's research (2018) applied five established characteristics common to most gambling activities (and that distinguish gambling from other risk-taking behaviour), to a list of 22 games containing loot boxes from 2016-17 and found that almost half of games met these criteria:

- The exchange of money or valuable goods.
- An unknown future event determines the exchange.
- Chance at least partly determines the outcome.
- Non-participation can avoid incurring losses.
- Winners gain at the sole expense of losers.

5.5.3 UK

Prof Mark Griffiths, a researcher with an extensive track record in gambling research, finds that:

Although there are many definitions of gambling in many disciplines, there are a number of common elements that occur in the majority of gambling instances that distinguish "true" gambling from mere risk taking. These include: (1) the exchange is determined by a future event for which, at the time of staking money (or something of financial value), the outcome is unknown; (2) the result is determined (at least partly or wholly) by chance; (3) the re-allocation of wealth (i.e., the exchange of money [or something of financial value] usually without the introduction of productive work on either side); and (4) losses incurred can be avoided by simply not taking part in the activity in the first place. Added to this, it could be argued that the money or prize to be won should be of greater financial value than the money staked in the first place. Based on these elements, the buying of loot boxes (or equivalents) would be classed as a form of gambling, as would other activities such as the "Treasure Hunter" and "Squeal of Fortune" games within the Runescape video game and online penny auctions.

5.5.4 Canada

Chanel Larche, videogame addiction researcher studying cognitive neuroscience, examines how people react to online gambling, from slot machines to gaming on mobile devices. She has also spent time researching loot boxes and what psychological impacts they may have. In an interview with CBC, she says:

There are clearly ethical issues when it comes to loot boxes, which fall somewhere on the continuum between slot machines and buying collector cards featuring hockey players or Pokemon characters.

"A lot of anecdotal evidence suggests that some players will spend more than they can afford to lose, which is in itself an issue: you shouldn't feel like you're throwing money at this if you can't afford it."

Moreover, because so many of these games are played by minors, there are other factors to consider as well.

"There is a lot of evidence in the gambling literature that early exposure to gambling-themed games that involve money can increase the risk for developing problems later on,"

<https://www.cbc.ca/radio/spark/387-alto-s-odyssey-loot-boxes-workplace-harassment-bot-and-more-1.4558228/are-loot-boxes-part-of-the-video-game-or-illegal-gambling-1.4559151>

6. Does loot box use on third party platforms constitute gambling?

6.1 Australian and overseas jurisdictions have differing legal definitions of gambling and differing views on whether "loot boxes" meet their particular definitions of gambling. To date, no Australian state government has been able both to find that loot boxes constitute a form of gambling, and to take action.

In ACCM's view the issue is not whether loot boxes meet current legal definitions of gambling. This is the wrong question. What matters is whether the use of loot boxes in online games carries similar (or other) potential for harm. ACCM finds that it does. ACCM has found it instructive to review what researchers worldwide have been finding about the processes (including the purchase of loot boxes) that are encouraged in online games, and that they have found these to constitute gambling behaviour, and to carry considerable risks for the young. (Griffiths, King, Larche,)

6.2 Australian children and young people are high users of mobile game applications. The [2018 Digital Australia report](#) reported that 90% of Australian children aged between 5 and 14 play digital games. They will have high exposure to devices such as loot boxes.

6.3 Apps and games are provided for free, or purchased, through third-party agencies such as Apple Store or Google. These agencies also provide the means whereby in-

game purchases can be made. Where such games contain gambling elements (the expenditure of money to take a risk on getting a benefit that they want), these third parties are in fact the providers of unlicensed gambling-like services to children and young people.

6.4 In ACCM's view it is timely to use a broader definition of what constitutes gambling, viz

- **the activity or practice of playing at a game of chance for money or other stakes.**
- **the act or practice of risking the loss of something important by taking a chance or acting recklessly.**

6.5 The definition of loot boxes as gambling is disputed by some who claim that

a) "loot boxes are like collectible cards": ACCM says that this view, while interesting, misses the electronic, time sensitive dimension to video games, and the ease with which one can spend money repeatedly over a short period of time. ACCM notes that unlike cards, lucky dips etc, the purchase and use of loot boxes happens against the backdrop of an activity (gaming) that carries its own risks of addictive or at least compulsive behaviour, and this changes the nature of the action.

b)

"loot boxes don't deal in real money and so do not constitute gambling." (They are likened to games of chance like the board game Monopoly, which has "in game" currency and is valuable within the game itself.) However in Monopoly, the player does not have to spend real money to obtain the in-game currency. The player cannot use Monopoly money to, say, buy a car in the real world (third party) and hence it has no real value. When you land on another player's property and have to pay rent, there is no real "worth" or "asset" lost.

In some mobile games, by contrast, you can earn online currency and then use that to open loot boxes. The online currency still has value to the player, who had to earn it. The fact that the player cannot spend the currency outside of the game is irrelevant. It should not matter where that currency has value – as long as it has value to the player/user. For a lot of children in particular, the items obtained from loot boxes are probably worth more than money.

c. "unless players can recoup in-game earnings as real money the process does not constitute gambling". ACCM argues that ultimately the presence of loot boxes in games puts substantial pressure on players to spend more than they want to for something they want, because all they can actually buy is a chance, not the thing they want. As the research quoted above shows, this psychological process is indistinguishable from that which takes place in 'traditional' gambling transactions. It is all the more serious when the games in question are those to which children have easy access, and which they frequently play.

ACCM also notes that people, and especially children, have a very bad understanding of probability. A lot of people believe (and poker machines work on this principle) that the more times you play, the closer or more likely you get to the thing you want. This is

not how probability works. Every time you press the button on a poker machine, you have the exact same odds of winning. As the Nuffield Foundation comments “a common mistake made by adults and children is to disregard the independence of successive events in a random situation. One’s chance of getting a tail on the next toss of the coin is not affected by what happened on previous throws” (Bryant 2012 p9).

This is a fundamental fallacy that lies at the heart of problem gambling, and again the dynamic of loot boxes is indistinguishable. People will think, “every extra bit of money I spend brings me closer to getting the thing that I’m after”.

7. Terms of reference b)

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

7.1 ACCM notes Australian and State Governments’ commitment to a strong national consumer protection framework, viz:

At their third meeting on 8 September 2017, Commonwealth and state and territory ministers with responsibility for gambling reaffirmed their commitment to ensuring greater protection for Australians gambling online and to the final stages of the establishment of a strong, consistent and best-practice national consumer protection framework. <http://pandora.nla.gov.au/pan/65939/20171219-1410/www.mhs.gov.au/media-releases/2017-09-08-gambling-ministers-agree-stronger-online-gambling-protections.html>

7.2 ACCM believes that while this Framework contains some elements that could provide some protections for children in relation to licensed gambling, it offers few protections against the inclusion of gambling via the purchase of loot boxes.

7.3 ACCM provides some comments on some elements of this Framework here:

a) **Ensure offering of inducements is consistent with responsible gambling**

Ministers have agreed to the following minimum requirements in relation to inducements:

- *Inducements to open an account or refer a friend to open an account will be prohibited.*
- *Inducements not part of an approved loyalty program in a jurisdiction that only permits inducements as part of an approved loyalty program will continue to be prohibited.*
- *The winnings from a bonus bet must be able to be withdrawn and not subject to turnover requirements.*
- *All customers of wagering services must opt-in to receive direct marketing material.*
 - *All marketing communications must contain a functional and easily accessible option to unsubscribe from receiving marketing material.*

Some jurisdictions expressed support for additional forms of inducements to be prohibited and further restrictions on the advertising of inducements. Those jurisdictions reserve the right to pursue those measures through their own regulations and licensing arrangements.”

ACCM Comment: This Code requirement does not cover the significant inducements that occur within games that offer loot boxes for purchase for advancement in the game.

b) More consistent gambling messaging

“Ministers agreed that gambling messaging is implemented with a nationally consistent set of standards, based on evidence for gambling messaging relevant to online wagering. The below high level principles will form part of the initial National Framework with the aim to be finalised by the end of this year, and will be mandated by state and territory governments. The key features include:

- that gambling messaging is easily understood and accessible to a wide range of groups across Australia and therefore be designed in consideration of the jurisdiction they are displayed*
- recognition that terminology of messaging is crucial to their effectiveness as a consumer protection measure, and messages should be designed in collaboration with experts (harnessing new and existing research).*

This measure is two-fold: industry would have one set of gambling messages to use in its advertising nation-wide, and states and territories can tailor this message for their own respective campaigns.”

ACCM comment: Few if any distributors of games provide any warnings of games that contain loot boxes, nor of their risks. However, any such warnings might not be useful to parents or children who do not understand the risks associated with loot boxes. Nor of the low odds of winning what they want.

c) Staff training in the responsible conduct of gambling

ACCM Comment: This training should be expected of those who produce online games, and those who distribute them.

d) Reducing the current 90-day verification timeframe for customer verification

ACCM comment: Strict verification would be needed for children playing games with loot boxes.

e) Interactive Gambling Amendment Bill 2016 and disruption measures

“A ‘prohibited interactive gambling service’ is defined in section 5 of the IGA as a gambling service where:

- 1. the service is provided in the course of carrying on a business; and*

2. *the service is provided to customers using any of the following:*
 - (i) *an internet carriage service*
 - (ii) *any other listed carriage service*
 - (iii) *a broadcasting service*
 - (iv) *any other content service*
 - (v) *a datacasting service.* “

ACCM Comment: If, as we suggest, gambling were redefined so as to include loot boxes, third parties providing the games would appear to be conducting prohibited interactive gambling services.

7.4 the adequacy of the current regulatory framework

In ACCM's view, and those of researchers in this area (Pitt 2018), the Australian government has an obligation to do much more in order to protect children in this predatory gaming environment. Such actions should include:

- a) Loot boxes within online games should be defined as gambling within the IGA, and consideration given to whether such providers need to be licensed
- b) The Classification Guidelines should be changed to include the element of gambling (and under a revised IGA this definition of gambling would include loot boxes)
- c) All online games which include the process of gambling should be classified R18+

7.5 international comparisons, age requirements and disclosure of odds.

7.5.1 International comparisons

The Netherlands have been the first to act. In their study of games with loot boxes they found

... four of the ten loot boxes that were studied contravene the law. These are the loot boxes in games where the in-game goods from the loot boxes are transferable. When opening loot boxes, the consumer cannot influence the outcome. Those games that feature a combination of in-game goods that can be traded and the obtaining of these goods through loot boxes fall under Article 1 of the Betting and Gaming Act. As a licence cannot be issued for this offering under the applicable legislation, these loot boxes are prohibited in the Netherlands. Six of the ten games with loot boxes that were studied do not contravene the law, as there is no question of in-game goods with a market value in these games. These games do not satisfy the definition of a prize in Article 1 of the Betting and Gaming Act. ...

... According to [an evaluation] tool, on average, loot boxes have a moderate to high addiction risk potential (hereinafter referred to as risk potential). The risk potential very much depends on how the loot box is offered. The loot boxes with a higher score have integral elements that are similar to slot machines. With these loot boxes, there is very often a (higher) jackpot where the virtual goods are transferable, players can keep opening unlimited loot boxes, multiple visual and sound effects are added and a 'near miss' effect is used. According to this tool, the loot boxes with a higher score are comparable with blackjack or

roulette in terms of addiction potential. According to this tool, the loot boxes with a lower score are comparable with small-scale bingo in terms of addiction potential..... The risk of gambling addiction in this group [of young people] is many times higher than in adults ...

To date, the Netherlands Gaming Authority has not observed any suitable control measures taken by the providers of games with loot boxes to exclude vulnerable groups and prevent gambling addiction.

<https://arstechnica.com/gaming/2018/04/dutch-government-rules-some-loot-boxes-count-as-illegal-gambling/>

https://www.kansspelautoriteit.nl/algemene-onderdelen/uitgebreid-zoeken/?zoeken_term=loot+boxes [English version of report available]

The Netherlands government has also introduced legislation to license the providers of online games that include gambling elements.

<https://www.government.nl/topics/games-of-chance/modernising-gambling-policy>

An account of the Belgian proposal can be found here.

https://www.gamingcommission.be/opencms/opencms/jhksweb_nl/faq/svz/

7.5.2 Age requirements

ACCM recommends that children under the age of 18 (age at which it is legal to gamble) should be strongly discouraged from playing online games that incorporate the elements of gambling behaviour.

7.5.3. Disclosure of odds

ACCM believes that the disclosure of odds for games which incorporate loot boxes would not provide any protection for children (nor for some adults) who do not understand the concepts of probability, and for whom the impetus to succeed in the game leads them to ignore the fact that they are unlikely to gain what they want. Moreover, as noted above, many people have a flawed understanding of how probability works.

CONCLUSION:

Children and young people are enthusiastic participants in the world of online games. The growth of the provision of within–game–purchasable loot boxes in which there may be items which will advance the player (but may not) creates a very risky environment for minors. Such financial transactions which are facilitated by online providers of the games, can, on the evidence, be functionally indistinguishable from gambling from a psychological point of view, and should therefore be equated with gambling legally.

Decisive action needs to be taken by the Australian and State governments to protect minors from this predatory practice.

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