

# Chapter 1

## Introduction

### Referral and terms of reference

1.1 On 28 June 2018, the Senate referred the following matter to the Environment and Communications References Committee for inquiry and report by 17 September 2018:

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.<sup>1</sup>

1.2 On 17 September 2018, the Senate granted an extension of time to report until 17 October 2018.<sup>2</sup>

1.3 On 15 October 2018, the Senate granted an extension of time to report until 27 November 2018.<sup>3</sup>

### Conduct of the inquiry

1.4 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions. The date for receipt of submissions was 27 July 2018. The committee received 42 submissions, which are listed at Appendix 1.

1.5 The committee held public hearings in Melbourne on 17 August 2018, and Canberra on 17 September 2018.

1.6 The list of witnesses who participated in public hearings is at Appendix 2.

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1 *Journals of the Senate*, No. 105, 28 June 2018, p. 3367.

2 *Journals of the Senate*, No. 118, 17 September 2018, p. 3766.

3 *Journals of the Senate*, No. 122, 15 October 2018, p. 3895.

1.7 The public submissions, additional information received and *Hansard* transcript are available on the committee's website at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Gamingmicro-transactions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions)

## **Acknowledgment**

1.8 The committee would like to thank the organisations and individuals who provided evidence to the inquiry.

## **Structure of the report**

1.9 This report comprises 5 chapters as follows:

- Chapter 1 provides an introduction and overview of gaming micro-transactions for chance-based items, recent public concern regarding the issue, and international responses;
- Chapter 2 explores whether gaming micro-transactions for chance-based items constitute gambling under Australian regulatory frameworks;
- Chapter 3 examines the evidence received that gaming micro-transactions for chance-based items meet the psychological definition of gambling, and the potential for harms associated with interaction with these mechanisms;
- Chapter 4 outlines possible government responses to the issue; and
- Chapter 5 provides a committee view and recommendations.

## **Introduction to gaming micro-transactions for chance-based items**

1.10 Many video games incorporate 'micro-transactions', a broad concept extending to any model that provides a consumer with the option of making small purchases within a game or other application. Micro-transactions are typically made using game points, real-world money, or both.<sup>4</sup>

1.11 Micro-transactions may involve the direct purchase of specific in-game content or features, including items (i.e. outfits, vehicles, weapons, tools, etc.), mission or quest packs, new game modes and extra play time, among other things. Micro-transactions may also involve the purchase of a virtual item that contains a variable selection of other virtual items (chance-based items), which are sometimes called 'loot boxes', 'loot crates', 'mystery boxes', 'prize crates' and other similar names.<sup>5</sup>

1.12 Gaming micro-transactions for chance-based items, called loot boxes for the purposes of this inquiry, are included in some video games to provide players with a way to obtain virtual items for in-game use. The items in loot boxes vary, but typically

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4 Interactive Games and Entertainment Association (IGEA), *Submission 3*, p. 5.

5 IGEA, *Submission 3*, p. 5.

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include collectibles, character outfits, game points, player bonuses, and weapon camouflages or 'skins'. Some virtual items are functional 'sidegrades' or upgrades that players may use functionally in game play (i.e. useful tools, armour, weapons or abilities), whereas others are simply cosmetic items.<sup>6</sup>

1.13 A list of possible items contained in a loot box may be, but is not always provided to players. The specific item received is randomly selected once payment is authorised. A common variation is to periodically provide players with boxes for free but require them to purchase a 'key' to open the box. Virtual items can hold significant value to players based on their potential to facilitate or assist game play, or provide desirable cosmetic features.<sup>7</sup>

1.14 There are a number of types of loot boxes available in games. These can be categorised according to the method of acquisition, and whether the items contained within the loot box can be monetised. Methods of acquisition are as follows:

- **Game-play** – loot boxes are awarded to players as a result of game-play achievements, such as hours played or missions completed.
- **Game-play with purchasable key** – loot boxes are provided to players during game-play, but players must purchase a key to open the loot box.
- **Purchase** – players purchase a loot box and are able to open it to obtain the (random) items within.

1.15 Loot boxes have been available in a number of social games (largely free to play mobile games) as well as video games produced by mid-sized or major publishers (so called AAA games) for a number of years. For example, *Team Fortress 2* released in 2011, introduced the concept of crates and item trading, while *Counter-Strike: Global Offensive* (CS:GO) introduced weapon crates in 2013. Since then, there has been an increase in the inclusion of loot boxes in games, most notably since the release of the beta version of *Overwatch* in 2016. Mr Blake Mizzi, Board Member, Game Developers' Association of Australia (GDAA) explained:

For decades, a lot of games have been offering a loot box or similar mechanic. Some of the earliest games in gaming history, for the last 20 years, have been offering a similar system of juicy rewards for players in digital games. It is only recently, however, that they have been allowed to be purchased with real-world money beyond the initial game purchase. The most popular games identified these days almost all include a loot box mechanic of some sort, and this is about making digital items available. But most of them don't make digital items available for sale outside the game.<sup>8</sup>

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6 IGEA, *Submission 3*, p. 5.

7 Australian Institute of Family Studies, *Submission 10*, pp. 1–2.

8 Mr Blake Mizzi, Game Developers' Association of Australia (GDAA), *Proof Committee Hansard*, 17 August 2018, p. 9.

1.16 The rarity of some virtual items and the emergence of third-party online sites acting as exchange markets have also led to players selling some in-game items for thousands of dollars. In this context, virtual items are operating as de-facto virtual currencies, and have subsequently been used as virtual betting chips on third-party gambling websites, with significant amounts of real-world currency being exchanged.<sup>9</sup>

1.17 So-called 'skin gambling' refers to the use of in-game items for online gambling through a variety of mechanisms including third-party websites. It should be noted that the expansion of these third-party sites has served to encourage players to stake money on loot boxes for the chance to obtain a rare item.<sup>10</sup>

### **Importance of loot boxes**

1.18 Australia's video game industry largely focuses on the production of games of 'narrative storytelling, problem solving, puzzle solving, escapism, role playing, sports games, games about superheroes, board games, card games, strategy and educational games'. There are over 200 game studios in Australia and the industry employs approximately 1000 people across the country. It is estimated to comprise three to four per cent of the global industry which is worth over \$100 billion.<sup>11</sup>

1.19 The video game industry, like other creative industries, faces economic challenges from piracy and arbitrage and as such, has had to develop a range of revenue streams beyond retail sales.<sup>12</sup> The following sections outline the evidence received by the committee in relation to the importance of in-game and in-app purchases, including loot boxes, in ensuring the economic viability of the industry.

### ***Revenue streams***

1.20 Loot boxes represent the evolution of revenue streams in the gaming industry. Previously, game titles were sold as a complete stand-alone product. As a title gained popularity, a sequel or 'expansion pack' may have been offered, however the sale of a title was largely considered a single transaction without ongoing interaction between the purchaser and the developer. As the industry evolved, developers began offering Downloadable Content (DLC) which, though smaller than expansion packs previously offered, would nevertheless offer new characters, costumes, additional missions or storylines.<sup>13</sup>

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9 Australian Institute of Family Studies, *Submission 10*, p. 2.

10 Australian Institute of Family Studies, *Submission 10*, p. 2.

11 Mr Blake Mizzi, GDAA, *Proof Committee Hansard*, 17 August 2018, p. 9.

12 Mr Blake Mizzi, GDAA, *Proof Committee Hansard*, 17 August 2018, p. 10.

13 Mr Alex Knoop, *Submission 12*, pp. 5–6.

1.21 With the rise of online gaming, developers began charging users a subscription fee to play online games such as *World of Warcraft* and other Massive Multiplayer Online Role-Playing Games (MMORPGs or MMOs). These games continually add content to keep players engaged.<sup>14</sup>

1.22 At the same time, virtual currencies emerged as another means for developers to earn additional revenue from titles. As such, players were given the opportunity to purchase in-game virtual currency using real-world currency, instead of earning virtual currency through game-play. This proved popular with users who had less time to spend participating in otherwise time-intensive games.<sup>15</sup>

1.23 The profitability of virtual currencies led to the development of free-to-play (F2P) games which are completely free to play, but players are encouraged to make in-game purchases using real-world money or face excessive hours of game play to make progress. Popular examples include *Candy Crush*, *League of Legends*, and *Team Fortress 2*.<sup>16</sup> Mr Mizzi, GDAA, told the committee:

The purest form of the successful in-app purchase game mechanic comes in the free-to-play model, which is a business model where players can download a game for free and play it indefinitely. It's at the player's discretion if they choose to purchase an in-game item or a cosmetic item that might help them to express their character online or just customise their character—you could buy a hat! There are also in-game mechanics or in-app purchases around energy mechanics to allow players to progress through a game faster.<sup>17</sup>

1.24 As an alternative revenue stream, in-app and in-game purchases have proven to be remarkably successful. For example, in 2018, Juniper Research estimated that the size of the global gaming industry was US\$117 billion, and 25 per cent of that value was generated through loot boxes.<sup>18</sup>

1.25 Further, Juniper Research estimated that without regulatory intervention, loot boxes will come to form 47 per cent of industry revenue by 2022. It projected the global video game industry's revenue to be US\$160 billion, with US\$75 billion being generated by chance-based micro-transactions.<sup>19</sup>

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14 Mr Alex Knoop, *Submission 12*, p. 6.

15 Mr Alex Knoop, *Submission 12*, p. 6.

16 Mr Alex Knoop, *Submission 12*, p. 6.

17 Mr Blake Mizzi, GDAA, *Proof Committee Hansard*, 17 August 2018, p. 10.

18 Dr James Sauer, *Proof Committee Hansard*, 17 August 2018, p. 7.

19 Dr Aaron Drummond, *Proof Committee Hansard*, 17 August 2018, pp. 8–9.

### ***Economic challenges***

1.26 The committee heard evidence that over the past two decades, retail prices have not increased, however the costs associated with the production and development of video games have increased significantly. Mr Mizzi, GDAA, explained:

Retail prices have been flat for about two decades so you could argue that they've gone down while the development budgets for games have gone into the billions of dollars. In some cases they dwarf the largest film productions. So AAA games today, for your \$60 or \$100 outlay, an EB Games [game] can provide hundreds of hours of game play. But the costs of development have increased, so too have the online development costs for deployment and the online support costs because these games now run those games as a service.<sup>20</sup>

1.27 As such, 'in-game purchases such as the loot box mechanic have become a core revenue prop' ensuring the viability of the video game industry.<sup>21</sup> Mr Mizzi explained that developers and publishers now rely on the purchases of a 'very small playing percentage of players' to support the industry.

1.28 However, Mr Mizzi told the committee that the in-app or in-game purchase model is viewed as a 'fairer system' where ongoing revenue is only collected from 'those willing to pay, and those who have the discretionary income to pay for these items'.<sup>22</sup>

### **Public concern**

1.29 As noted above, loot boxes have been included in video games for many years. However, Electronic Arts (EA) released *Star Wars Battlefront II* in 2017 containing a new type of loot box with items which provide a player with advantages such as stronger characters or items which substantially increase the damage, health and fire rate of the player's characters. The introduction of this 'pay to win' approach led to widespread outrage in the gamer community and public pressure influenced EA to remove paid loot boxes from this game.<sup>23</sup> Mr Mizzi, GDAA explained:

...key iconic Star Wars characters—would be available from the game purchase; but a lot of those were locked behind further long-form grind mechanics, where a player would have to complete long tasks, over a long period of time, to unlock these rewards. But the economy inside the game allowed a player to shortcut these mechanics with real money—so you could buy Darth Vader now or you could play 60 hours to unlock Darth Vader. This process, which is hugely disliked by gamers around the world, is called nickel and diming.

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20 Mr Blake Mizzi, GDAA, *Proof Committee Hansard*, 17 August 2018, p. 10.

21 Mr Blake Mizzi, GDAA, *Proof Committee Hansard*, 17 August 2018, p. 10.

22 Mr Blake Mizzi, GDAA, *Proof Committee Hansard*, 17 August 2018, p. 10.

23 Attorney-General and Minister for Justice (Qld), *Submission 1*, p. 2.

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Also, I think the combining of the *Star Wars* franchise and the *Battlefront* franchise—which is huge—was a huge media draw, so it gained a lot of attention. It is also my belief that the outrage around these loot boxes really hit a nerve in western audiences. The pay-to-win mechanic is actually quite accepted in eastern cultures. I am not advocating that that is right. It is really around that pay-to-win mechanic. So this brought loot boxes to the wider mass media consciousness and has triggered a lot of this healthy discussion.<sup>24</sup>

1.30 The criticism of the inclusion of 'pay to win' loot boxes was echoed by submitters with some describing their inclusion as a decision motivated by greed. For example, Mr Samuel Drew stated:

Gaming micro-transactions have been a plague to the online gaming community for a very long time but has recently gained traction as a result of greedy company decisions that allow online players to gain an advantage over others by spending extra money on said micro-transactions.<sup>25</sup>

1.31 Concern was also raised that the inclusion of loot boxes has damaged the quality of games, with developers focusing on raising revenue rather than creating engaging content.<sup>26</sup>

1.32 Throughout 2017 and 2018, public backlash led to games developers either removing existing loot boxes from games, or releasing new games without loot boxes. For example:

- *Shadow of War* removed its loot boxes;
- *Far Cry 5* and *Monster Hunter World* have minor micro-transactions, but no loot box elements at all, and *God of War* and *Spider-Man* are using the lack of loot boxes as a marketing tool;
- *Fortnite*, currently the most popular game globally, has a micro-transaction system that is entirely loot box-free. The Battle Pass lets players pay \$10 a season for earned cosmetic rewards, and those cosmetics can also be flat-purchased outright without randomisation; and
- Blizzard games *Hearthstone* and *Overwatch*, dramatically increased the quality of drops for players, disallowing legendary card/skin duplicates, so players could amass more of the best items more quickly.<sup>27</sup>

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24 Mr Blake Mizzi, GDAA, *Proof Committee Hansard*, 17 August 2018, p. 9.

25 Mr Samuel Drew, *Submission 15*, p. 1.

26 Name withheld, *Submission 13*, p. 1.

27 Paul Tassi, 'From "Battle Front 2" to "Fortnite", The War Against Loot Boxes is Being Won in 2018', 11 April 2018, <https://www.forbes.com/sites/kpmg/2018/07/19/the-great-rewrite-the-future-of-work-in-an-automated-world/#650b95221105>, (accessed 9 August 2018).

1.33 Public concern has also arisen regarding the popularity of games containing loot boxes with players under the age of 18. In particular, the concern that children are being exposed to in-game gambling or simulated gambling which leaves them vulnerable to gambling-related harms. The Office of the eSafety Commissioner stated:

Debates have to date centred on the addictive nature of loot boxes, as well as their exploitative and manipulative design features. As an Office, we are particularly aware of growing community concern and debate that this feature may normalise spending behaviour and potentially act as a gateway to more traditional forms of 'online gambling'.<sup>28</sup>

1.34 The media coverage and public debate regarding loot boxes was also noted by the Australian Communications and Media Authority (ACMA) with Ms Jonquil Ritter, Executive Manager, Content Safeguards Branch, stating that during November 2017, the ACMA received a number of complaints and inquiries as a result of significant media coverage of the gambling-like mechanisms in popular games such as *Star Wars Battlefront II*. Ms Ritter also stated that since August 2017, 15 per cent of its complaints and inquiries over the 12 month period to August 2018 were in relation to loot boxes and skin gambling.<sup>29</sup>

### ***Skin gambling***

1.35 Concern regarding the spread of skin gambling, or the use of virtual items in online betting, has also driven much of the debate in relation to the need to regulate loot boxes.

1.36 The skin gambling market was estimated to be worth approximately US\$7.4 billion in 2016.<sup>30</sup> It is estimated that tens of thousands of people make bets using in-game items, particularly those obtained from CS:GO, on third-party websites. The items which are won and lost have real-world value as they can be bought and sold on the Steam Community Market offered by CS:GO's publisher, Valve.<sup>31</sup>

1.37 There are a range of ways that users are able to skin gamble including:

- esports betting where users can place bets on CS:GO matches using CS:GO skins;
- mystery boxes where players are presented with loot boxes that mimic the experience of opening a loot box in CS:GO, and where the items can be sold on the Steam Community Market; and

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28 Office of the eSafety Commissioner, *Submission 34*, p. 1.

29 Ms Jonquil Ritter, ACMA, *Proof Committee Hansard*, 17 August 2018, p. 43. See also ACMA, *Submission 26*, p. 1.

30 Mr Alex Knoop, *Submission 12*, p. 18.

31 Evan Lahti, 'CS:GO's controversial skin gambling, explained', *PC Gamer*, July 20 2016, <https://www.pcgamer.com/csgo-skin-gambling/>.

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- public pots where players deposit skins into a shared pot for a specific amount of time, and where the higher total value of the skins a player deposits, the greater the chance of winning the pot.<sup>32</sup>

1.38 Valve has undertaken a number of legal actions against third-party skin gambling sites, and there have been a number of controversies regarding betting on esports using skins including instances of match-fixing.

1.39 Much of the public concern however has been regarding the exposure of children and vulnerable persons to this form of online gambling through engagement with loot boxes, and the potential for gambling-related harms to be experienced.

### **International regulatory responses**

1.40 As a result of public concern, regulators around the world have begun to consider whether loot boxes should be considered a form of gambling, and regulated accordingly. International regulators have come to differing conclusions and implemented a range of responses.

1.41 The following sections outline the approaches taken in a number of jurisdictions.

#### ***Denmark***

1.42 The Danish Gambling Authority, in response to an increased number of public inquiries, issued a public statement on loot boxes clarifying when a game would fall under the auspices of the Danish *Gambling Act*. The statement noted that games must be licensed when three criteria are met: there must be a deposit; there must be an element of coincidence; and there must be a prize. Where the prize is a virtual item, it must be 'able to translate into financial terms'.<sup>33</sup>

1.43 The Danish Gambling Authority examined a number of well-known video games containing loot boxes and observed that where virtual items cannot be sold or otherwise converted into money, the *Gambling Act* would not apply. However, it stated that where items can be sold on third-party websites and 'thus converted into money' then the *Gambling Act* would apply.<sup>34</sup>

1.44 The Gambling Authority concluded that loot boxes must be considered 'individually as it is not possible to generally assess whether the items won in a loot

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32 Evan Lahti, 'CS:GO's controversial skin gambling, explained', *PC Gamer*, July 20 2016, <https://www.pcgamer.com/csgo-skin-gambling/>.

33 ACMA, *Submission 26*, Attachment 1, p. 2.

34 ACMA, *Submission 26*, Attachment 1, p. 2. Citing: Danish Gambling Authority, *Statement about loot boxes/crates*, 29 November 2017, <https://spillemyndigheden.dk/en/news/statement-about-loot-boxes-loot-crates>.

box can be converted into money. Therefore, it cannot be excluded that loot boxes may in some cases be covered by the Act on Gambling'.<sup>35</sup>

1.45 The Danish Gambling Authority also recognised the importance of protecting children and young people, and emphasised the importance of parents taking an interest in the games played by their children and discussing responsible gaming behaviour.<sup>36</sup>

### **Belgium**

1.46 The Belgium Gaming Commission's Secretariat, Mr Peter Naessens, published a research report on loot boxes in April 2018. The report applied the definition of a game of chance as established under the Belgium *Gaming and Betting Act*. Mr Naessens concluded that:

The paid loot boxes in the examined games *Overwatch*, *FIFA 18* and *Counterstrike: Global Offensive* fit the description of a game of chance because all of the constitutive elements of gambling are present (game, wager, chance, win/loss). The loot box system in *Star Wars Battlefront 2* prior to the official release of the game also fits this definition, but this is no longer the case today.<sup>37</sup>

1.47 Mr Naessens made a suite of recommendations to the Belgium Gaming Commission, distributors and game developers, and entities which license brands to game developers (e.g. FIFA and Disney). These recommendations included a ban on minors buying games containing paid for loot-boxes, age verifications for in-game purchases, permits be developed for games of chance in video games, education for parents and children, and the regulator having the power to inspect games following complaints.<sup>38</sup>

1.48 Mr Naessens also recommended increased transparency regarding odds, giving the Belgium Gaming Commission complete control of the number generator used for loot boxes, and the introduction of spending limits.<sup>39</sup>

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35 ACMA, *Submission 26*, Attachment 1, p. 2. Citing: Danish Gambling Authority, *Statement about loot boxes/crates*, 29 November 2017, <https://spillemyndigheden.dk/en/news/statement-about-loot-boxes-loot-crates>.

36 ACMA, *Submission 26*, Attachment 1, p. 3. Citing: Danish Gambling Authority, *Statement about loot boxes/crates*, 29 November 2017, <https://spillemyndigheden.dk/en/news/statement-about-loot-boxes-loot-crates>.

37 ACMA, *Submission 26*, Attachment 1, p. 1.

38 ACMA, *Submission 26*, Attachment 1, p. 1.

39 ACMA, *Submission 26*, Attachment 1, p. 2.

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## *The Netherlands*

1.49 The Netherlands Gaming Authority (NGA) also conducted a study into loot boxes. It found that four of ten games assessed contravened Dutch law. It stated:

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.<sup>40</sup>

1.50 The Dutch *Betting and Gambling Act* defines gambling as activities where there is an opportunity to compete for prizes and premiums, and where participants are unable to exercise a dominant influence. The NGA determined that when opening loot boxes, players cannot influence the outcome.

1.51 It also assessed that where virtual items are transferable, they have potential economic value and this meets the first requirement that players compete for prizes or premiums. The NGA told the committee that:

Prizes are defined as all goods to which economic value can be assigned that accrues to the participants in the games of chance by virtue of their participation. Where they do not exist in cash, prizes shall be taken into consideration at their economic value. Prizes can also be intangible game outcomes (items) that represent an economic value. When trading of items between players is possible, items represent a potential economic value. In practice, we see that items sometimes represent a value of thousands of euros.<sup>41</sup>

1.52 The NGA also noted the addiction risk potential associated with loot boxes and described the integration of loot boxes into games of skill without the corresponding addiction prevention measures and provisions to be inconsistent with Dutch gambling policy. The NGA stated:

According to our analyses, loot boxes have, on average, an addiction potential between moderate and high. A lot of loot boxes have integral elements that are similar to slot machines. Loot boxes with a higher score are often comparable with blackjack or roulette in terms of addiction potential. Loot boxes with a lower score are comparable with small-scale bingo in terms of addiction potential.

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40 ACMA, *Submission 26*, Attachment 1, p. 4. See also Additional Information, The Netherlands Gambling Authority – Regulatory approach to loot boxes, p. 1.

41 Additional Information, The Netherlands Gambling Authority – Regulatory approach to loot boxes, p. 1.

A very large group of minors (75% - 95%) play video games. This group can currently be exposed to loot boxes. The risk of gambling addiction in this group is higher than in other groups.

The integration of loot boxes into games of skill provides a low threshold for playing a game of chance. This integration creates a mixture of games of chance and games of skill in an environment that is comparable, in physical terms, with the low threshold of the hotel and catering industry. Such mixing at these locations was prohibited in the Netherlands in the 1990s to reduce exposure to games of chance and to protect minors.<sup>42</sup>

1.53 The NGA noted that it broadly has the power to impose a fine or other sanction such as an Administrative Order for incremental penalty payments of €30,000 or 10 per cent of a company's world-wide turnover in the event of non-compliance with its determinations. It also noted that if administrative enforcement does not work then the NGA can appeal to the Public Prosecution Service to prosecute criminal proceedings.<sup>43</sup>

### *France*

1.54 In November 2017, a French Senator wrote to the *Autorité de régulation des jeux en ligne* (ARJEL), the French online gambling regulator, in relation to loot boxes. In response, the President of ARJEL, Mr Charles Coppolani, outlined three issues which loot boxes raise. These issues were:

- consumer protection rights with respect to micro-transactions which are added after the game's original purchase, and of which players are not clearly informed;
- tracking in-game spending with Coppolani contrasting loot boxes with pay-to-win micro-transactions where players know what they are purchasing; and
- the issue of converting virtual items into something of real-world value.<sup>44</sup>

1.55 ARJEL expanded on its position in 2018 and examined the definition of gambling under French law which requires a stake, chance and a prize. ARJEL concluded that given the legal definition of gambling, not all loot boxes can be qualified as gambling, however it is different where it is possible to monetize virtual items. ARJEL further stated that the 'legality of this type of game is arguable when the prize may be transferred out of the platform and when the gaming editor enables the use of prizes won elsewhere than in the environment of the platform'.<sup>45</sup>

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42 Additional Information, The Netherlands Gambling Authority – Regulatory approach to loot boxes, p. 2. See also ACMA, *Submission 26*, Attachment 1, pp. 4–5.

43 Additional Information, The Netherlands Gambling Authority – Regulatory approach to loot boxes, p. 3. See also Dr James Sauer, *Proof Committee Hansard*, 17 August 2018, p. 4; Dr Aaron Drummond, *Proof Committee Hansard*, 17 August 2018, p. 4.

44 ACMA, *Submission 26*, Attachment 1, p. 3.

45 ACMA, *Submission 26*, Attachment 1, p. 3.

1.56 More broadly, ARJEL noted that regardless of meeting legal definitions of gambling, loot boxes challenge the public policy objectives that underpin French gambling policy. In particular, ARJEL noted: the lack of age verification which results in minors being able to play games with loot boxes; loot boxes introducing minors to gambling-like elements; and a lack of transparency with respect to the random number generator used in loot boxes.<sup>46</sup>

### ***Germany***

1.57 Germany's Federal Review Board for Media Harmful to Minors (BPjM) issued a statement regarding loot boxes in October 2017. It noted that risks posed by loot boxes lie in how game mechanics function rather than the content of games themselves. BPjM noted that loot boxes pose new challenges to regulators seeking to protect minors from harm and stated that it was working other agencies to develop a child and youth policy strategy which would encompass loot boxes.<sup>47</sup>

1.58 In February 2018, the Commission for the Protection of Youth in the Media (KJM) also issued a statement on loot boxes. It indicated that some loot boxes may contravene Germany's prohibition on direct advertisement appeals to purchase products directed at minors.<sup>48</sup>

### ***United Kingdom***

1.59 In October 2017, the UK's Parliamentary Under Secretary of State for Sport and Civil Society responded to a written question on notice regarding protecting children and vulnerable adults from harm associated with gambling and video games. The answer stated that:

Where items obtained in a computer game can be traded or exchanged outside the game platform they acquire a monetary value, and where facilities for gambling with such items are offered to consumers located in Britain a Gambling Commission licence is required. If no licence is held, the Commission uses a wide range of regulatory powers to take action.<sup>49</sup>

1.60 The UK Gambling Commission issued further guidance on loot boxes in November 2017 and stated that in determining whether loot boxes meet the definition of gambling under UK law, the key consideration 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

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46 ACMA, *Submission 26*, Attachment 1, p. 3.

47 ACMA, *Submission 26*, Attachment 1, pp. 3–4.

48 ACMA, *Submission 26*, Attachment 1, p. 4.

49 ACMA, *Submission 26*, Attachment 1, p. 5.

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.<sup>50</sup>

1.61 The UK Gambling Commission also noted that where activities don't meet the legal definition of gambling, but could still potentially cause harm to children, it is the job of the regulator to ensure that children are protected through other measures such as age verification requirements.<sup>51</sup>

### ***United States***

1.62 Responses to loot boxes in the United States have included self-regulatory initiatives, as well as state-based legislative proposals.

1.63 The Entertainment Software Rating Board (ESRB) is a self-regulatory body responsible for assigning rating for video games and apps sold in the US and Canada. In October 2017, it declared that it did not consider loot boxes to be gambling. However, in February 2018, it launched an initiative to assign an 'in-game purchase' label to physical copies of video games to aid parents. It also simultaneously launched a website to assist parents in tracking children's in-game spending.<sup>52</sup>

1.64 States such as Hawaii, Washington state, Minnesota and California have introduced bills related to the regulation of loot boxes. These bills have not been passed to date.<sup>53</sup>

### ***China***

1.65 In 2016, it was reported that China's Ministry of Culture requires video games containing loot boxes to provide information about the odds of receiving loot box items.<sup>54</sup>

### ***New Zealand***

1.66 In December 2017, the Department of Internal Affairs' Gambling Compliance Office issued a media statement to the effect that loot boxes do not meet the definition of gambling under New Zealand law. The statement noted:

Gamers do not purchase loot boxes seeking to win money or something that can be converted into money. They buy loot boxes so that they can use their contents within the game and thereby have a better gaming experience.<sup>55</sup>

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50 ACMA, *Submission 26*, Attachment 1, p. 5.

51 ACMA, *Submission 26*, Attachment 1, p. 6.

52 ACMA, *Submission 26*, Attachment 1, pp. 6–7.

53 ACMA, *Submission 26*, Attachment 1, pp. 7–8.

54 ACMA, *Submission 26*, Attachment 1, p. 2.

55 ACMA, *Submission 26*, Attachment 1, p. 5.