



Australian Government

**Australian Government response to the House of
Representatives Standing Committee on Social
Policy and Legal Affairs report:**

Protecting the age of innocence

June 2021

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Overview

The Australian Government received the report by the House of Representatives Standing Committee on Social Policy and Legal Affairs (the Committee) into age verification for online wagering and online pornography released on 5 March 2020.

Children's exposure to online pornography and online gambling

The Government recognises that children's access to age-inappropriate or potentially harmful online services and content is a key online safety concern for the Australian community.

Online pornography

In 2018, the Office of the eSafety Commissioner published a report on 'Parenting and pornography: findings from Australia, New Zealand and the United Kingdom',¹ which found that 33 per cent of parents listed access to pornography as one of their top concerns for their children's online safety. The report also highlighted that 40 per cent of children's exposure was accidental.

On 7 December 2017, the Australian Institute of Family Studies (AIFS) released the *Effects of Pornography on Children and Young People* report. The report reviews the available evidence on the impact that exposure to and consumption of online pornography has on children and young people. The research found that nearly half of children between the ages of 9 and 16 years experience regular exposure to sexual images; that the use of pornography can negatively influence their knowledge about sex, safe sex practices and gender roles; and could lead them to have unrealistic expectations about sex. The research found that negative influence could have serious consequences in the long term. For example, pornography may strengthen attitudes supportive of sexual violence and violence against women.²

Online gambling

While there is limited empirical research available on the levels of children and young people gambling online, Australian research has shown that teenagers may be more likely to be gambling online than adults, with one study finding that 60 per cent of teenagers who have gambled had done so online.³

Reasons for the number of teenagers gambling online include young people's accessibility to, and ownership of digital devices, such as mobile phones.⁴ However, it is important to highlight that gambling behaviour is complex. Research also shows that individuals' gambling behaviour varies over time, and that underage gambling may not be predictive of future gambling or gambling problems.

¹ Office of the eSafety Commissioner, December 2018, *Parenting and pornography: findings from Australia, New Zealand and the United Kingdom*, available at: www.esafety.gov.au/sites/default/files/2019-09/summary-report-parenting-and-pornography.pdf

² Australian Institute of Family Studies, *Pornography shaping young people's sexual experience*, available at: aifs.gov.au/media-releases/pornography-shaping-young-peoples-sexual-experience

³ Victorian Gambling Research Foundation, March 2017. Discussion paper, Gen Bet: Has gambling categorised out tends? <https://responsiblegambling.vic.gov.au/resources/publications/gen-bet-has-gambling-gatecrashed-our-teens-16/>

⁴ King, D. (2018). *Online gaming and gambling in children and adolescents – Normalising gambling in cyber places*. Victorian Responsible Gambling Foundation. Melbourne.

Age verification

Age verification is the process of confirming a user's age, to restrict access to online services and content from those who are not appropriately-aged. The report mentions a number of different methods available for online age verification, including use of the Document Verification Service or other databases, age screening and age estimation.

Age verification is different from identity or customer verification, which involves more comprehensive checks to establish a person is who they claim to be. This often involves the use of government-issued identity documents, such as a driver licence or passport.

The Government considers it important to safeguard the privacy and security of Australians in a digital environment. While identity verification processes could serve age verification requirements, further consideration is needed on whether such processes are appropriate for certain industry sectors.

Technology is only part of the solution

While there are no simple solutions to any online safety issue, technologies, such as age verification, age assurance and age prediction, are developing at pace. If used in conjunction with filtering and other proactive user safety settings, they can play a role in limiting exposure to harmful content for children.

The Government also recognises that technological solutions alone will not stop all children from accessing online pornography or other age-inappropriate services. A multifaceted approach that includes parental engagement and education is vital to reduce the adverse effects of online pornography and other harmful content. Online safety requires long-term, sustained social and cultural change, through the coordinated efforts of the global community, and greater collaboration and consultation between industry, government and the general public.

Response Methodology

The Department of Infrastructure, Transport, Regional Development and Communications has coordinated the development of the Australian Government's response in consultation with the Department of Social Services. Input was provided from Commonwealth agencies including the Australian Communications and Media Authority; Australian Cyber Security Centre; Attorney-General's Department; Department of Education, Skills and Employment; Department of Home Affairs; Digital Transformation Agency; Office of the eSafety Commissioner; and National Office for Child Safety.

Australian Government response

Recommendation 1:

2.143 The Committee recommends that the Digital Transformation Agency, in consultation with the Australian Cyber Security Centre, develop standards for online age verification for age-restricted products and services.

- a. These standards should specify minimum requirements for privacy, safety, security, data handling, usability, accessibility, and auditing of age-verification providers.
- b. Consideration should be given to the existing technical standards in Australia and overseas, including but not limited to the UK Age Verification Certificate, the PAS 1296 Age Checking code of practice, the Trusted Digital Identity Framework, and the European Union General Data Protection Regulation.
- c. Opportunities should also be provided for consultation with industry, including private age-verification providers, and members of the public.

The Government **supports** this recommendation **in principle**.

The Government is committed to protecting young people while safeguarding the privacy and security of people of all ages in an increasingly digital environment.

The Government has several work streams underway that examine the efficacy of existing measures and identify further measures required to meet this commitment:

- the Office of the eSafety Commissioner is leading the development of a roadmap for the implementation of a mandatory age verification regime for online pornographic material, as discussed in the response to Recommendation 3.
- the Department of Social Services is completing a review of customer verification requirements for online wagering services as discussed in the response to Recommendation 4.

Subject to the findings of the work outlined above, further technical standards-based work may be required which could include requirements for privacy, safety, security, data handling, usability, accessibility, and auditing of age-verification providers. If so, the Government agrees that:

- the Digital Transformation Agency (DTA) is well-placed to develop any necessary technical standards; and
- the Australian Cyber Security Centre (ACSC) is well-placed to provide any necessary advice and support relating to the cybersecurity of IT systems.

Recommendation 2:

2.148 The Committee recommends that the Digital Transformation Agency extend the Digital Identity program to include an age-verification exchange for the purpose of third-party online age verification.

The Government **supports** this recommendation **in principle**.

Initially, the Government's priority will be to complete work underway that explores the potential for changes to the policy and accreditation framework, as discussed in the response to Recommendation 1. Depending upon the findings of this work, further technical interventions may be required. If so, the Government agrees that the Digital Transformation Agency is well placed to explore extending the Digital Identity program.

Recommendation 3:

3.184 The Committee recommends that the Australian Government direct and adequately resource the eSafety Commissioner to expeditiously develop and publish a roadmap for the implementation of a regime of mandatory age verification for online pornographic material, setting out:

- a. a suitable legislative and regulatory framework;
- b. a program of consultation with community, industry, and government stakeholders;
- c. activities for awareness raising and education for the public; and
- d. recommendations for complementary measures to ensure that age verification is part of a broader, holistic approach to address risks and harms associated with the exposure of children and young people to online pornography.

The Government **supports** this recommendation.

With children accessing or being exposed to sexually explicit material on a diverse range of online platforms, the Government recognises that there is no straightforward solution. The development of a comprehensive roadmap that adequately explores the complexities of regulating online pornography will require considerable amounts of research and stakeholder consultation over a 12 to 18 month period.

The Office of the eSafety Commissioner (eSafety) is leading the development of this roadmap, in collaboration with community, industry, state and territory governments, and Commonwealth agencies including the Department of Infrastructure, Transport, Regional Development, and Communications (DITRDC); Department of Social Services; Department of Home Affairs; Digital Transformation Agency; and the Australian Cyber Security Centre. The roadmap will be based on detailed research as to if and how a mandatory age verification mechanism or similar could practically be achieved in Australia. The roadmap, including a recommended way forward, will be provided to Government for consideration.

The Government is committed to keeping Australians safe online and maintaining Australia's position as a world leader on this issue. On 11 December 2019, the Government released the online safety legislation reform discussion paper which outlined key elements of a proposed new Online Safety Act. DITRDC considered the feedback received during consultation. The challenge of children's access to age inappropriate content, including pornography, is being considered through these reforms.

The Government is also considering the risks and harms posed by the exposure of children and young people to online pornography through its work on developing a National Strategy to Prevent Child Sexual Abuse (National Strategy). The National Strategy is a key recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse. The National Strategy will be a long term policy framework that establishes a coordinated, nationally aligned approach to preventing child sexual abuse in all settings. As such, it will incorporate the important work being progressed by eSafety to keep children safe online.

Recommendation 4:

4.60 The Committee recommends that the Australian Government, through the National Consumer Protection Framework for Online Wagering, introduce a requirement that customers are not to use an online wagering service prior to verification of their age as 18 years or over.

The Government **supports** this recommendation **in principle**.

As set out in the National Policy Statement for the National Consumer Protection Framework for Online Wagering, the Commonwealth and all state and territory governments agreed to a reduced customer verification period for online wagering services to a maximum of 14 days. All governments further committed to review the customer verification period 12 months from the date the new rules came into effect, with a view to further reducing the customer verification timeframe to 72 hours. This review commenced in April 2020 and includes concerns around age verification. Any changes recommended by the review will need to be agreed by all state and territory gambling Ministers, in addition to the responsible Commonwealth Minister, prior to implementation.

Recommendation 5:

4.65 The Committee recommends that the Office of the eSafety Commissioner or other relevant government department report to the Australian Government on options for restricting access to loot boxes and other simulated gambling elements in computer and video games to adults age 18 years or over, including through the use of mandatory age verification.

The Government **notes** this recommendation.

While the Office of the eSafety Commissioner (eSafety) does have a role around educating and raising awareness to Australians about safer online gaming, the regulation of micro-transactions such as in-app purchases and loot boxes would be more appropriately dealt with by the National Classification Scheme.

The Australian Government has a range of effective measures in place to minimise the potential harm of simulated gambling to children:

Senate inquiry into gaming micro-transactions for chance-based items

On 28 June 2018, the Senate Environment and Communications Reference Committee commenced an Inquiry into gaming micro-transactions for chance-based items (loot boxes). The report highlighted that there are many types of loot boxes and noted that academic research on the gambling-related harms of loot boxes was in its infancy. It was suggested that further research was required prior to developing an evidence-based regulatory approach to mitigate against harms caused by loot boxes in games. The Government responded to this review on 6 March 2019 and noted the recommendations.⁵

The classification, and any age restriction, of computer games with loot boxes or simulated gambling has been considered as part of the review of Australian classification regulation. In a general sense protecting children from exposure to online harms including around loot boxes and other simulated gambling elements in computer and video games are being considered through broader online safety reform.

New Online Safety Act

On 24 February 2021 the Government introduced the Online Safety Bill (the Bill) into Parliament. The Bill proposes migrating the online content scheme (Schedules 5 and 7 in the *Broadcasting Services Act 1992*) to a new Online Safety Act and updating the current industry requirements to better support Australian households managing children's access to content that is not suitable for their age group.

While the Online Safety Bill does not specifically address children's access to either gambling or simulated gambling through online gaming, it will address user safety online, empower the eSafety Commissioner to regulate, and (through the online content scheme) provide for filtering technologies to be made available to households that prevent children's access harmful online content more broadly.

The Online Safety Bill includes measures to:

- implement practical measures to protect Australians against exposure to illegal and harmful online content;
- articulate clear Basic Online Safety Expectations of online service providers as to their responsibilities to keep Australians safe online; and
- provide a safety net for users where online service providers fail to meet their obligations under the Act.

⁵ Australian Parliament House, Gaming micro-transactions for chance-based items. Available at: www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions

Through the proposed Basic Online Safety Expectations, for instance, online service providers will be encouraged to make their technologies, products and services safe for their users. This captures children and the harms presented to them by gambling products and services.

National Classification Scheme

The National Classification Scheme serves as a framework to provide parents and carers with advice on the content in computer and video games.

The Classification Board applies consumer advice of ‘in-game purchases’ where the Board considers that a computer or video game contains the ability to use real-world money to purchase downloadable content including randomised items found in loot boxes.

Australia is a member of the International Age Rating Coalition (IARC), which developed a tool that enables game developers to answer a questionnaire that produces country-specific classification information for mobile and online games. Following a recent upgrade to the IARC tool, consumer advice of ‘In-game Purchases (includes random items)’ can now be applied to mobile and online games with loot boxes that can be purchased where the outcome is random.

If a computer game contains simulated gambling, where a player is unable to win real money, but there is a casino-like feel or elements of wagering, the consumer advice of ‘Simulated gambling’ is used to inform consumers. ‘Gambling themes’ and ‘Gambling references’ are also used in consumer advice depending on the context and impact of the game.

Review of Australian classification regulation

The Government has undertaken a review of Australian classification regulation, led by Mr Neville Stevens AO. The review included consideration of the National Classification Code and the Guidelines for the Classification of Computer Games, including classification of games that include certain loot boxes and simulated gambling. The Government is considering the review and will work with the states and territories, due to the cooperative nature of the National Classification Scheme.

Role of the eSafety Commissioner

The Office of the eSafety Commissioner (eSafety) is an independent statutory office established under the *Enhancing Online Safety Act 2015*. A key function under the Act is to promote online safety for all Australians. eSafety plays an important role in educating Australians about technology risks and protecting themselves online, and in providing avenues for support and assistance.

eSafety provides advice for parents regarding the installation of parental controls and privacy and safety settings on devices or in an app or browser and on approaches for parents.

Resources for online gaming

eSafety provides advice to parents on how to best facilitate a safe online environment for children and manage risks associated with online gaming. This includes advice on approaches for parents to take to discuss gambling and gambling-like elements in games with their children.

As the Australian Government agency responsible for promoting online safety, eSafety plays a key role in educating and empowering Australians to combat cyber harms and abuse in all its manifestations; to better manage the safety and wellbeing of Australians online; and to develop critical digital skills to enable Australians to explore and engage with the online world whilst also having resilience to overcome online setbacks.

On March 2018, eSafety published the research report 'State of Play – Youth and Online Gaming in Australia'. The research highlighted that online gaming is a popular avenue for young people to express and assert their engagement with the digital world, with an estimated 81 per cent of Australians aged 8 to 17 having played an online game in the 12 months prior to June 2017. The report indicated that 34 per cent of all Australian young people had made in-game purchases while playing online games.⁶

eSafety has produced a range of targeted online resources and advice for children and young people, female gamers, parents and carers and educators that cover online gaming and which touched upon online gambling. eSafety's resources cover a wide-range of issues, including online gaming habits and spending within a gaming context, overviews of 'loot boxes', strategies for safe gaming and advice on parental control tools and our online safety measures that can be used to minimise exposure to gambling adverts and content. These resources are subject to periodic reviews in response to new developments.

Safety by Design

eSafety's Safety by Design (SbD) initiative seeks to modify the way that technology is designed, developed and deployed, shifting the responsibility for safety back onto tech platforms and providers. It provides realistic, actionable and achievable measures to better protect and safeguard citizens online, highlighting good practice and tangible steps needed to make user safety considerations a routine element of product development cycles. eSafety worked with more than 60 organisations across industry, government and civil society to arrive at three primary SbD principles: service provider responsibilities; user empowerment and autonomy; and transparency and accountability.

A framework of resources and guidance is currently being developed, in collaboration with industry, to enable companies to understand the potential harms, assess the risks to users on their platforms and provide them with ideas and best practice innovations to build safety protections in at the front end.

Role of the Australian Competition and Consumer Commission (ACCC)

The ACCC's role is to enforce the *Competition and Consumer Act 2010*, the Australian Consumer Law (ACL), and a range of additional legislation, promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians. In addition to any new regulation regarding age verification, computer and video game providers must also comply with the ACL. Amongst other things, the ACL prohibits businesses from engaging in misleading or deceptive conduct, or engaging in conduct that is, in all the circumstances, unconscionable. Given the ACCC's role in enforcing the ACL, to help assist consumers in this area the ACCC website includes specific guidance on preventing unauthorised in-app purchases on mobile apps, which includes children using their parent's device to make an in-app purchase. It also provides guidance on device authentication and methods for consumers to restrict in-app purchases.

Role of industry

Both major game app providers, Google Play and the Apple App Store, require games apps to disclose the odds of receiving particular items in loot boxes. The major game console makers, Sony, Microsoft and Nintendo, require games developed for their platforms that include paid loot boxes to disclose information on the relative probability of obtaining randomised virtual items. In addition, in 2019 many video game publishers committed to disclosing drop rates for the games that they publish by the end of 2020.⁷

⁶ Office of the eSafety Commissioner, March 2018, *State of Play – Youth and Online Gaming in Australia*, available at: <https://www.esafety.gov.au/sites/default/files/2019-07/Youth-and-online-gaming-report-2018.pdf>

⁷ IGEA, August 2019, *Global Video Game Industry Commits to Further Inform Consumer Purchases*. Available at: <https://igea.net/2019/08/global-video-game-industry-commits-to-further-inform-consumer-purchases/>

Both Google Play and the Apple App Store advise at the point of sale if a game includes in-game purchases. In addition, all of the major video game consoles and smartphone operating systems enable parents to disable or restrict spending without permission, including on in-game purchases such as loot boxes. Some game developers and digital storefronts have also introduced improved refund practices for in-game purchases.

The Interactive Games & Entertainment Association (IGEA) has observed that the use of loot boxes in high profile games has decreased over time, with a rise in alternative forms of monetisation such as subscriptions. Some developers have also removed the element of chance from loot boxes in their games.

The International Social Games Association (ISGA), the global industry body for social games companies (including simulated gambling games) specifically discourages its members from promoting simulated gambling products to users under the age of 18 years.⁸ The ISGA also provides an online resource called 'Smart Mobile Gamers' to give guidance, tips and advice on topics such as parental controls and managing in-game spending. It has partnered with digital safety organisations and experts to create this website.

⁸ ISGA Best Practice Principles. Available at: www.i-sga.org/best-practice-principles

Recommendation 6:

4.67 The Committee recommends that the Office of the eSafety Commissioner develop education resources to inform parents of the risks and harms associated with online gambling and assist parents to reduce children and young people's exposure to online gambling.

The Government **supports** this recommendation in **principle**.

The Government notes that the remit of the eSafety Commissioner does not extend to online gambling. However, the eSafety Commissioner plays a role in providing online resources and education for parents and carers on how to prevent children's access to age-inappropriate content online (as discussed under Recommendation 5).

Online gambling as defined under the *Interactive Gambling Act 2001* is regulated by the Australian Communications and Media Authority (ACMA).

Role of ACMA

ACMA provides advice to Australian consumers about online gambling services, including maintaining a register of licensed interactive wagering providers, and conducts investigations into both illegal interactive gambling services and compliance with gambling advertising restrictions.

ACMA has responsibility for enforcement of illegal offshore gambling rules, which have resulted in more than 100 illegal services exiting the Australian market since rules came into force in 2017. Additionally, in November 2019, under powers given to ACMA under the *Telecommunications Act 1997*, ACMA began to ask ISPs to disrupt illegal online content by blocking access to gambling websites where serious criminal or civil offences are involved. 54 illegal gambling websites have been blocked by ACMA as of 12 June 2020.

From July 2019 to the end of March 2020, ACMA completed 45 investigations into 57 gambling sites or apps. ACMA found 45 breaches of the *Interactive Gambling Act 2001* and referred two individuals in control of contravening services to the Department of Home Affairs for inclusion on the Movement Alert List (MAL).

The risks associated with illegal offshore gambling have been communicated through an awareness campaign developed by ACMA targeted at the general population. The awareness campaign aims to show people the risks of using illegal offshore gambling sites and the lack of protection they have, and to inform Australians who might use offshore gambling sites that they are illegal.