

Chapter 5

Committee view and recommendations

5.1 The video game industry is a creative industry providing interactive entertainment to millions of people around the world. In Australia alone, there are more than 200 studios employing over 1000 people in the creation of games of narrative story-telling, problem solving, escapism, role playing, sports games, games about superheroes, board games, card games, strategy and educational games.

5.2 As the video game industry has grown and evolved over the past twenty years, so too has its revenue streams. The introduction of micro-transactions through in-app or in-game purchases has revolutionised the economics of the video game industry. For example, the global video game industry is currently valued at approximately US\$117 billion, with 25 per cent of that value generated from micro-transactions. The value of the industry is projected to grow to US\$160 billion by 2022 and it is estimated that approximately 47 per cent of the industry's revenue will be sourced from micro-transactions.

5.3 Micro-transactions for chance-based items, or 'loot boxes' have been included in games for a number of years, however the introduction of loot boxes which provide game-play advantage rather than simply cosmetic items, is described as being the catalyst for much of the public criticism of the mechanism seen in recent years. The inclusion of so-called 'pay to win' loot boxes created such significant public backlash that a number of game developers removed existing loot boxes from games or released new games without loot boxes.

5.4 Beyond the criticism of 'pay to win' loot boxes, much of the public debate regarding loot boxes has centred on whether such micro-transactions constitute gambling, and should therefore be regulated accordingly. This debate has focussed on the legal definitions of gambling under federal and state and territory legislation; and the definition of gambling according to psychology.

5.5 In particular, it has been argued that even where loot boxes do not meet the legal definition of gambling, many loot boxes meet the five established psychological criteria for gambling, and as such, players may be at risk of developing gambling-related harms.

5.6 Regulators, both in Australia and around the world, have considered whether loot boxes meet the legal definition of gambling, and have formulated a variety of responses to the issue. These responses have ranged from determining that loot boxes do not constitute gambling to determining that loot boxes contravene gambling regulation and the sale or provision of loot boxes is therefore prohibited. Other regulators have introduced the requirement that games must publish the odds associated with loot boxes, and others have introduced labelling requirements.

However, a global consensus view on whether loot boxes constitute gambling has not been reached, nor has a uniform approach to dealing with the issue been adopted.

5.7 It is important to note that loot boxes are not a homogenous entity and many variations of the mechanism exist. In particular, there are a variety of ways in which loot boxes can be acquired including through game-play achievements and through direct purchase using real-world currency. Loot boxes can also differ according to whether the virtual items contained within can be monetised.

5.8 As such, definitive statements regarding the operation and effect of loot boxes in general are difficult. A range of stakeholders including regulatory agencies, and academics told the committee that loot boxes should be assessed on a case-by-case basis. However, there was broad consensus that where real-world currency is exchanged (that is, when loot boxes are purchased, where virtual items are bought and sold, or where both occur) loot boxes may most closely meet the definitions of gambling (both regulatory and psychological), and therefore a range of risks to players may exist.

Regulatory review

5.9 The committee acknowledges the community concern that the inclusion of loot box mechanisms in video games may be normalising gambling and gambling-like behaviour. The committee also acknowledges the concern that children and some vulnerable adults may suffer gambling-related harms as a result of interaction with loot box mechanisms included in video games.

5.10 However, it is important to note that in Australia, neither video games nor interactive gambling are unregulated spaces, and as such, video games containing loot boxes are already subject to regulation in a variety of ways. The Australian Government provides regulatory oversight through the:

- Department of Communications and the Arts;
- Australian Competition and Consumer Commission (ACCC);
- Australian Communications and Media Authority (ACMA);
- Office of the e-Safety Commissioner;
- Classification Board; and
- Department of Social Services.

5.11 Of particular note, video games are subject to review and classification by the Classification Board. The classification of games ensures that consumers are aware when games contain classifiable material, and allows consumers to make informed purchasing decisions. The scheme is a critical component in protecting children and vulnerable adults from harms related to video games, including where games contain gambling elements.

5.12 The committee also acknowledges the advice of the ACMA that it has not considered that loot boxes meet the definition of gambling as contained in the *Interactive Gambling Act 2001* (IGA), as virtual items redeemed from loot boxes do not have any monetary or other value. The ACMA told the committee that the Explanatory Memorandum for the IGA explicitly stated that to be considered a gambling service, a game must be played for a prize of monetary value.

5.13 The committee notes that the ACMA qualified this advice by stating that the particular features of a game or service must be considered on a case-by-case basis, and that statements about loot boxes more generally, are difficult.

5.14 The committee is aware that loot boxes are not a homogenous entity and that any policy or regulatory response, including the classification of games, should take account of this. The committee is also aware that research into the psychological impact of loot boxes on players is still in its infancy and it would be inappropriate to draw inferences from existing research. Until further research is complete, developing an evidence-based regulatory approach to mitigate against any harm which may arise from interaction with loot boxes is challenging. Nevertheless, with regards to loot boxes, the roles and responsibilities of Australian Government regulators may benefit from clarification and greater coordination to guard against any gaps in coverage.

5.15 The committee is of the view that the issue of loot boxes in video games is one which would benefit from a formal departmental review, led by the Department of Communications and the Arts. Such a review should address concerns around regulator roles and responsibilities, legal definitions, classifications and consumer protection.

Recommendation 1

5.16 The committee recommends that the Australian Government undertake a comprehensive review of loot boxes in video games. This review should be led by the Department of Communications and the Arts in conjunction with the ACMA, the ACCC, the Office of the e-Safety Commissioner, the Classification Board, and the Department of Social Services.

5.17 This review should commission further research into the potential for gambling-related harms to be experienced as a result of interaction with loot boxes; identify any regulatory or policy gaps which may exist in Australia's regulatory frameworks; examine the adequacy of the Classification Scheme as it relates to video games containing loot boxes; consider if existing consumer protection frameworks adequately address issues unique to loot boxes; and ensure that Australia's approach to the issue is consistent with international counterparts.

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