



Minister for Children

Associate Minister of Education

Minister of Internal Affairs

Minister for Seniors

18 DEC 2017



COMPLETED

Section 9(2)(a) of the OIA

Dear



Section 9(2)(a) of the OIA

I am responding to your email of 28 November 2017 about the inclusion of "loot boxes" within computer games and the potential harm they may cause to the vulnerable in society, particularly children. This issue falls within my responsibility as the Minister of Internal Affairs.

I understand that the issue of loot boxes within computer games has been the source of much debate internationally and different jurisdictions have tried to determine if loot boxes qualify as gambling under their respective legislation. There has also been considerable consumer comment about the introduction of in-game micro transactions due to concerns that these may be exploitative.

There are many games which enable the user to purchase additional items to enhance the gaming experience. Loot boxes are a variation on this theme. 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 have a better gaming experience.

While the payment of money for a loot box, the contents of which are determined by chance, may appear to be gambling, my officials' view is that it does not meet the legal definition of gambling and cannot be regulated under the Gambling Act 2003. However officials will continue to follow international developments, including the discussion about loot boxes.

There is a need for all New Zealanders to be knowledgeable about living and learning in a digital society. This need is recognised by the National Library which provides advice and support to schools for developing digital literacy and digital citizenship. An informed population is better able to protect itself from the risks that come with connectivity.

Thank you again for writing.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Tracey Martin', written over a grey rectangular redaction box.

Hon Tracey Martin
Minister of Internal Affairs

Hon Tracey Martin

Minister for Children

Associate Minister of Education

Minister of Internal Affairs

Minister for Seniors

Document 50



18 DEC 2017

COMPLETED

Section 9(2)(a) of the OIA

Dear [REDACTED] Section 9(2)(a) of the OIA

Thank you for your email of 23 November 2017 about the inclusion of "loot boxes" within computer games and the potential harm they may cause to the vulnerable in society, particularly children.

I understand that the issue of loot boxes within computer games has been the source of much debate internationally and different jurisdictions have tried to determine if loot boxes qualify as gambling under their respective legislation. There has also been considerable consumer comment about the introduction of in-game micro transactions due to concerns that these may be exploitative.

There are many games which enable the user to purchase additional items to enhance the gaming experience. Loot boxes are a variation on this theme. 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 have a better gaming experience.

While the payment of money for a loot box, the contents of which are determined by chance, may appear to be gambling, my officials' view is that it does not meet the legal definition of gambling and cannot be regulated under the Gambling Act 2003. However officials will continue to follow international developments, including the discussion about loot boxes.

The classification of video games is conducted by the Office of Film and Literature Classification, an independent Crown entity, under the Films, Videos, and Publications Classification Act 1993 (the Classification Act). I am advised that, under the Classification Act, the descriptive notes on classification labels may only indicate the presence of certain content. The Classification Act does not permit the Office of Film and Literature Classification to label video games to indicate the presence of loot boxes.

There is a need for all New Zealanders to be knowledgeable about living and learning in a digital society. This need is recognised by the National Library which provides advice and support to schools for developing digital literacy and digital citizenship. An informed population is better able to protect itself from the risks that come with connectivity.

Thank you again for writing.

Yours sincerely



Hon Tracey Martin
Minister of Internal Affairs

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 51

From: [Trish Millward](#)
To: [UM_PRC_RS Licensing Compliance](#)
Cc: [Gareth Bostock](#); [Cath Anyan](#); [Michelle White](#); [Lance Daly](#)
Subject: Loot boxes and media coverage
Date: Monday, 18 December 2017 4:48:59 PM
Attachments: [image003.png](#)

Hi All

This is a really good reminder that we need to be very careful with every bit of advice we put out. This was an email response sent to an enquiry to the licensing compliance inbox that came from a researcher. The advice got published on Gamasutra https://www.gamasutra.com/view/news/311463/New_Zealand_says_lootboxes_do_not_meet_the_legal_definition_for_gambling.php and went viral really quickly being picked up by international gaming sites all around the world. The good thing is Poni had been liaising with operational policy about the wording of the response (there were multiple Ministerial enquiries at the same time). So the lesson here for us all – know your audience, if there is any chance it is a journalist or your advice will be published get the comms team involved before responding.

If you google Trish Millward loot see what comes up – most interesting version of advice contains the following:

Loot bins are no longer a produce of gambling, says a Fresh Zealand government regulator. The most up-to-date government observation on the educate aligns with the contentions of the United States' Entertainment Application Affiliation and publishers of video games that employ them.

Trish Millward, of the Playing Compliance workplace for Fresh Zealand's Division of Inner Affairs, told Gamasutra on Monday that loot bins "manufacture no longer meet the definition of gambling."

Trish Millward | Fresh Zealand Government Regulator | Playing Compliance Workplace

The Department of Inner Affairs Te Tari Taiwhenua

Direct Dial: +64 4 494 0551 | Mobile: +64 27 538 9946

Our Vision Ta Matou Matakite

We regulate for a **safe, transparent** and **trusted** gambling sector that benefits **communities**

E whakarite ture ana matau mo tetahi rangai petipeti **haumarū, marama, tika** ho te wāhi hua ana **nga hapori**.

Logo-test



RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 52

From: [Trish Millward](#)
To: [Joshua Chand](#)
Subject: RE: Trish your famous RE: loot boxes
Date: Tuesday, 19 December 2017 2:08:17 PM

I know I feel so important!

From: Joshua Chand
Sent: Tuesday, 19 December 2017 8:11 AM
To: Trish Millward
Cc: Gareth Bostock; Heather McShane
Subject: Trish your famous RE: loot boxes

<https://www.polygon.com/2017/12/16/16785474/loot-boxes-gambling-law-government-stars-battlefront-2>

This site has a lot of daily traffic.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 53

From: [Jason Hewett \(Parliament\)](#)
To: [minadviceteam](#); [Ministerial Correspondence](#)
Cc: [Lloyd Bezett](#)
Subject: Request for Ministerial Correspondence: [REDACTED] IA17 286
Date: Wednesday, 20 December 2017 10:37:43 AM

Section 9(2)(a) of the OIA

Hi Team

Can I please have a response drafted to the email from [REDACTED] Section 9(2)(a) of the OIA

Jason Hewett

Private Secretary for the Minister of Internal Affairs
Hon Tracey Martin
5.3L Executive Wing | Parliament Buildings
DDI: 04 817 8340 | M: 021 420 602 | E: Jason.hewett@parliament.govt.nz

From: Jason Hewett
Sent: Wednesday, 20 December 2017 10:35 AM
To: minadviceteam <minadviceteam@dia.govt.nz>; Ministerial Correspondence <Ministerial.Correspondence@dia.govt.nz>
Cc: Lloyd Bezett <Lloyd.Bezett@dia.govt.nz>
Subject: FW: Computer game loot boxes

Hi Team

Can I please have a response drafted to the email from [REDACTED] Section 9(2)(a) of the OIA

Thanks

Jason Hewett

Private Secretary for the Minister of Internal Affairs
Hon Tracey Martin
5.3L Executive Wing | Parliament Buildings
DDI: 04 817 8340 | M: 021 420 602 | E: Jason.hewett@parliament.govt.nz

From: Jason Hewett
Sent: Wednesday, 20 December 2017 10:24 AM
To: [REDACTED] Section 9(2)(a) of the OIA
Subject: RE: Computer game loot boxes

Dear [REDACTED] Section 9(2)(a) of the OIA

This email is to acknowledge receipt of your correspondence (as below). Your correspondence will be given to the Minister for her information and, if appropriate, for her response.

Kind Regards

Jason Hewett

Private Secretary for the Minister of Internal Affairs
Hon Tracey Martin

From: [REDACTED]
Sent: Tuesday, 19 December 2017 11:21 AM
To: Hon Tracey Martin <Tracey.Martin@parliament.govt.nz>
Subject: Computer game loot boxes

Section 9(2)(a) of the OIA

Hi Tracey

I would first like to thank you for the response to questions in regards to loot-boxes in games. I came across it [here](#).

While I believe this position and understanding is correct for the vast majority of examples there are some examples I would like to ensure you are aware of.

Firstly there are significant third-party markets for converting the contents of loot boxes to money. This however I have less of a problem with but a close eye is needed as this matures. The main example is CSGO (Counter-Strike: Global Offensive) a quick internet search for "sell csgo skins" will prove this point.

Secondly there is a relatively new variant on the mechanics of loot boxes that locks away content.

I would think this fits under definition b of the Gambling Act 2003. "includes a sales promotion scheme"

The best example for this is the initial release of Star Wars Battlefront II.

Hero/Villain characters were locked out by this variation of the loot-box mechanic.

Note the Hero/Villain side of this game is what makes it a unique experience and so is a significant aspect of the game.

Not sure if you will see this before Christmas/new years.

I hope you have/had a good break and merry Christmas.

Regards [REDACTED] Section 9(2)(a) of the OIA

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 54

From: [Gareth Bostock](#)
To: [Sue Ingram](#); [Trish Millward](#); [Cath Anyan](#); [Michelle White](#)
Cc: [Mike Osmond](#); [Heather McShane](#); [Maarten Quivooy](#)
Subject: RE: Are lootboxes the slot machines of video gaming? | The Spinoff
Date: Wednesday, 20 December 2017 9:11:45 AM

Balanced exploration of the issues. Unusual. It's just missing a quote from Trish.

Gareth

Gareth Bostock | Director
Gambling Compliance Group
Department of Internal Affairs Te Tari Taiwhenua
Direct Dial: +64 4 495 7298 | Mobile: +64 27 441 3601
147 Lambton Quay | PO Box 805, Wellington 6140, New Zealand | www.dia.govt.nz

-----Original Message-----

From: Sue Ingram
Sent: Wednesday, 20 December 2017 8:17 AM
To: Gareth Bostock; Trish Millward; Cath Anyan; Michelle White
Cc: Mike Osmond; Heather McShane; Maarten Quivooy
Subject: Are lootboxes the slot machines of video gaming? | The Spinoff

This is an interesting read and does the topic justice. (The Spinoff is by far the most in-depth, balanced journalism around at the moment- in my humble opinion!).

<https://thespinoff.co.nz/games/19-12-2017/lootboxes-slot-machines-video-gaming/>

S
Sent from my iPad

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 55

From: [Trish Millward](#)
To: [Sue Ingram](#)
Subject: Re: Are lootboxes the slot machines of video gaming? | The Spinoff
Date: Wednesday, 20 December 2017 8:23:38 AM

Just read it on the bus. Agree and nice invitation for developers to self regulate.

Sent from my iPhone

On 20/12/2017, at 8:17 AM, Sue Ingram <xxx.xxxxxx@xxx.xxxx.xx> wrote:

This is an interesting read and does the topic justice. (The Spinoff is by far the most in-depth, balanced journalism around at the moment- in my humble opinion!).

<https://thespinoff.co.nz/games/19-12-2017/lootboxes-slot-machines-video-gaming/>

S
Sent from my iPad

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 56

From: Heather McShane
To: [Mark Thornton](#); [Lloyd Bezett](#)
Subject: FW: Are lootboxes the slot machines of video gaming? | The Spinoff
Date: Thursday, 21 December 2017 8:59:39 AM

-----Original Message-----

From: Sue Ingram
Sent: Wednesday, 20 December 2017 8:17 AM
To: Gareth Bostock; Trish Millward; Cath Anyan; Michelle White
Cc: Mike Osmond; Heather McShane; Maarten Quivooy
Subject: Are lootboxes the slot machines of video gaming? | The Spinoff

This is an interesting read and does the topic justice. (The Spinoff is by far the most in-depth, balanced journalism around at the moment- in my humble opinion!).

<https://thespinoff.co.nz/games/19-12-2017/lootboxes-slot-machines-video-gaming/>

S
Sent from my iPad

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 57

From: Mark Thornton
To: [Gareth Bostock](#)
Cc: [Trish Millward](#); [Heather McShane](#)
Subject: RE: Gambling in games - Loot boxes
Date: Thursday, 21 December 2017 1:05:48 PM
Attachments: [image001.png](#)
[image002.jpg](#)
[image003.png](#)

Thanks Gareth,

Happy with the changes.

There appears to be a random element in what loot boxes contain but I guess we don't know for sure.

I think that maybe the "outcome" depends on chance if you don't know what is in the loot box. It could be something valuable or not, regardless of whether that is determined using a random number generator or an algorithm that distributes valuable items in a predetermined way. The purchaser takes a "chance" that there will be something of value in the box.

Not sure if a judge would see it that way!

Cheers,

Mark

From: Gareth Bostock
Sent: Thursday, 21 December 2017 12:27 PM
To: Mark Thornton
Cc: Trish Millward; Heather McShane
Subject: RE: Gambling in games - Loot boxes

Hi Mark

Below is looking good I have made some changes in black based on the principle that there is a mens rea element (in my view) in the definition which is not apparent in gaming If you consider that seeking = striving for something, then it follows that the player's intention (mens rea) is to enhance gaming experience at the time of the transaction

One query - have we established that loot box programming is based on chance? If not, we should insert that as another reason to add doubt as to why it is not gambling, rather than accepting that it is chance If you are happy that it is chance based then happy that this stays in

Nga mihi

Gareth

Gareth Bostock | Director
Gambling Compliance Group
Department of Internal Affairs Te Tari Taiwhenua
Direct Dial +64 4 495 7298 | Mobile +64 27 441 3601
147 Lambton Quay | PO Box 805 Wellington 6140 New Zealand | www.dia.govt.nz

Logo-test

From: Mark Thornton
Sent: Thursday, 21 December 2017 10:45 AM
To: Trish Millward
Cc: Heather McShane; Gareth Bostock
Subject: RE: Gambling in games - Loot boxes

Hi Trish

How about this:

Hi [REDACTED],

[REDACTED]

Section 9(2)(g)(i) of the OIA

[REDACTED]

[REDACTED]

Section 9(2)(g)(i) of the OIA

[REDACTED]

[REDACTED]

Section 9(2)(g)(i) of the OIA

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Section 9(2)(g)(i) of the OIA

[REDACTED]

[REDACTED]

[REDACTED]

Yours etc

Happy to have a chat and add or subtract anything,

Cheers,

Mark

Dr Mark Thornton | Senior Advisor Operational Policy
The Department of Internal Affairs Te Tari Taiwhenua
Direct Dial: +64 4 495 6086 | Extn: 5186 | Mobile: +64 21 0690 443
147 Lambton Quay | PO Box 805, Wellington 6140, New Zealand | www.dia.govt.nz

Update your email signature to the Coat of Arms



From: Trish Millward
Sent: Wednesday, 20 December 2017 2:58 PM
To: Mark Thornton
Cc: Heather McShane; Gareth Bostock
Subject: FW: Gambling in games - Loot boxes

Hi Mark

Have just discussed with Heather she thinks you may be able to give some advice for a response to this please ?

Thanks Trish

From: Trevor Henry
Sent: Wednesday, 20 December 2017 12:52 PM
To: Gareth Bostock; Trish Millward
Cc: Media Internal Affairs
Subject: FW: Gambling in games - Loot boxes

Hi Gareth and Trish

This query re gambling and Loot boxes came to us. Could you take on this request and reply to him please, copying in Media Internal Affairs media@dia.govt.nz. We have already acknowledged his request.

Many thanks

Trevor Henry
Senior Communications Adviser
The Department of Internal Affairs
Direct Dial: +64 4 495 7211 (extn 5211)
Mobile: +64 21 245 8642
email:trevor.henry@dia.govt.nz
www.dia.govt.nz

Logo-test



I work Tuesday, Wednesday and Thursday. If your inquiry is urgent please contact Emma Blackmore (emma.blackmore@dia.govt.nz). Otherwise I will deal with it when I'm next in the office.

From: Media Internal Affairs
Sent: Wednesday, 20 December 2017 12:35 PM

To: Trevor Henry
Cc: Media Internal Affairs
Subject: FW: Gambling in games - Loot boxes

Another loot box for you Trevor 😊

From: [REDACTED]
Sent: Wednesday, 20 December 2017 12:32 PM
To: Media Internal Affairs
Subject: Gambling in games - Loot boxes

Section 9(2)(a) of the OIA

Good afternoon,

I am not sure which email to send this to so if this is to the wrong address I would appreciate it being forwarded or being directed to the correct person.

Section 9(2)(a) of the OIA

I am [REDACTED] who has experience with "gaming loot boxes" and I have seen how harmful they can be.

With regards to this email that was sent in this article https://www.gamasutra.com/view/news/311463/New_Zealand_says_lootboxes_do_not_meet_the_legal_definition_for_gambling.php

It appears the key concern as to why loot boxes cannot be regulated is because while they require money to use, they do not return anything of monetary value. However, if you look at Counter-Strike: Global Offensive (CS:GO) you will find that there are loot boxes, where you pay to unlock them then the items which are won can be bought and sold for money through the steam market system, some of which are worth in the thousands of dollars. The second issue around this is that like many other forms of gambling they can be extremely addictive and unregulated gambling sites are used to gamble and bet where people have lost thousands of dollars (I can provide links to back these claims if you wish). While CS:GO isn't the only game with a loot box system nearly all of these games have a system to trade and sell these goods (I can give further examples of necessary). The factors combined with the games targeting kids leads to kids growing up with gambling addictions and spending unreasonable amounts of money on these games.

This is why I'm concerned with the lack of regulations and even if loot boxes are not considered gambling then they should be regulated under something.

I wish to understand the reasons why loot boxes are not considered gambling, if there is going to be any actions taken in the future and if all these points were taken into account during the decision making of that policy.

If you have any questions or would like more information I am happy to help in any way I can.

Kind Regards,

Section 9(2)(a) of the OIA

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 58

From: [Trish Millward](#)
To: [Gareth Bostock](#); [Mark Thornton](#)
Subject: FW: Loot boxes and gambling
Date: Thursday, 21 December 2017 6:07:20 PM
Attachments: [image001.png](#)

FYI

From: Trish Millward
Sent: Thursday, 21 December 2017 6:07 PM
To: [REDACTED] Section 9(2)(a) of the OIA
Cc: Media Internal Affairs
Subject: Loot boxes and gambling

Hi [REDACTED], Section 9(2)(a) of the OIA

Thank you for your email of 20 December concerning loot boxes and gambling.

For something to be classed as “gambling” under the Gambling Act 2003 (the Act) it needs to fit the definition contained within the Act. The relevant part of the definition of gambling is that it “means paying or staking consideration, directly or indirectly, on the outcome of something seeking to win money when the outcome depends wholly or partly on chance...” (Section 4 Gambling Act 2003).

With regard to loot boxes, there is the element of staking consideration (paying money) on an outcome which depends wholly or partially on chance. However, one of the considerations to take into account here is whether the “outcome” can be said to meet the required element of “seeking to win money”, with the definition of money including both money and “money’s worth”. Gamers purchase loot boxes for the purpose of enhancing the gaming experience, not to seek money or money’s worth. It is understood that in acquiring the content of loot boxes, there may be a subsequent degree of financial value which can be attained from the contents (for example, in-game tools, powers, skins, expedited progression etc). We are aware that some players can and do trade items on websites and may receive money for them but this is a secondary possibility and contingent on how the player performs in the game.

The key feature here is that within the game as supplied to the gamer there is no inbuilt mechanism provided for cashing in and exchanging for real money the items that were bought in the loot box. Furthermore, in most games it is likely that selling any item obtained from a loot box on a secondary market will be in breach of the terms and conditions of the game, and websites which allow the trading of in-game items may also be in breach of copyright or other laws.

I hope that clarifies for you why it is our view that loot boxes as they are currently being used in games do not fit the definition of gambling contained within the Gambling Act.

That said, games which are not gambling may have some potentially harmful characteristics. There is a need for all New Zealanders to be knowledgeable about living and learning in a digital society. This need is recognised by the National Library which provides advice and support to schools for developing digital literacy and digital citizenship. We will continue to monitor the use of loot boxes in games and any new developments in this area to ensure that they do not break

New Zealand's gambling laws.

Regards

Trish Millward | Manager Licensing Compliance | Regulatory Services

The Department of Internal Affairs Te Tari Taiwhenua

Direct Dial: +64 4 494 0551 | Mobile: +64 27 538 9946

Our Vision Ta Matou Matakite

We regulate for a **safe, transparent** and **trusted** gambling sector that benefits **communities**

E whakarite ture ana matau mo tetahi rangai petipeti **haumarū, marama, tika** hoki e whai hua ana **nga hapori**.

Logo-test



RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982