



interactive games & entertainment association

Submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Response to proposed new mandatory
minimum classifications for gambling-like
content in computer games

June 2023

We acknowledge the Traditional Custodians of Country throughout Australia and their continuing connection to the land and sea. We pay our respects to all Aboriginal and Torres Strait Islander peoples, their cultures and to their elders past, present and emerging.

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Executive Summary

IGEA represents and advocates for the video games sector in Australia, an industry which is a major contributor to the digital economy. Our industry prioritises both fun and safety for players, and we welcome the opportunity to provide a submission on the Australian Government's proposed new mandatory minimum classifications for games with loot boxes and simulated gambling. Our submission responds to the proposed reforms in four ways: by addressing the policy basis for the two mandatory minimum classifications that have been proposed, by responding to the proposed new draft definitions in the Classification Guidelines, and by outlining our broader concerns with the policy and consultation process. Our submission makes several recommendations for the Australian Government to consider.

Firstly, IGEA disagrees with the proposed mandatory minimum classification of M for games with paid loot boxes as they do not constitute gambling. Loot boxes are a mechanism that always provides a prize, whereas gambling embeds a risk of loss. There is no evidence base for the proposed change, including in the Government's own literature review of research, the findings of a 2018 Australian Senate Inquiry, and recent research from the UK Government which concluded that enhanced industry-led protections should be pursued before regulation. Should a mandatory minimum classification for games with loot boxes still be pursued, we point to the Stevens Review which recommended a PG classification for such games.

Secondly, IGEA is concerned with the government's proposed classification of games containing simulated gambling as R18+. This proposal is inconsistent with the Stevens Review, which recommended a minimum classification of MA15+, and only for video games that exclusively involve simulated gambling. IGEA is concerned that this 'one-size-fits-all' approach to regulation will unintentionally impact games that include incidental, tangential or trivial elements of 'simulated gambling' in a way that is incomparable to 'social casino' games. Should a mandatory minimum classification for games with simulated gambling be pursued, we recommend an MA15+ classification for games that exclusively deal with simulated gambling and a lower classification for games that simply include simulated gambling.

Thirdly, our submission highlights the need to review the new definitions of 'gambling service', 'in-game purchases linked to elements of chance', 'real world currency' and 'simulated gambling' that are proposed to be added to the Guidelines for the Classification of Computer Games 2012. Particularly, the definition of 'gambling service' is too broad and not fit-for-purpose. We are deeply concerned that the definition is likely to encompass content that is very different to the age-restricted casino-style mechanics that the Government is targeting, including a range of chance-based mechanics in traditional games unrelated to gambling.

Finally, IGEA is highly concerned about the direction and consultation process for the proposed classifications reform. These reforms are being made to a classification framework that the Stevens Review found was out-of-date and no longer fit-for-purpose. Rather than implementing the current reforms, national discussion about broader reform must be prioritised. Further, the reform process is rushed and opaque. The public consultation period will only last three weeks and there has been no dialogue with stakeholders. The proposed changes were not accompanied by any consultation, discussion, options, or policy paper to contextualise the reforms, explain to the public why they are needed, highlight the objectives,

benefits and risks, or explore any alternate options or solutions. No town hall meetings or roundtables have been organised, limiting opportunities for stakeholder and public dialogue. Despite the significant requirements of reform of the National Classification Scheme, which require states and territory consensus, no effective public consultation is being carried out and only a limited analysis of policy options appears to have been undertaken. This has prevented broader conversations about other ways to promote safe gameplay more effectively.

List of recommendations

1. *The proposed mandatory minimum classification of M for games with loot boxes should not be implemented as there is no evidence for this significant regulatory action. Instead, we support a minimum consumer advice for games with loot boxes.*
2. *However, should the Government decide to progress with a mandatory minimum classification for games with loot boxes, despite the lack of evidence for this approach, we recommend that it follow the findings of the Stevens Review, which recommended a minimum classification of PG for games containing loot boxes.*
3. *We recommend that any proposed mandatory minimum classification for games with simulated gambling be aligned with the recommendation of the Stevens Review, being that it:*
 - *is limited to games that exclusively involve simulated gambling,*
 - *use a definition of 'simulated gambling' that is made with specific reference to "interactive content which replicates casino games", and*
 - *is set at MA15+.*
4. *However, should the Government consider that games that do not exclusively involve but do include simulated gambling (interactive content which replicates casino games) should also be subject to a mandatory minimum classification, that the minimum classification be lower (e.g. M) as long as it is justified by context. Such games should also be required to be given consumer advice of 'simulated gambling'.*
5. *We recommend that the Government avoid using the definition of 'gambling service' under the IGA and instead adopt its own definition of 'gambling' in games that is clearer in its scope, following the approach taken by other ratings bodies overseas, including PEGI and the ESRB. For example, we would recommend the following definition:*

Gambling Service: "Means games of chance that are ordinarily prohibited or age-restricted, including games of chance played in casinos".
6. *We recommend adding an additional element to the definition of 'in-game purchases linked to elements of chance' requiring that the in-game purchase does not disclose to the player the specific in-game digital items prior to the purchase.*
7. *We recommend amending the definition of 'real world currency' from "physical and digital currency, including cryptocurrency" to "physical and digital currency that can be purchased with real world money, including cryptocurrency".*
8. *We recommend changing the wording in limb (a) of the definition of 'simulated gambling' from "resembles or functions like a gambling service" to "simulates the experience of gambling [or a gambling service]".*

9. *We recommend adding to limb (a) of the definition of 'simulated gambling' that the simulated gambling must also be "playable or otherwise interactive to the player".*
10. *We recommend adding to limb (b) of the definition of 'simulated gambling' that simulated gambling rewards cannot be traded to other players in-game "for real world currency or anything else that can be redeemed or traded for real world currency".*
11. *Reform of the National Classification Scheme (NCS) should not be carried out in a piecemeal manner and if the proposed reforms are to be progressed, they should be progressed concurrently with broader consideration of how to modernise the NCS.*
12. *If the proposed reforms are to progress, despite the concerns raised in this submission, they must not be rushed but instead be progressed through genuine consultative policy dialogue, including a consideration of different policy options for achieving the Government's intended policy objectives.*
13. *If the proposed reforms are to progress, that any changes to the Classification Guidelines not come into legal effect for a period of at least twelve months.*

Introduction & Overview

About IGEA

The Interactive Games & Entertainment Association (IGEA) is the industry association representing and advocating for the video games industry in Australia, including the developers, publishers and distributors of video games, as well as the makers of the most popular gaming platforms, consoles and devices. IGEA also organises the annual Games Connect Asia Pacific (GCAP) conference for Australian game developers and the Australian Game Developer Awards (AGDAs) that celebrate the best Australian-made games each year. IGEA has over a hundred members, from emerging independent studios to some of the largest technology companies in the world.

IGEA welcomes the opportunity to express to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) our concerns with the proposed changes to the Guidelines for the Classification of Computer Games 2012 (the Guidelines). These changes will implement proposed new mandatory minimum classifications for so-called 'gambling-like' content in computer games. Specifically, the proposed changes to the Guidelines would make Australia a significant global outlier with respect to video game age classifications by introducing mandatory minimum classifications of R18+ (Restricted to 18 and over) for games which contain any element of simulated gambling and M (Mature – not recommended for persons under 15) for games containing in-game purchases linked to chance such as purchased loot boxes.

The importance of video games and the video games industry in Australia

Video games are a beloved Australian activity and provide great benefits for Australian game players, the wider community, and the economy. Video game developers and publishers are the innovators, creators and business leaders that are reimagining entertainment and transforming how we learn and play. Two in three Australians play games, mainly for enjoyment and relaxation, and games are increasingly being used for serious and educational purposes, including by governments. Video games provide a digital outlet for Australian art, culture, stories and voices, and Australian-made video games are among Australia's most successful and valuable cultural exports. Our medium also brings Australian kids into STEM and helps to build technology skills that will feed our country's future workforce needs.

The video game industry is a major contributor to the Australian digital economy. According to our data, video games are worth around \$4 billion a year in Australia,¹ while Australian-made games brought in \$284 million in largely export revenue last year.² Moreover, because the video game sector uniquely sits at the intersection of entertainment, the arts and technology, video game companies hire a wide range of artistic, technical and professional roles and are thus a wellspring of high-quality sustainable careers, providing an engine for growth within the Australian national economy. Indeed, Australian game developers are internationally renowned and ours has the potential to be one of Australia's most important growth industries of the future, as well as an integral component of the Government's vision for Australia to be a top 20 digital economy and society by 2030.

¹ <https://igea.net/2022/05/australian-video-game-consumer-sales-remain-robust>

² <https://igea.net/2022/12/australian-game-development-industry-records-job-boom>

The vibrant Australian video game development industry has been embraced by the Australian Government and by all state and territory governments. Canberra has recognised the economic, social, and cultural importance of video games and we are grateful for the strong support for our industry from across the political spectrum. We thank the Australian Government for celebrating video games in its recent National Cultural Policy by providing ongoing funding for Screen Australia to support video game development, and for introducing a bill to implement the Digital Games Tax Offset - a great bipartisan success story - which is currently before the Senate. We also thank the states and territories, each of which now provide grants or rebates (and often both) to support their fast-growing local video game development industries.

Our industry prioritises the importance of providing a fun and safe gaming experience for our players. Our industry implements world-leading parental settings and controls that allow individuals and parents to prevent, restrict and monitor in-game spending. These controls are effortless to set up and there is extensive guidance available online. While classification already provides consumer advice around games with in-game purchases or simulated gambling, our industry has gone further through its voluntary commitment to increase transparency around loot boxes by providing 'drop rate' disclosures (the disclosure of the rarity or probability of obtaining various items in loot boxes) to help players to make more informed choices.

About our submission

Our submission responds in detail to the proposed new mandatory minimum classifications and outlines a range of critical recommendations. Our submission is set out into four sections.

The first two sections highlight our overarching concerns with the policy basis of the proposed reforms. In the third section, we provide detailed commentary around ways to improve the draft definitions that are proposed to be added to the Classification Guideline and our rationale for them, should the mandatory minimum classifications nonetheless proceed. In the final section, we outline our broader concerns with the Australian Government's decision to progress these reforms independently of broader reform and with the rushed policy development and consultation process that we are observing.

Overarching concerns with and opposition to the proposed mandatory minimum age classification for games with loot boxes

In this section, we outline our overarching concerns with the underlying policy of a minimum M classification for games with loot boxes that the Australian Government is proposing to implement, which we strongly oppose.

We disagree with the Government's proposed mandatory minimum classification of M for games with loot boxes and are not satisfied that the Government has presented a compelling evidence base for this decision. Fundamentally, we object to the Government's characterisation of loot boxes as 'gambling-like content', as it has done during this process, and for conflating loot boxes with simulated gambling.

Loot boxes do not constitute gambling

As we have previously outlined publicly and to the Government, there are two critical differences between loot boxes and gambling. First, loot boxes are a prize mechanic that always provide a reward, whereas the risk of losing a bet or wager to win a prize of money or anything else of value is a central and necessary aspect of gambling. Most significantly, loot boxes do not provide anything of real-world value, while gambling is always played to enable a person to win money.

While loot boxes do involve an element of chance, rather than bearing any similarities with gambling, these are purchases with an element of chance that are akin to those commonplace in the physical and digital consumer landscape such as physical collectible trading card packs, blind boxes, lucky dips, mystery shopping offers, spin the wheel mechanics and prize-based arcade machines. All of these mechanics involve a similar element of chance and none of these are regulated through any kind of age classification designation. There is simply no evidentiary basis for singling out loot boxes in video games for disparate regulatory treatment.

The Government's proposed mandatory minimum classification is also inconsistent with the approaches taken by international governments on loot boxes, where they are not treated as gambling but rather a simple game mechanic. We are unaware of any countries that have given any default minimum age rating for games with loot boxes. Loot boxes are not prohibited anywhere in the world with the exception of Belgium (where a recent study identified that the country's loot box 'ban' was found to be ineffective).³

Inconsistency with existing government recommendations

In 2018, the Australian Senate Environment and Communications References Committee conducted a comprehensive six-month inquiry into loot boxes, with the bipartisan Committee concluding that there was no basis for changing any existing policy settings and recommending against any new policies to regulate loot boxes. Amongst other findings, the Committee recognised that there were existing and effective regulations and that there is an appreciable lack of compelling research demonstrating the need for further regulation. The Commission also based its determination to not take action on the fact that loot boxes are not homogenous, and thus any 'one-size-fits-all' policy or regulatory response would be inappropriate. Each of these underlying bases for the Committee's conclusions are just as valid today as they were five years ago and there are no notable changes, including the direction of

³ www.aph.gov.au/DocumentStore.ashx?id=857f9e37-a669-47d7-a9ae-6f749453e300&subId=728047

the research since then, that we believe justify the Government’s proposal to significantly change the Guidelines.

In 2020, the Federal Government commissioned the ‘Stevens Review’ of classification reform, a comprehensive and highly analytical review of ways to modernise the National Classification Scheme (NCS), including with reference to loot boxes and simulated gambling. We note that the Australian Government jointly released the Stevens Review with the announcement of the proposed mandatory minimum classifications. The Stevens Review recommended that games with loot boxes be classified PG (Parental Guidance).

In announcing the proposed minimum classification of M for games with loot boxes, the Government has not outlined why it has disregarded the recommendation of the Senate Environment and Communications References Committee that no further regulation is needed, or why it has chosen not to follow the recommendation of the Stevens Review that games with loot boxes be classified PG (despite the fact that the proposed reforms and the Stevens Review were released together). While both the Senate Inquiry and the Stevens Review were completed a few years ago, we are not aware of any research that has been undertaken since then that provides compelling evidentiary justification for the proposed mandatory minimum classification.

No evidentiary basis for further regulating loot boxes

There is no analytical basis for the Government’s proposal. The academic research on the impact of loot boxes is extremely limited and often suffers from methodological shortcomings. There is no longitudinal research examining any harmful relationship between loot boxes, gambling and gambling problems over time to understand the progression of any such relationship. Further, there are no studies or data that demonstrate a causal link between loot boxes and gambling problems. Any evidence regarding whether the involvement of real-world money impacts the relationship between loot box use and gambling problems is also inconsistent and underdeveloped.

The UK Government this year finalised a comprehensive and forensic two-year examination of loot boxes,⁴ including an analysis of existing research which purported to show an association between loot box purchases and gambling. Likely the largest study into loot boxes conducted anywhere in the world to date, the UK Government concluded that research has not established a causal link and there are a range of alternative explanations that could underpin any purported association. The UK Government concluded that the evidence did not support regulation, which would introduce significant risks, and that the best action would be to work more closely with the video games sector to strengthen industry-led protections.

We do not intend to adjust the legal definitions of gambling at this time in order to capture loot boxes. In our view, it would be premature to pursue legislative options without first pursuing enhanced industry-led protections, given the potential downsides.⁵

⁴ www.gov.uk/government/consultations/loot-boxes-in-video-games-call-for-evidence/outcome/government-response-to-the-call-for-evidence-on-loot-boxes-in-video-games

⁵ Rt Hon Lucy Frazer KC MP, UK Secretary of State for Culture, Media and Sport, Ministerial Foreword, www.gov.uk/government/consultations/loot-boxes-in-video-games-call-for-evidence/outcome/government-response-to-the-call-for-evidence-on-loot-boxes-in-video-games

Also supporting this lack of a causal or directional link, we note the submission made by the University of Sydney's Gambling Treatment and Research Clinic to the ongoing House of Representatives Standing Committee on Social Policy & Legal Affairs's Inquiry into Online Gambling, which noted that of the 1,129 clients received by the clinic since July 2021, only one identified loot boxes as an activity causing harm.⁶

Ultimately, there simply is no evidence-based analytical support in Australia or overseas data for any view that games with loot boxes are not recommended for children aged under 15. The proposed regulatory approach to loot boxes is unnecessarily disproportionate, without any indication that it will be effective to address any purported harm.

The Government's review of research

The primary basis for the Government's proposal is its June 2022 literature review on the harms associated with loot boxes, simulated gambling, and in-game purchases. While this study identified an association between loot box engagement and problem gambling, the Government's review also concluded that there was no evidence of any causal link between loot boxes and gambling problems:

The reviewed studies employed mostly cross-sectional designs and it was not possible to determine whether loot box engagement caused gambling problems. Further investigation - such as via longitudinal studies - would be required to determine whether: (i) loot box consumption causes gambling problems directly, (ii) those who already experience gambling problems are predisposed to higher loot box consumption, (iii) if there is a bidirectional relationship, or (iv) if any other factor/s are wholly explaining this relationship (mediation).⁷

In relation to this lack of a causal link, the review acknowledged that evidence of associations between engagement with loot boxes and harm may be influenced by a range of other factors, including player characteristics and social factors.⁸ Of particular concern is the fact that in investigating a link between loot boxes and harms, the review acknowledged that of all of the research that they assessed, "[only a] few studies accounted for other factors that could contribute to harm".⁹ Ultimately, the review highlighted the reality that the existing body of research has significant shortcomings and much broader research is needed to holistically understand and therefore regulate any purported harm.¹⁰

Rather than recommend any particular policy responses, the review's proposed next steps were further research to determine causality and to observe changes over time.¹¹ The fact that the primary basis for the Government's proposal is this literature review is particularly concerning since the review itself does not make any findings that loot boxes are not recommended for children under the age of 15 or that an M rating should be applied to them. In fact, in its section discussing mitigation, the review highlights a range of possible response options that have been raised in studies, with most of them appearing to be non-regulatory.¹² The reality is that there is simply no evidence base to justify the Government's proposals.

⁶ <https://www.aph.gov.au/DocumentStore.ashx?id=b4111e90-05d7-4892-9031-5c9b62f4691c&subid=725431>

⁷ Literature Review, p. 20

⁸ Literature Review, p. 48

⁹ Literature Review, p. 47

¹⁰ Literature Review, pp. 47-8

¹¹ Literature Review, p. 48

¹² Literature Review, pp. 39-40

Classification unsuitable for loot boxes

We also believe that the Government's proposal is inconsistent with the fundamental purpose of classification. Classification age ratings have always been designed to align the expectations of parents and consumers with the contents of a game. Descriptors have been adopted in certain jurisdictions to identify interactive elements in games, but age ratings themselves are used to reflect the content presented in video games. It is highly questionable how loot boxes, or any kind of in-game purchase, can be described as 'content' in the way that the NCS was designed for. The fact that the proposed loot box regulation has to be shoehorned into the classifiable element of 'themes', which generally refers to the exploration of adult narratives, or horror, science fiction or fantasy elements, particularly highlights this unsuitability.

Modifying the age rating process to set a minimum mandatory classification for a specific type of in-game purchasing mechanic represents a significant deviation from the fundamental purpose of classification as it bases the determination of the game's age rating not on the content of the game, but rather on how that content is monetised. Such a change introduces a real risk of confusion to parents and consumers. This is why other ratings systems have opted to utilise feature descriptors to inform parents and players of features that involve in-game purchases or other types of in-game interactions such as communications or user-generated content.

Industry's strong response

We also understand that the Australian Government will require the Classification Board to provide more specific consumer advice for games with loot boxes, such as "*In-game purchases (includes random items)*". IGEA supports this as a better and more parent-friendly approach. This would also put Australia's classification regime on par with other international video game age rating authorities such as the Entertainment Software Rating Board (ESRB) in North America and the Pan European Game Information (PEGI) in Europe.

Such a change will complement the range of measures that the industry has already implemented to improve loot box design, including by increasing guidance for consumers and by improving transparency around the probabilities of items obtainable via loot boxes. As previously mentioned, our industry is committed to providing transparency to players and parents on game features, including in-game purchases and randomised content such as loot boxes, as well as supporting the Australian Government's efforts to achieve the same objective.

Through the International Age Rating Coalition (IARC) system of classification for online and digitally-delivered games, which IGEA pushed Australia to adopt and which the Australian Government now co-governs globally, the games industry has introduced feature descriptors that provide pre-purchase information on the availability of in-game purchases in Australia and around the world across most popular digital game platforms - specifically "*In-Game Purchases (Includes Random Items)*" for games with loot boxes. This advice clearly signals upfront to the consumer prior to purchase that a game contains for-purchase loot boxes.

For years, our industry has also provided a range of family tools and features to provide a safe environment for game players and their families. Many of these tools, which continue to be strengthened year-on-year, are world-leading and unmatched by any other digital sector. In particular, all three video game consoles as well as all major smartphone operating systems enable parents to easily restrict, turn off, or require approval for spending on the platform, preventing their children from purchasing loot boxes or making other in-game purchases

without permission. Some consoles have also developed companion apps that parents and carers can download on their smartphones to make these settings and controls even more accessible.

Further, our industry in 2019 announced new initiatives to help consumers to make more informed choices about their purchases by ensuring information is available on the relative rarity or probability of obtaining randomised virtual items. Often referred to as probability or drop rate disclosure, these initiatives ensure players in Australia and around the world are aware of the probabilities of virtual items available in loot boxes. Finally, many game developers and digital storefronts have improved the visibility of their refund policies and practices for in-game purchases, which we understand has reduced consumer queries around loot box purchases.

PG is the most appropriate mandatory minimum classification

Finally, noting our objection to a mandatory minimum classification for games with loot boxes, if one is nevertheless implemented despite the lack of evidence for such an approach, it should be set at PG. A PG rating, which highlights the central value of parental guidance around games with loot boxes but without stating an age recommendation, is the better and more sensible approach. Not only was PG the recommendation of the Stevens Review, as previously discussed, but it better aligns with the community standards of Australians.

According to the Government’s most recent survey of the community on the topic of loot boxes, 31% of surveyed Australian parents stated that PG was the classification category that they felt was the most suitable for games with loot boxes, compared to just 19% who stated M.¹³ A further 23% of surveyed Australian parents also felt that loot boxes should either be G-rated or should not even be a relevant factor in classification. These are critical considerations as a foundational principle of the National Classification Scheme is that it is meant to reflect community standards.

Recommendations

1. *The proposed mandatory minimum classification of M for games with loot boxes should not be implemented as there is no evidence for this significant regulatory action. Instead, we support a minimum consumer advice for games with loot boxes.*
2. *However, should the Government decide to progress with a mandatory minimum classification for games with loot boxes, despite the lack of evidence for this approach, we recommend that it follow the findings of the Stevens Review, which recommended a minimum classification of PG for games containing loot boxes.*

¹³ www.classification.gov.au/about-us/research-and-publications/classification-survey-results-loot-boxes-and-simulated-gambling-games

Overarching concerns with the proposed mandatory minimum age classification for games with simulated gambling and recommendation for improvement

In this section, we outline our concerns with the underlying policy of a proposed R18+ classification for games with simulated gambling that the Government is proposing to implement. We disagree with the Government's proposed mandatory minimum classification of R18+ for games with simulated gambling, which in effect will be regulating simulated gambling with the same age restriction as real gambling, despite there being no possibility of winning anything of value and thus having vastly different potential harm profiles. We are also worried about the wide scope of the proposed change and have made some recommendations to address this.

Inconsistency with existing recommendations and evidence base

We are concerned that the Government has again rejected the recommendation of the Stevens Review in designing this proposal. First, the Stevens Review recommended a mandatory minimum classification of MA15+, while the Government has proposed an R18+ classification without giving an explanation for disagreeing with the expert's recommendation. We also highlight the fact that whilst the Government's literature review identified a causal link between simulated gambling and gambling problems, it also found that there are significant limitations with the evidence base. Further, the review did not make any recommendations that an R18+ classification should be extended to such games, despite the review being the Government's primary evidence base for these proposed mandatory minimum classifications.

Inadvertent impact on other kinds of games

Most critically, while the Stevens Review recommended that only video games that exclusively involve simulated gambling should be classified MA15+, the Government's proposal will also cover games that contain any simulated gambling, even in a very limited context. It is clear to us that the Government intended for this proposal to target so-called 'social casino games'. However, we do not consider that the Government has given adequate consideration to the fact that some video games that are not 'social casino games' may nevertheless sometimes incorporate elements of simulated gambling, merely as a part of the game's story or the environment of a level, and in a way where it is not a significant part of the game.

For example, a game level set on an abandoned cruise ship may include antique poker machines with pullable levers to give authenticity to the setting, while an adventure game may require the player to engage in a competitive game of cards against a villain to progress the storyline. We are certain that the Stevens Review had these examples in mind when it chose to only target games that exclusively involve simulated gambling with its recommendation. Unfortunately, under the scope of the Government's proposal, these examples above would be treated in the exact same way as social casino games and be required to be classified R18+.

While we note that the Government's literature review identified research that raised concern around simulated gambling, it is our understanding that most or all of the assessed research centred around social casino games, rather than games that simply include some simulated gambling features for narrative, aesthetic or immersive effect (and can be clearly differentiated from 'social casino games' where the simulated gambling element is central). These two categories of games should not be treated under a 'one-size-fits-all' approach to regulation - yet that is what the Government's mandatory minimum classification does.

A (minimum) two-tier approach to classifying simulated gambling

To effectively address the above discussed issue, any future minimum mandatory classification for games with simulated gambling must be designed in a way that recognises that ‘simulated gambling’ will have varying levels of impact from game to game - depending on context, how the content is presented in a game, how interactive it is, etc. This is the current way in which the Classification Guidelines treat essentially every other part of a game, from language and violence to sex, nudity and other themes. Simulated gambling must be treated no differently. In order for classifications to guide - and not misguide - consumers’ selection of material to play and watch, classification must be applied consistently. Rather than a game with simulated gambling only being able to be classified R18+, any proposed mandatory minimum classifications must be nuanced enough to accommodate multiple categories.

This is why we recommend that instead of imposing a single mandatory minimum classification for games with simulated gambling, that it apply a minimum two-tier approach with a higher mandatory minimum classification for games that exclusively deal with simulated gambling (MA15+) and a lower mandatory minimum classification (eg. M) for games that simply include simulated gambling where it is justified by context. There is nothing to stop the Classification Board from still giving a higher than minimum classification if it considers that the simulated gambling elements of the game to be significant enough to warrant such a rating.

Not only do we feel that a more nuanced approach to classifying simulated gambling is a better policy approach, but it will be more informative to the community. A R18+ classification always means ‘high in impact’, messaging that we feel would be diminished by indiscriminately applying the same classification to games containing simulated gambling even in instances where the specific material is, by all reasonable assessments, not high in impact, such as a brief card game within a game. We are concerned that as a result, consumers will underestimate the impact level of other R18+ material.

Recommendations

3. *We recommend that any proposed mandatory minimum classification for games with simulated gambling be aligned with the recommendation of the Stevens Review, being that it:*
 - *is limited to games that exclusively involve simulated gambling,*
 - *use a definition of ‘simulated gambling’ that is made with specific reference to “interactive content which replicates casino games”, and*
 - *is set at MA15+.*
4. *However, should the Government consider that games that do not exclusively involve but do include simulated gambling (interactive content which replicates casino games) should also be subject to a mandatory minimum classification, that the minimum classification be lower (e.g. M) as long as it is justified by context. Such games should also be required to be given consumer advice of ‘simulated gambling’.*

The proposed additional definitions to the Classification Guidelines

Having outlined our overarching concerns with the mandatory minimum classification proposals in general, we turn to the specific draft definitions that are proposed to be added to the Classification Guidelines should the Government nonetheless progress with these reforms.

'Gambling service'

For the purposes of the proposed mandatory minimum classification of R18+ for games with simulated gambling, a gambling service is proposed to be defined as having the same meaning as in the *Interactive Gambling Act 2001* (the IGA). Unfortunately, this definition is extremely wide and amongst other things includes a "game of chance or of mixed chance and skill". We are deeply concerned that the definition of 'gambling service' in the IGA is far too broad to be used when repurposed for this context and is likely to encompass content that is very different to the age-restricted casino-style mechanics that the Government is likely to be targeting through this proposed policy reform.

For example, we believe that unless specifically excluded, the following mechanics in a game are at significant risk of being covered by the definition of 'gambling service' in the IGA, even though they are legal and not subject to any age restrictions in real life:

- A game containing festival or arcade style mini-games that combine skill and chance to win tickets.
- Electronic versions of physical family board games that incorporate an element of chance, including those with randomly drawn 'chance' cards.
- A game where the player can enter a raffle, spin a wheel, or participate in a prize draw mechanic to win an in-game prize.
- A game where a player is challenged to a 'coin toss' or similar chance mechanic.
- A game where a player rolls dice to determine an action or quantity.

Further, we are also concerned with the simplistic approach of adopting the definition of 'gambling service' in the IGA, a piece of legislation that is entirely different to classification in design and policy intent. Finally, we note that the Australian Government could choose to unilaterally amend the definition of 'gambling service' at any time, which would therefore alter the operation of the Classification Guidelines without the agreement of the states and territories - possibly in contravention of the national arrangements underpinning the NCS set out through the foundational Intergovernmental Agreement on Censorship.

Rather than simplistically deferring to the definition of 'gambling service' in the IGA, we would suggest including a specific, bespoke, and context-informed definition of 'gambling service' that is clear and precise in its scope. Such an approach has been taken by other ratings bodies overseas, including PEGI and the ESRB.

Recommendation

5. We recommend that the Government avoid using the definition of 'gambling service' under the IGA and instead adopt its own definition of 'gambling' in games that is clearer in its scope, following the approach taken by other ratings bodies overseas, including PEGI and the ESRB. For example, we would recommend the following definition:

Gambling Service: "Means games of chance that are ordinarily prohibited or age-restricted, including games of chance played in casinos".

'In-game purchases linked to elements of chance'

We note that the proposed mandatory minimum classification for games with loot boxes in practice will target 'in-game purchases linked to elements of chance', which will include loot boxes (which are separately defined). While we accept that the element of chance is an important characteristic of the mechanic being regulated, we consider that the larger defining characteristic is the element of 'unknownness' around what the loot box contains. Some in-game purchases will have the element of chance but no element of unknownness. For example, some games only present in-game offers that, while being randomly determined, allow the player to see every item contained in the offer prior to its purchase. Here, the element of unknownness has become fully negated since the element of chance is fully transparent to the player prior to purchase. Despite this, such an offer would still technically fall within the definition of 'in-game purchases linked to elements of chance' and be required to be classified M. We think that this is an unintended consequence and is easily fixed by amending the definition.

Recommendation

6. *We recommend adding an additional element to the definition of "in-game purchases linked to elements of chance" requiring that the in-game purchase does not disclose to the player the specific in-game digital items prior to the purchase.*

'Real world currency'

We acknowledge and appreciate that the Government is proposing to limit the mandatory minimum classification for games with loot boxes to paid loot boxes only. Here, we recommend a slight amendment to the definition of 'real world currency' to include a requirement that the currency must have real world monetary value. This is because the term 'digital currency', which is included in the definition, is sometimes used colloquially to refer to in-game currencies, including those that are completely earned through gameplay and have no monetary or other real-world value. This can also be easily fixed by amending the proposed definition.

Recommendation

7. *We recommend amending the definition of "real world currency" from "physical and digital currency, including cryptocurrency" to "physical and digital currency that can be purchased with real world money, including cryptocurrency".*

'Simulated Gambling'

We have several suggestions to improve the current proposed definition of 'simulated gambling'.

In relation to limb (a) of the proposed definition, we consider that the most accurate and meaningful description of the scope of 'simulated gambling' is one that actually uses the word "simulates" rather than the proposed wording of "resembles or functions like", which does not have an identical meaning to the word "simulates" (in our view, "resembles or functions like" is broader, less precise and more difficult to interpret than "simulates").

We also do not believe that the existing limb (a) of the proposed definition makes it sufficiently clear that only games with simulated gambling that can be played are within scope (eg. a game

level set in an abandoned casino that only has machines as scenery that cannot be used should not be considered 'simulated gambling'). For additional clarity, we recommend the addition of a requirement in the definition that the mechanic not only simulates gambling, but also be playable or otherwise player-interactive.

In relation to limb (b) of the proposed definition, while it is currently a requirement of the definition of simulated gambling that rewards cannot be redeemed for real world currency, there is no caveat around real world currency if those rewards are traded in-game. Some games allow rewards to be traded to other players in-game for other in-game items or in-game currency. This simply allows players to swap in-game items that have no real-world value with other in-game items (or currency) that also have no real-world value. We believe this is likely an unintentional omission and we therefore recommend that the definition be amended to address this.

Recommendations

8. *We recommend changing the wording in limb (a) of the definition of 'simulated gambling' from "resembles or functions like a gambling service" to "simulates the experience of gambling [or a gambling service]".*
9. *We recommend adding to limb (a) of the definition of 'simulated gambling' that the simulated gambling must also be "playable or otherwise interactive to the player".*
10. *We recommend adding to limb (b) of the definition of 'simulated gambling' that simulated gambling rewards cannot be traded to other players in-game "for real world currency or anything else that can be redeemed or traded for real world currency".*

Classification policy reform process

We conclude our submission by conveying three further broader concerns with the proposed reforms and the present consultation process.

Impact on modernisation of the National Classification Scheme

We note that the Australian Government announced the proposed reforms on the same day that it released the long-awaited results of the Stevens Review. The Stevens Review provides a path forward for overhauling a NCS that has largely been unchanged since it was developed almost 30 years ago in 1994 and is so critically out-of-date that it is no longer fit-for-purpose and no longer reflects community expectations. Despite this, the Australian Government has chosen to delay broader reform, as well as higher priority issues with the NCS, in order to focus on two very specific and exceptional proposals for video games.

There are two main implications of the Australian Government's decision to sidestep the immediate need for reforming the NCS in order to progress the proposed reforms. First, noting that changing the NCS is a complicated task and requires obtaining a consensus amongst the jurisdictions, we are concerned that expending an entire reform process on two narrow proposals will be detrimental to the prospects of overall reform. Under a best-case scenario, this two-stage process will risk delaying work on the more critical need to modernise the NCS. At worst, it will endanger the overall process of implementing this broader reform given the limited attention and time that states and territories, and especially Attorneys-General, can dedicate to classification reform.

Second, ad hoc changes to the NCS are not sensible from a practical standpoint as it will be impossible to determine how the proposals will work under a radically different future framework. For example, the Stevens Review makes several recommendations affecting every aspect of the NCS, including the information that is provided to the public, how classification decisions are made and how classification is enforced. Enforcement is a particularly key consideration that is not being addressed as a part of the proposed reforms, given that classification laws, being a state and territory responsibility, are for the most part not presently being enforced online. As an aside, the present lack of online (or other) enforcement means that while our members will of course comply with any new regulations, many other industry participants will not and will most-likely not face any consequences, leading to a significant competitive disadvantage for us.

There are also still important discussions that need to be had in the context of modernising the NCS about whether to even keep the existing classification categories and whether their meanings should remain the same. In these circumstances, we believe that rather than implementing the current proposals prior to any national discussion around broader reform, we believe that it is far more sensible to carry them out concurrently.

Recommendation

11. Reform of the National Classification Scheme (NCS) should not be carried out in a piecemeal manner and if the proposed reforms are to be progressed, they should be progressed concurrently with broader consideration of how to modernise the NCS.

Rushed and opaque reform and consultation process

We are disappointed that the present reform process is rushed and opaque, with no genuine consultation process. The proposed reforms were first announced on 29 March this year with minimal explanation or detail, while the text of the proposed amendments to the Classification Guidelines were released on 17 May. There was no meaningful dialogue with stakeholders on the text of the proposed amendments prior to their release and the proposed changes were not accompanied by any consultation, discussion, options or policy paper to help provide stakeholders and the public with context and explanation of the Government's policy decision.

As a result of this lack of contextual information around the consultation, there are significant questions that remain unanswered and are not being put to the stakeholder or the public for open dialogue. For example, there are questions around the evidence base for the proposals, which as discussed appears to be primarily limited to the Government's literature review, which provided no findings that loot boxes or games with simulated gambling should be limited to people of a certain age or any policy recommendations in the classification space or elsewhere. Likewise, given that the Government has only released proposed changes to the Classification Guidelines and little accompanying commentary or analysis, there has been no dialogue possible around different ways in which the Government's policy objectives could be achieved through alternative - and possibly more effective - approaches or methodologies.

Critically, as we have already highlighted, the Government has not explained why in designing the proposals it has disregarded the bipartisan findings of the 2018 Senate Inquiry into gaming microtransactions for chance-based items, which recommended against increased regulation of loot boxes, or the Stevens Review itself, which recommended that games with loot boxes be classified PG (instead of the proposed M) and that games that exclusively deal with simulated gambling be classified MA15+ (instead of the proposed R18+ classification for games that contain any simulated gambling). Nor is there any discussion of evidence of the potential effectiveness of the Government's proposal, or consideration of the possibility of unintended consequences for game players, parents and carers, impacts on the video game industry and workers in the industry, or broader classification modernisation efforts. It is unclear, for example, whether any regulatory impact analysis has been undertaken in the design of the proposed policies, or whether any recent community research has been carried out (despite the fact that the classification framework is meant to reflect current community standards). These are questions that have not been asked, let alone answered, and are not being given space for transparency or dialogue through the current limited public consultation process.

We are further concerned that the public consultation process for such an important policy reform that will impact the two-thirds of all Australians who play games, not to mention the parents and carers of game players, is being unnecessarily rushed. We note that the public consultation period will only last three weeks - by far the shortest of any of the other public consultation periods that the Department is running for other policy reforms (which range from one to six months). Likewise, no town hall meetings or roundtables have been held during the consultation period, further limiting opportunities for stakeholder and public dialogue.

As a result of the above, we are concerned that no effective stakeholder or public consultation is being carried out, despite the fact that public consultation is a requirement of reform of the NCS as agreed with the states and territories, and that only a very limited analysis of policy options has been undertaken. The reality is that video game classification is only one way to promote safe gameplay and that there are many more effective policy frameworks than

classification for achieving that aim. However, obtaining these better outcomes requires a longer and more industry-inclusive consultation process. Unfortunately, the present process will not achieve this and stands in stark contrast to the UK Government’s recent inquiry into loot boxes, which comprised a comprehensive two-year process, an open review of research process, and extensive public consultation and dialogue.

Ultimately, we consider that any reform of the NCS must be done through a process befitting such an important national policy. The NCS is a bedrock component of Australia’s content regulation, and any proposal to use the NCS to regulate or restrict certain content or features must be properly scrutinised. Without such scrutiny, the NCS risks becoming a political tool that simply censors the moral panic of the day or topic of passing political focus. This can lead to unintended consequences, including the censoring or unnecessary regulation of material that is not likely to harm minors and the application of the NCS in ways that were never intended. The minimum standard of scrutiny should include a combination of independent research, community research, stakeholder engagement and public consultation. Regardless of the issue, whether it be loot boxes and simulated gambling, or language and violence, policy makers should be insisting on a minimum level of scrutiny, free of political objectives, before implementing any new content regulation.

Recommendation

12. If the proposed reforms are to progress, despite the concerns raised in this submission, they must not be rushed but instead be progressed through genuine consultative policy dialogue, including a consideration of different policy options for achieving the Government’s intended policy objectives.

Reasonable implementation period

Finally, should the proposed mandatory minimum classifications proceed, we ask that the changes to the Classification Guidelines be given a reasonable period to come into effect to enable video game developers to prepare for the impact of what is a very significant and sudden change in classification policy. Video games, whether made by small indie teams in Australia or massive AAA games developed in Australia and abroad, generally take several years to complete. For games currently close to completion, any newly imposed mandatory minimum classifications may have a significant impact on mechanics in the game that have been worked on for years. Out of consideration of this, we ask that any changes to the Classification Guidelines only come into effect after a period of at least twelve months.

Recommendation

13. If the proposed reforms are to progress, that any changes to the Classification Guidelines not come into legal effect for a period of at least twelve months.

Any questions?

For more information on any issues raised in this submission, please contact IGEA's Director of Policy & Government Affairs, Ben Au, at ben@igea.net

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