

From: [REDACTED] Section 9(2)(a) of the OIA
To: [Trish Millward](#)
Subject: Re: Loot boxes and gambling
Date: Friday, 22 December 2017 8:51:26 AM
Attachments: [image001.png](#)

Hi Trish,

Thanks, I really appreciate you taking time out of your day to respond. I learned some things about law from this and it's good to know you guys are aware of it all.

What means of enforcement does the government have against terms breached by secondary markets or parties which are explicitly for monetary gain?

Kind Regards,

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

On 21/12/2017 18:06, "Trish Millward" <Patricia.Millward@dia.govt.nz> wrote:

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](tel:+6444940551) | Mobile: [+64 27 538 9946](tel:+64275389946)

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Document 60

From: [Lisa Doyle](#)
To: [Trish Millward](#)
Cc: [Keren Ross](#)
Subject: Response letter to [REDACTED] OIA request re. loot boxes
Date: Wednesday, 24 January 2018 1:46:12 PM
Attachments: [Response letter - signed.pdf](#)

Section 9(2)(a) of the OIA

Good afternoon Trish

Attached for your information is our proposed response to [REDACTED] regarding his OIA request on loot boxes.

Section 9(2)(a) of the OIA

Let me know if you have any questions or concerns. We will be sending it out on Friday afternoon.

Thanks,
Lisa

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147 Lambton Quay
PO Box 805
Wellington 6140
New Zealand
Phone +64 4 495 7200
Fax +64 4 495 7222
Website dia.govt.nz

26 January 2018



Section 9(2)(a) of the OIA

Dear  Section 9(2)(a) of the OIA

Official Information Act 1982 (OIA) request dated 14 December 2017 (ref. 2017180205)

Thank you for your OIA request to the Department of Internal Affairs (the Department) dated 14 December 2017, in which you asked for the following information:

"Can you please also forward to me the internal reports/discussion documents on the issue of whether loot boxes meet the legal definition of gambling, and the decision document."

We have interpreted your request to be for substantive discussion documents that directly led to the Department's decision on whether loot boxes meet the legal definition of gambling. We have not included emails between staff discussing media coverage, preparing responses to correspondence regarding loot boxes, or including discussion that did not directly led to our decision. Based on this interpretation we have identified three documents in-scope of your request:

1. an email from Operational Policy to Legal Services dated 20 November 2017, requesting a legal opinion on the status of loot boxes;
2. an email from Legal Services to Operational Policy dated 28 November 2017, containing a draft legal opinion on the status of loot boxes; and
3. an email from Legal Services to Operational Policy dated 8 December 2017, providing the final legal opinion on the status of loot boxes.

The above documents have been withheld in full under section 9(2)(h) of the OIA to maintain legal professional privilege. I consider that the withholding of information detailed above is not outweighed by other considerations which render it desirable, in the public interest, to make that information available.

We do however recognise there is public interest in transparency of this process. We have therefore provided you with a summary of the considerations that led to the Department's decision regarding loot boxes (see Appendix One).

I trust this information is useful.

If you would like to discuss the Department's decision regarding loot boxes further I suggest you raise it at the quarterly meeting that you attend with Regulatory Services officials.

If you are dissatisfied with my decision on your request for information, you have the right, under section 28 of the OIA, to make a complaint to the Office of the Ombudsman. The Office of the Ombudsman can be contacted by phone on 0800 802 602, via post at PO Box 10152 Wellington or via email to info@ombudsman.parliament.nz.

Yours sincerely



Louise Cavanagh
Director Operations Support
Regulatory Services

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Appendix One: Summary of process and considerations that led to the Department's decision regarding loot boxes

The issue of loot boxes and their similarity to gambling was first raised with the Department in early October 2017 by the Office of Film and Literature Classification and a member of the public. Our response to those enquiries contained the following:

"Gambling 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.

As 'loot boxes' are a major source of revenue, they are also a marketing tactic that uses psychology to engage people and encourage them to spend more – just like lots of other marketing strategies. Therefore this does not appear to meet the definition of gambling. While the content of a box may be unknown, the payment of the charge does purchase a box – so really there are no losers.

Even if this was gambling, New Zealand law does not prevent people from gambling on overseas websites, which presumably these are."

This initial view resulted from a consideration of the response to loot boxes in other jurisdictions and our understanding of how the feature is implemented in a number of games. The Department concentrated on a type of loot box known as "pay-to-loot"; where the exact content of the box is unknown at the time of purchase and is determined by the game programme partly based on chance.

On 13 November 2017 an article on loot boxes appeared in *The Wireless* (<http://thewireless.co.nz/articles/are-video-games-turning-young-people-into-gamblers>), as well as a story on Radio NZ's *Nine to Noon* show. It is worth noting that the article in *The Wireless* raises this issue in the context of treating addictive behaviours and suggests that the psychological techniques employed by computer games can be similar to those employed by gaming machines.

Subsequently, the Minister of Internal Affairs and the Department received a number of emails from concerned members of the public suggesting that loot boxes are a form of gambling and requesting that action be taken, either under the Gambling Act 2003 (the Gambling Act) or the Films, Videos, and Publications Classification Act 1993 (the Classification Act), to restrict access to games containing loot boxes.

In considering whether loot boxes constitute gambling, officials looked at a number of issues:

- Is the content of a loot box "money", as defined in the Gambling Act?
- Is the purchaser of a loot box "seeking to win money"?
- If the purchaser of a loot box always gets contents of the value paid for, does this make a difference?
- Does the content of a loot box have subjective value? (i.e. will the same content be valued differently by different players?).

- Does our view change if there is a secondary market where the contents of a loot box can be traded?
- The underlying game may be sold or available free from overseas websites and played on overseas servers.
- If the game is sold in New Zealand stores or played on local servers, would this constitute "remote interactive gambling"?

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. The Department's view is that players do not purchase loot boxes seeking to win money or something that can be converted into money. They buy loot boxes so they can use their contents within the game and thereby have a better gaming experience. The Department therefore considers that computer games containing loot boxes that have been brought to its attention do not meet the legal definition of gambling. We will continue to follow the international debate over loot boxes and developments in gaming technology.

Some correspondents also asked whether computer games that include loot boxes could be given an age restricted classification to prevent children from purchasing them and to alert parents to the presence of gambling. Computer games come within the definition of a "film" in terms of the labelling requirements of the Classification Act.

Section 3(1) of the Classification Act provides that a publication is objectionable if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good. Section 3 is the threshold provision for any restriction on access, and is set understandably high to be consistent with the rights affirmed in the Bill of Rights Act 1990. As gambling is neither listed in this provision nor falls within any of the issues listed, it doesn't appear possible that the presence of gambling could be a reason for a restricted classification. This view has also been expressed by the Office of Film and Literature Classification on its website: <https://www.classificationoffice.govt.nz/blog/monte-casino/>.

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Document 62

From: [Poni Lealofi](#)
To: [Trish Millward](#)
Subject: FW: Children Gambling in Video Games with (lots of) Real Money
Date: Thursday, 15 February 2018 10:06:49 AM
Attachments: [image001.png](#)
[image002.png](#)

Hi Trish.

Please review the response below.

Nga mihi nui.

Poni Lealofi | Senior Gambling Inspector | Licensing Unit
The Department of Internal Affairs Te Tari Taiwhenua
Direct Dial: +64 4 495 9380 | Extn: 5380 | Fax: +64 4 494 0656
45 Pipitea Street | Thorndon, Wellington 6011, New Zealand | www.dia.govt.nz

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From: Lloyd Bezett
Sent: Tuesday, 13 February 2018 3:27 PM
To: Poni Lealofi
Cc: Heather McShane
Subject: RE: Children Gambling in Video Games with (lots of) Real Money

Morning Poni

Suggested reply to [REDACTED] . **Section 9(2)(a) of the OIA**

[REDACTED]

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

[REDACTED]

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

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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

Lloyd Bezett | Senior Policy Advisor | Operational Policy | Regulatory Services
Direct Dial: +64 4 495 9367 | Extn: 5367

From: Gambling Compliance
Sent: Thursday, 8 February 2018 9:06 AM
To: Lloyd Bezett
Subject: FW: Children Gambling in Video Games with (lots of) Real Money

Hi Lloyd.

Section 9(2)(a) of the OIA

Can you respond directly to [REDACTED] please? I feel like we're going around in circles with this person despite me telling him that our legal team have already considered all angles to our position on loot boxes.

Poni.

From: [REDACTED] Section 9(2)(a) of the OIA
Sent: Wednesday, 7 February 2018 5:00 PM
To: Gambling Compliance
Subject: Re: Children Gambling in Video Games with (lots of) Real Money

Hi,

Could you please help me understand how spending circa five dollars on a chance to win something worth hundreds of dollars, which can then be sold in under a minute to one of hundreds of thousands of willing buyers, fails to meet the definition of "money's worth"? There are plenty of readily examples online of people buying these boxes with the hopes of winning an expensive item they can then sell for cash, or trade for something of value.

In lieu of an explanation, from my perspective it appears as though you are **gravely** misunderstanding the key facts and principles surrounding both the legislation and the gambling/loot box system. I would very much appreciate an explanation of how it is not money's worth with reference to case law - my understanding has always been that money's worth is anything capable of being turned into money. Which I have shown is the case here.

Kind regards,

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

On 7 February 2018 at 15:50, Gambling Compliance

<Gambling.Compliance@dia.govt.nz> wrote:

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

Our Legal Services team have considered that angle and decided that, whether a thing has value in a secondary market doesn't change the assessment that by purchasing a loot box a player is not seeking to win money's worth.

Afterall, it can be argued that everything is money's worth if you can find one person who is willing to buy it.

Thank you for your time.

Nga mihi nui.

Poni Lealofi | Senior Gambling Inspector | Licensing Unit
The Department of Internal Affairs Te Tari Taiwhenua
Direct Dial: [+64 4 495 7200](tel:+6444957200) | Extn: 5380 | Fax: [+64 4 494 0656](tel:+6444940656)
[45 Pipitea Street | Thorndon, Wellington 6011, New Zealand](http://45.Pipitea.Street.Thorndon.Wellington.6011.New.Zealand) | www.dia.govt.nz

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From: [REDACTED] **Section 9(2)(a) of the OIA**
Sent: Saturday, 3 February 2018 12:51 AM
To: Gambling Compliance
Subject: Re: Children Gambling in Video Games with (lots of) Real Money

Hi,

Just following up on this gambling issue that primarily targets young children; I never received a response to me email 15 December 2017.

Cheers,

[REDACTED]

Section 9(2)(a) of the OIA

On 15 December 2017 at 11:40, Gambling Compliance

<Gambling.Compliance@dia.govt.nz> wrote:

Thank you for your enquiry. This email is a formal acknowledgement that we have received your enquiry.

Please allow 10 working days for us to respond. We may take slightly longer to respond depending on the nature of the information you require.

You can also contact the Gambling Compliance Team on 0800 25 78 87 if you wish to discuss your request.

Regards

Gambling Compliance



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Document 63

From: [Gambling Compliance](#)
To: [Trish Millward](#); [Lloyd Bezett](#)
Subject: FW: Children Gambling in Video Games with (lots of) Real Money
Date: Friday, 16 February 2018 2:19:50 PM

FYI

From: [REDACTED] **Section 9(2)(a) of the OIA**
Sent: Friday, 16 February 2018 1:58 PM
To: Gambling Compliance
Subject: Re: Children Gambling in Video Games with (lots of) Real Money

Thank you for that helpful explanation of the DIA's view.

I understand there are very real limitations on what is probably the majority of companies "operating a business outside of New Zealand" (EA is a likely example of an outside-NZ company. Blizzard is a 50-50.). That being said, it is a safe starting position (in lieu of NZ case law) to assume that Valve (the company in question) is operating a business within NZ.

ACCC v Valve Corp No 3 (FCA) held in 2016 that Valve were operating a business within Australia. It was not precedent-setting but it clarified some contemporary relevant considerations. The biggest factors apply to both countries equally (market share, advertising, etc). Some other factors are exclusive to Australia, and others exclusive to New Zealand (operate in NZ currency, promises adherence to NZ legislation). Others still, undetermined for NZ (servers, taxes, bank accounts). Following the ACCC case in Australia, Valve, as a **direct** result, agreed to the Commerce Commission's suggested changes to prevent probable breaches of the NZ CGA and FTA. Valve now lists compliance with the NZ CGA in their NZ Ts&Cs.

Valve clearly consider that they would lose an interlocutory hearing on whether they operate a business within Australia (or at least that the cost of defending it outweighs chances for success), but the issue remains to be tested in Court.

I don't agree that the GA2003 requires "most" people to be seeking money. This view is not reflected *at all* in the wording of the definition of 'gambling' in the Act. How could a court ever quantify such a subjective and arbitrary criteria?? Do you have case law supporting this interpretation??

Surely the more correct view is whether a reasonable person *could* or *would* be seeking money or money's worth by staking consideration on the outcome of something. Just because 51% of people are playing NZ Lotto because they like the touching yellow paper, wouldn't suddenly make Lotto outside the scope of "gambling". Poker machines are *designed* around the idea that people like pushing flashing buttons. Many machines tell a story or the like. If a 51% of people are staking consideration just for the flashy buttons and a story, is that suddenly no longer classed as gambling?

Notwithstanding the above, under your stated view of gambling, an operator could sell lottery tickets to win luxury watches. The more tickets you buy, the higher the chance of winning. One ticket gives you a 0.025% (1 in 4000).

The "primary purpose" of these watches would be to obtain an item that tells the time. Is this also not gambling? There is absolutely no difference between this example and the lootboxes. Both can be exchanged for physical cash (this can be done by "gifting" it to someone digitally after they have paid you for it physically).

As a side note, it is worth pointing out that in the examples I have previously provided, the items do not provide a use in-game. They are purely cosmetic. They "do" nothing, their

"use" does not extend beyond aesthetics.

There are 3rd party companies whose entire business revolves around these loot boxes, and provide more on the nose gambling opportunities, and/or outright purchase/sell/trade opportunities (this is absolutely not remotely close to an exhaustive list):

- <https://skins.cash/how-it-works>
- <https://csgo-case.com/>
- <https://www.csgowinner.com>
- <https://flashyflashy.com/>
- <http://farmskins.com/>
- <https://csgolounge.com/>
- <https://csgo-skins.com>
- <https://hellcase.com/>
- <https://skinxchange.com/>
- <https://csgo.igvault.com/>
- <https://opskins.com/>
- <https://www.lootmarket.com/csgo>
- <https://www.lootmarket.com/dota-2>
- <https://csgoshop.com/>

With so much business revolving around buying, selling, and winning of loot items, and given my response above - I think the initial view you have taken is incorrect. I think a great many people are buying lootboxes in order to win money or money's worth.

It may be that I've missed the mark with my understanding of the scope and operation of the Act, if so I am sorry for being a pain. **However**, at this point I truly do not think I am. I would greatly appreciate another response addressing the further issues raised in this email.

Kind regards,

Section 9(2)(a) of the OIA

On Fri, Feb 16, 2018, 12:48 Gambling Compliance <Gambling.Compliance@dia.govt.nz> wrote:

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

At present, based on what games we are aware of, the Department's position is that lootboxes do not meet the definition of gambling in the Gambling Act 2003. Gambling 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.

A person who purchases a lootbox is paying consideration, directly, on the outcome of something, when the outcome depends partly on chance. However, the Department considers that most players are not **seeking** to win money (or money's worth) when they purchase a lootbox. Most players are seeking to obtain something that is useful to them in the game. While we are aware that markets exist that allows the contents of a lootbox to be traded, this does not change our assessment that, on the evidence presently available, the primary purpose of a lootbox is to obtain items that are useful in the game.

We also note that, if the Department is aware of a game that does meet the definition of gambling

then it would have to consider what, if any, action it could take. The Gambling Act does prohibit remote interactive gambling in New Zealand (with the exception of Lotto and the TAB), but this does not include remote interactive gambling by a person in New Zealand with a gambling operator located outside New Zealand.

The Department 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.

Kind regards.

Trish Millward | Manager Licensing Compliance | Regulatory Services

The Department of Internal Affairs Te Tari Taiwhenua

Mobile: [+64 27 538 9946](tel:+64275389946)

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From: [REDACTED]
Sent: Wednesday, 7 February 2018 5:00 PM

Section 9(2)(a) of the OIA

To: Gambling Compliance
Subject: Re: Children Gambling in Video Games with (lots of) Real Money

Hi,

Could you please help me understand how spending circa five dollars on a chance to win something worth hundreds of dollars, which can then be sold in under a minute to one of hundreds of thousands of willing buyers, fails to meet the definition of "money's worth"? There are plenty of readily examples online of people buying these boxes with the hopes of winning an expensive item they can then sell for cash, or trade for something of value.

In lieu of an explanation, from my perspective it appears as though you are **gravely** misunderstanding the key facts and principles surrounding both the legislation and the gambling/loot box system. I would very much appreciate an explanation of how it is not money's worth with reference to case law - my understanding has always been that money's worth is anything capable of being turned into money. Which I have shown is the case here.

Kind regards,

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

On 7 February 2018 at 15:50, Gambling Compliance
<Gambling.Compliance@dia.govt.nz> wrote:

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

Our Legal Services team have considered that angle and decided that, whether a thing has value in a secondary market doesn't change the assessment that by purchasing a loot box a player is not seeking to win money's worth.

Afterall, it can be argued that everything is money's worth if you can find one person who is willing to buy it.

Thank you for your time.

Nga mihi nui.

Poni Lealofi | Senior Gambling Inspector | Licensing Unit
The Department of Internal Affairs Te Tari Taiwhenua
Direct Dial: [+64 4 495 7200](tel:+6444957200) | Extn: 5380 | Fax: [+64 4 494 0656](tel:+6444940656)
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From: [REDACTED]
Sent: Saturday, 3 February 2018 12:51 AM
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Section 9(2)(a) of the OIA

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Cheers,

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

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<Gambling.Compliance@dia.govt.nz> wrote:
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Please allow 10 working days for us to respond. We may take slightly longer to respond depending on the nature of the information you require.

You can also contact the Gambling Compliance Team on 0800 25 78 87 if you wish to discuss your request.

Regards

Gambling Compliance



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From: [Gambling Compliance](#)
To: [Lloyd Bezett](#); [Liz Hibbs](#)
Cc: [Trish Millward](#)
Subject: FW: Children Gambling in Video Games with (lots of) Real Money
Date: Thursday, 22 February 2018 1:31:45 PM
Attachments: [image001.png](#)

As expected...

From: [REDACTED] Section 9(2)(a) of the OIA
Sent: Thursday, 22 February 2018 11:43 AM
To: Gambling Compliance
Subject: Re: Children Gambling in Video Games with (lots of) Real Money

For clarity, I've only referenced ancillary issues so that we might put them to one side and ignore them in favour of focusing on the key issue at hand: the definition of gambling under the GA2003.

Based on the previous correspondence, is it accurate to say that the DIA's position, based on "sound and good advice", is that the definition of gambling is not met **because only 49%, or fewer, of the relevant population is seeking to win money as their "primary purpose" when buying a treasure/loot box/charm/item with 0.025% chance of giving an item of a value worth hundreds of times the original value, and a 99.975% chance of giving nothing of value?**

This interpretation reached by the DIA (above) flies in the face of hundreds of years of common law and legislative interpretation. A requirement that "most" people do something, or that there be a requirement of a "primary purpose" does not make any sense. These do not feature in the definition of 'gambling' and are a fiction created during our correspondence. It would be no different if I insisted that the definition of 'gambling' required people to be wearing brown shoes at the time. Nothing I could find at common law suggested for a moment that there be a "primary purpose" or that "most" of a population is required. And you haven't made reference to any as asked.

Your interpretation also flies in the face of *logic*. Even under the erroneous definition provided in this correspondence, I fail to see how spending money and winning nothing, tens or hundreds of times over, is not for the "primary purpose" of winning money's worth??? What other purpose could it possibly be for??? Their bank account had too many numbers in it?

Please explain the gaping flaws in the DIA's logic and reasoning.

Kind regards,

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

On 22 February 2018 at 10:14, Gambling Compliance
<Gambling.Compliance@dia.govt.nz> wrote:

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

Thank you for your email on 16 February, in particular your views on the applicability of New Zealand law to overseas entities providing services over the internet.

However in the case of lootboxes, the Department is currently of the view that the definition of gambling has not been met. Without gambling there can be no "remote interactive gambling" and whether an overseas service provider is operating in New Zealand does not have to be determined.

While I appreciate you disagree with the Department's interpretation of the Gambling Act, we

consider that our position is based on sound and good advice.

As noted in our previous correspondence, the Department is continuing to monitor the use of lootboxes in games and new developments. The information you have provided about the existence of overseas websites that facilitate the trading of lootbox contents will contribute to that understanding.

Thank you for your continued interest in this topic.

Kind regards.

Trish Millward | Manager Licensing Compliance | Regulatory Services
The Department of Internal Affairs Te Tari Taiwhenua
Mobile: [+64 27 538 9946](tel:+64275389946)

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From: [REDACTED]
Sent: Friday, 16 February 2018 1:58 PM

Section 9(2)(a) of the OIA

To: Gambling Compliance
Subject: Re: Children Gambling in Video Games with (lots of) Real Money

Thank you for that helpful explanation of the DIA's view.

I understand there are very real limitations on what is probably the majority of companies "operating a business outside of New Zealand" (EA is a likely example of an outside-NZ company. Blizzard is a 50-50.). That being said, it is a safe starting position (in lieu of NZ case law) to assume that Valve (the company in question) is operating a business within NZ.

ACCC v Valve Corp No 3 (FCA) held in 2016 that Valve were operating a business within Australia. It was not precedent-setting but it clarified some contemporary relevant considerations. The biggest factors apply to both countries equally (market share, advertising, etc). Some other factors are exclusive to Australia, and others exclusive to New Zealand (operate in NZ currency, promises adherence to NZ legislation). Others still, undetermined for NZ (servers, taxes, bank accounts). Following the ACCC case in Australia, Valve, as a **direct** result, agreed to the Commerce Commission's suggested changes to prevent probable breaches of the NZ CGA and FTA. Valve now lists compliance with the NZ CGA in their NZ Ts&Cs.

Valve clearly consider that they would lose an interlocutory hearing on whether they operate a business within Australia (or at least that the cost of defending it outweighs chances for success), but the issue remains to be tested in Court.

I don't agree that the GA2003 requires "most" people to be seeking money. This view is not reflected *at all* in the wording of the definition of 'gambling' in the Act. How could a

court ever quantify such a subjective and arbitrary criteria?? Do you have case law supporting this interpretation??

Surely the more correct view is whether a reasonable person *could* or *would* be seeking money or money's worth by staking consideration on the outcome of something.

Just because 51% of people are playing NZ Lotto because they like the touching yellow paper, wouldn't suddenly make Lotto outside the scope of "gambling". Poker machines are *designed* around the idea that people like pushing flashing buttons. Many machines tell a story or the like. If a 51% of people are staking consideration just for the flashy buttons and a story, is that suddenly no longer classed as gambling?

Notwithstanding the above, under your stated view of gambling, an operator could sell lottery tickets to win luxury watches. The more tickets you buy, the higher the chance of winning. One ticket gives you a 0.025% (1 in 4000).

The "primary purpose" of these watches would be to obtain an item that tells the time. Is this also not gambling? There is absolutely no difference between this example and the lootboxes. Both can be exchanged for physical cash (this can be done by "gifting" it to someone digitally after they have paid you for it physically).

As a side note, it is worth pointing out that in the examples I have previously provided, the items do not provide a use in-game. They are purely cosmetic. They "do" nothing, their "use" does not extend beyond aesthetics.

There are 3rd party companies whose entire business revolves around these loot boxes, and provide more on the nose gambling opportunities, and/or outright purchase/sell/trade opportunities (this is absolutely not remotely close to an exhaustive list):

- <https://skins.cash/how-it-works>
- <https://csgo-case.com/>
- <https://www.csgowinner.com>
- <https://flashyflashy.com/>
- <http://farmskins.com/>
- <https://csgolounge.com/>
- <https://csgo-skins.com>
- <https://hellcase.com/>
- <https://skinxchange.com/>
- <https://csgo.igvault.com/>
- <https://opskins.com/>
- <https://www.lootmarket.com/csgo>
- <https://www.lootmarket.com/dota-2>
- <https://csgoshop.com/>

With so much business revolving around buying, selling, and winning of loot items, and given my response above - I think the initial view you have taken is incorrect. I think a great many people are buying lootboxes in order to win money or money's worth.

It may be that I've missed the mark with my understanding of the scope and operation of the Act, if so I am sorry for being a pain. **However**, at this point I truly do not think I am. I would greatly appreciate another response addressing the further issues raised in this email.

Kind regards,

Section 9(2)(a) of the OIA

On Fri, Feb 16, 2018, 12:48 Gambling Compliance <Gambling.Compliance@dia.govt.nz> wrote:

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

At present, based on what games we are aware of, the Department's position is that lootboxes do not meet the definition of gambling in the Gambling Act 2003. Gambling 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.

A person who purchases a lootbox is paying consideration, directly, on the outcome of something, when the outcome depends partly on chance. However, the Department considers that most players are not **seeking** to win money (or money's worth) when they purchase a lootbox. Most players are seeking to obtain something that is useful to them in the game. While we are aware that markets exist that allows the contents of a lootbox to be traded, this does not change our assessment that, on the evidence presently available, the primary purpose of a lootbox is to obtain items that are useful in the game.

We also note that, if the Department is aware of a game that does meet the definition of gambling then it would have to consider what, if any, action it could take. The Gambling Act does prohibit remote interactive gambling in New Zealand (with the exception of Lotto and the TAB), but this does not include remote interactive gambling by a person in New Zealand with a gambling operator located outside New Zealand.

The Department 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.

Kind regards.

Trish Millward | Manager Licensing Compliance | Regulatory Services

The Department of Internal Affairs Te Tari Taiwhenua

Mobile: [+64 27 538 9946](tel:+64275389946)

Our Vision Ta Matou Matakite

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

E whakarite ture ana matou mo tetahi rangai petipeti haumarua, marama, tika hoki e whai hua ana nga hapori.

Logo-test



From: [REDACTED]

Sent: Wednesday, 7 February 2018 5:00 PM

Section 9(2)(a) of the OIA

To: Gambling Compliance

Subject: Re: Children Gambling in Video Games with (lots of) Real Money

Hi,

Could you please help me understand how spending circa five dollars on a chance to win something worth hundreds of dollars, which can then be sold in under a minute to one of

hundreds of thousands of willing buyers, fails to meet the definition of "money's worth"? There are plenty of readily examples online of people buying these boxes with the hopes of winning an expensive item they can then sell for cash, or trade for something of value.

In lieu of an explanation, from my perspective it appears as though you are **gravely** misunderstanding the key facts and principles surrounding both the legislation and the gambling/loot box system. I would very much appreciate an explanation of how it is not money's worth with reference to case law - my understanding has always been that money's worth is anything capable of being turned into money. Which I have shown is the case here.

Kind regards,

Section 9(2)(a) of the OIA

On 7 February 2018 at 15:50, Gambling Compliance

<Gambling.Compliance@dia.govt.nz> wrote:

Hi Section 9(2)(a) of the OIA

Our Legal Services team have considered that angle and decided that, whether a thing has value in a secondary market doesn't change the assessment that by purchasing a loot box a player is not seeking to win money's worth.

Afterall, it can be argued that everything is money's worth if you can find one person who is willing to buy it.

Thank you for your time.

Nga mihi nui.

Poni Lealofi | Senior Gambling Inspector | Licensing Unit

The Department of Internal Affairs Te Tari Taiwhenua

Direct Dial: [+64 4 495 7200](tel:+6444957200) | Extn: 5380 | Fax: [+64 4 494 0656](tel:+6444940656)

[45 Pipitea Street | Thorndon, Wellington 6011, New Zealand](https://www.dia.govt.nz) | www.dia.govt.nz

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

Logo-test



From:

Section 9(2)(a) of the OIA

Sent: Saturday, 3 February 2018 12:51 AM

To: Gambling Compliance

Subject: Re: Children Gambling in Video Games with (lots of) Real Money

Hi,

Just following up on this gambling issue that primarily targets young children; I never

received a response to me email 15 December 2017.

Cheers,

Section 9(2)(a) of the OIA

On 15 December 2017 at 11:40, Gambling Compliance

<XXXXXXXXXXXXXXXXXXXX@XXX.XXXX.X> wrote:

Thank you for your enquiry. This email is a formal acknowledgement that we have received your enquiry.

Please allow 10 working days for us to respond. We may take slightly longer to respond depending on the nature of the information you require.

You can also contact the Gambling Compliance Team on 0800 25 78 87 if you wish to discuss your request.

Regards

Gambling Compliance



Virus-free. www.avast.com

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45 Pipitea St
PO Box 805
Wellington 6140
New Zealand
Phone +64 4 495 7200
Fax +64 4 495 7222
Website dia.govt.nz

15 March 2018

Section 9(2)(a) of the OIA

Via email: [REDACTED]

Dear [REDACTED]

Section 9(2)(a) of the OIA

Official Information Act 1982 (OIA) request dated 22 February 2018 (ref 2017180285)

Thank you for your OIA request of 22 February 2018 to the Department of Internal Affairs (the Department) relating to loot boxes. You asked for the following information:

1. *I would like a copy of all internal correspondence relating specifically to my original query as well as/including the sound and good advice referred to above.*
2. *I would like to know what legal authority the DIA relied on in adopting its position, specifically in the position that the Gambling Act 2003 requires that "most people" be seeking to win money/money's worth, and that it is their "primary purpose".*
3. *I would also like to know whether the DIA, in reaching its position, has contacted Valve Corporation or any other relevant commercial entity.*

My responses to your questions are set out below.

Question One

For question one, we have identified a short email exchange between two staff members in-scope of your request. The information contained within the emails has been summarised under section 16(1)(e) of the OIA:

A staff member sent your original query to another staff member to ask for help in drafting a response. The second staff member advised that the reply should be held until a Ministerial response to a similar correspondence had been prepared. Both the Minister of Internal Affairs and the Department had received a number of similar emails on the topic of loot boxes and advice was being sought before a standard reply was drafted. Once the response was prepared a staff member emailed the standard response to another staff member who then replied to all the queries received by the Department on loot boxes. If you still require a copy of the email correspondence please let us know at OIA@dia.govt.nz.

Question Two

In relation to question two, the Department consulted with its in-house legal function around these issues. We are of the view that the public interest does not outweigh legal professional privilege in this instance, so we are therefore withholding all the legal advice in full under section 9(2)(h) of the OIA. We consider that the withholding of this information is not outweighed by other considerations which render it desirable, in the public interest, to make that information available.

We do however recognise there is public interest in transparency of this process. We have therefore provided you with a summary of the considerations that led to the Department's decision regarding loot boxes (see Appendix One).

Question Three

With respect to question three, the Department in reaching its decision has not contacted Valve Corporation or any other relevant commercial entity.

If you are dissatisfied with my decision on your request for information, you have the right, under section 28 of the OIA, to make a complaint to the Office of the Ombudsman. The Office of the Ombudsman can be contacted by phone on 0800 802 602, via post at PO Box 10152 Wellington or via email to info@ombudsman.parliament.nz.

Yours sincerely



Heather McShane
Manager Operational Policy
Regulatory Services

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Appendix One: Summary of process and considerations that led to the Department's decision regarding loot boxes

The issue of loot boxes and their similarity to gambling was first raised with the Department in early October 2017 by the Office of Film and Literature Classification and a member of the public. Our response to those enquiries contained the following:

"Gambling 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.

As 'loot boxes' are a major source of revenue, they are also a marketing tactic that uses psychology to engage people and encourage them to spend more – just like lots of other marketing strategies. Therefore this does not appear to meet the definition of gambling. While the content of a box may be unknown, the payment of the charge does purchase a box – so really there are no losers.

Even if this was gambling, New Zealand law does not prevent people from gambling on overseas websites, which presumably these are."

This initial view resulted from a consideration of the response to loot boxes in other jurisdictions and our understanding of how the feature is implemented in a number of games. The Department concentrated on a type of loot box known as "pay-to-loot"; where the exact content of the box is unknown at the time of purchase and is determined by the game programme partly based on chance.

On 13 November 2017 an article on loot boxes appeared in *The Wireless* (<http://thewireless.co.nz/articles/are-video-games-turning-young-people-into-gamblers>), as well as a story on Radio NZ's *Nine to Noon* show. It is worth noting that the article in *The Wireless* raises this issue in the context of treating addictive behaviours and suggests that the psychological techniques employed by computer games can be similar to those employed by gaming machines.

Subsequently, the Minister of Internal Affairs and the Department received a number of emails from concerned members of the public suggesting that loot boxes are a form of gambling and requesting that action be taken, either under the Gambling Act 2003 (the Gambling Act) or the Films, Videos, and Publications Classification Act 1993 (the Classification Act), to restrict access to games containing loot boxes.

In considering whether loot boxes constitute gambling, officials looked at a number of issues:

- Is the content of a loot box "money", as defined in the Gambling Act?
- Is the purchaser of a loot box "seeking to win money"?
- If the purchaser of a loot box always gets contents of the value paid for, does this make a difference?
- Does the content of a loot box have subjective value? (i.e. will the same content be valued differently by different players?).
- Does our view change if there is a secondary market where the contents of a loot box can be traded?
- The underlying game may be sold or available free from overseas websites and played on overseas servers.
- If the game is sold in New Zealand stores or played on local servers, would this constitute "remote interactive gambling"?

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. The Department's view is that players do not purchase loot boxes seeking to win money or something that can be converted into money. They buy loot boxes so they can use their contents within the game and thereby have a better gaming experience. The Department therefore considers that computer games containing loot boxes that have been brought to its attention do not meet the legal definition of gambling. We will continue to follow the international debate over loot boxes and developments in gaming technology.

Some correspondents also asked whether computer games that include loot boxes could be given an age restricted classification to prevent children from purchasing them and to alert parents to the presence of gambling. Computer games come within the definition of a "film" in terms of the labelling requirements of the Classification Act.

Section 3(1) of the Classification Act provides that a publication is objectionable if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good. Section 3 is the threshold provision for any restriction on access, and is set understandably high to be consistent with the rights affirmed in the Bill of Rights Act 1990. As gambling is neither listed in this provision nor falls within any of the issues listed, it doesn't appear possible that the presence of gambling could be a reason for a restricted classification. This view has also been expressed by the Office of Film and Literature Classification on its website: <https://www.classificationoffice.govt.nz/blog/monte-casino/>.

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