

To the Online Safety Commission,

My name is ██████████. I am currently a technical artist and Unity Developer with Voxon photonics, hobbyist and solo developer, and former educator within the games industry. I am writing to express my feedback on the proposed Phase 2 codes as part of the open consultation process.

I'd like to give a heads up that I'm not a bureaucratic sort of person, and I'm not well versed in writing this sort of letter, so I hope that you read this letter in the spirit and intent that it is written, rather than whether it conforms to the expected format.

My understanding of the proposed reforms boils down to the intention to implement new measures to limit the ability for minors to access pornographic, self-harm, and gambling materials, by way of verifying the user's identity against a government database. It is also my understanding that it is the responsibility of the service provider to implement this check if there is reasonable risk of the user being an Australian, and accessing materials of risk.

Speaking to the representative of the IGEA: as a game designer, your userbase's feedback and their proposed solutions are rarely correct. When you look at the systems in play you can establish what the underlying problem *really* is. The proposed reforms don't address the root issue.

While I intend to speak briefly on a specific intersection of issues and reforms, please know that my concerns extend much, much further than my criticisms on matters of prohibition, definitions, and privacy. Numbered links for each citation can be found on the last page of this document.

Prohibition and piracy

Historically, blanket prohibition, whether on alcohol, drugs, or digital media, has had extremely limited success. Applying this principle online, where users have multiple avenues for circumvention, may simply drive minors toward unmonitored spaces. There's always a workaround, whether intended or not, and often those workarounds have bolstered organised crime[1]. The classic example is alcohol prohibition in the US in the 1920s, but equally applies to black market tobacco in Australia right now, or to not being able to watch Game of Thrones at the time it was released.

- 47% of Australians over the age of 14 have used an illicit substance at some point in their life[2]. Illicit substances are illegal, so idealistically that number should be close to 0%.
- Black market tobacco is increasing, despite an overall downward trend in the tobacco market[3]. Police have task forces dedicated to eradicating black market tobacco.
- Australia led the world in pirating Game of Thrones season 4, simply because it wasn't accessible enough[4]. That's not to say it was inaccessible; simply not accessible enough.
- The most relevant example, NetAlert. In 2007, the Australian Government implemented an \$84m porn filter, only for it to be bypassed in 30 minutes by a year 10 student[5].

I don't condone any of the above, though the last one is really, really funny. Rather, each of these examples highlights that no matter what prohibition measures are put in place, people will find ways around them.

The reform's approach to prohibiting content may unintentionally encourage piracy. Simply put, if you want to reduce piracy, make content accessible, both in cost and ease of access. If you want to increase piracy, make the content impossible to obtain legally[6]. By limiting access to the content that minors want to access, the proposed reforms could instead foster an environment of increased, self-justified piracy, and open the doors to accessing totally unmoderated content. This represents lost revenue for the games industry, but it also exposes minors to completely unmoderated channels, as well as potential malware and spyware on their devices. Anecdotally, my students already had VPNs for bypassing region locks, and would render the 'protecting children' angle of these reforms immediately moot. Or if it's a biometric lock, then a deepfake can be generated from a single picture.

The impracticality of prohibiting VPN use is evident, given its legitimate applications—many businesses rely on VPNs for secure remote access[7] and personal data protection[8]. By their very nature, VPNs are hostile to these reforms. All said, though, access to a VPN would be preferable to a minor going through ToR and the deep web to find what they're looking for.

I don't pretend to have the end-all solution to this. I believe that parents should have a stake in the games and media their children consume. I also believe that as soon as you start thinking that somebody else cares more about your wellbeing than you do, you get complacent, you take your eye off the ball, and somebody gets hurt. If parents believe that their kids can't access this material, that may spiral into even more extreme content because they don't keep tabs on it.

Australia already has a content rating system for games, and only added an R18+ rating in 2013. At the time, reportedly, many games that would have otherwise been firmly in an R18+ classification were instead included in a very generous MA15+ rating[9], even more accessible than what the R18+ rating would be. It's not a perfect solution, but it provides parents that care enough with a tool to help them make an informed decision. My brother, while working at EB Games many years ago, would direct parents to the ratings of games they were buying for their children. Games like Grand Theft Auto, that these children had omitted the sex, crimes, and shootouts from why they wanted the game. The existing tools can work as intended, but more needs to be done to make people care about their own domain.

Broad definitions

This section is what's driven me to write this letter in the first place. In my own hobby project, I'm including a Spoofs[10] mini-game, as a sort of memorial to the games I played with my grandfather. Mini-games, such as these, are often brought with a wagering mechanism to make the game more rewarding in the context of a much larger game.

The problem I have is the broad definitions in place. Lootboxes get an M rating, simulated gambling gets an R rating[11]. Then to further clarify:

Simulated Gambling: Interactive activity within a game that:

- a) resembles or functions like a real world age restricted betting or gambling service; and
- b) does not provide rewards that can be redeemed for real world currency or traded to other players in-game for real world currency.

Note: For example, interactive activity within games that resembles or functions like real world commercial casinos, slot machines, lotteries, sports betting services or other betting services will be simulated gambling.

Then looking at three points from the FAQ:

Q. What is the relevant criteria in a video game that would determine whether it should be treated as simulated gambling and classified R 18+?

A. To meet the criteria for simulated gambling and be classified R 18 +, the following criteria must be met:

- Interactivity
- the environment resembles or functions like a real-world, age-restricted betting or gambling service
- a stake of value is required to participate
- there is a randomised outcome, and
- there is the possibility of losing the stake.

Largely, I have issue with the term “resembles or functions like”, being broad, subjective, and open to interpretation. Almost any game mechanic that involves chance, stakes, or “betting” of in-game currency could be interpreted as resembling gambling, and at the same time significant oversights exist within this wording.

Likewise, the term “stake of value” is also broad and open to interpretation. The FAQ states there’s no differentiation between real-world, purchasable and in-game currencies, the latter of which could be a numerical value the same as hit points, ammo, mana, or other items. It could equally be interpreted to include opportunity costs, or sunk-time (real or in-game).

And yet despite my qualms, let’s argue the other way.

Poker Night at the Inventory, is exactly what it says on the tin. A poker game between popular characters takes place in “The Inventory”, a well-hidden speakeasy where “game enthusiasts and game characters can hang out and have a cocktail and play poker”[13]. A game of poker in a bar is pretty easy to classify in the legislated definitions.

But for argument let’s change it so that instead of taking place at The Inventory as an establishment, all the characters know each other and are instead going to Strong Bad’s house for a friendly wager. The environment no longer resembles or functions like a real-world gambling environment, and despite being the same gambling game, with buy-in and prizes, is now not covered by the definition.

Reasonably:

- If the change would not change the rating of the game, then the term “resembles or functions” is either overstepping its definition, or not being used in the determination.
- If the change would change the rating, then the rating hinges on superficial elements like setting rather than the act of gambling, and can be easily circumvented by the developer.

If the definitions are loosened, then it will encompass innocuous mechanics relying on chance, or leave developers unsure as to how their work might be classified under ambiguous criteria. If the definitions are tightened then they become easier to bypass.

Out of curiosity, I think it would be great to get a ruling on some other unclear examples:

- Cait Sith's Limit break in Final Fantasy 7 (<https://www.youtube.com/watch?v=piEu5UF1XIU>) which features a slot machine interface, the risk of wiping out your party, consumes the limit break gauge and the opportunity cost to use...
- Swoop Racing in Knights of the Old Republic (<https://www.youtube.com/watch?v=Qbb8Tr-40RE>) isn't betting specifically, instead having a "Timekeeper's fee" and a winner's prize. There's no randomness, but you are wagering on your own skill. This is initiated from a racing parlour.
 - Drawing off this example, Zelda games will have races, for a prize, in exchange for an entry fee, but they usually have no specific venue.
- My game uses a deterministic chaos engine instead of a typical random number generator. That is to say, if I know the initial state, I can determine what a given output will be (this is a measure to encourage speedrunning). While it may appear random, it's deterministic. Would Spoofs as a tavern-based mini-game be exempt, since I'm not using actual randomness?

Would these games risk R18+ classification due to visual similarities or wagering mechanics that resemble gambling, despite lacking real-world consequences or prizes?

These examples might seem arbitrary, but historically boundaries about what "is" and what "isn't" gets blurred, pushed, and argued. Pinball was argued in a US court in 1974 as to whether it was to remain outlawed as a game of chance, (largely based off how the game originated compared to how the game evolved with the introduction of flippers)[14]. In the same way, rules of classic gambling games are contextualised, changed, remixed and recontextualised; Blackjack becomes Pazaak, Poker becomes Balatro. Where and how long do classical and historical connotations remain when determining "resemblance"?

Again, I think the proposed changes miss the mark on what they should be doing. Instead of a hard line of "This is gambling, it's not for children", I think it's eliminating a very real capability for games to educate, in the same way as the legislation does for depictions of drugs.

"Drug use can be shown, but "not gratuitously detailed", and should also "not be promoted or encouraged". For computer games, drug use related to "incentives and rewards" is not permitted."[15].

This is a brilliant, nuanced way of handling the seriousness of drug use because it has the capacity to give each individual user a negative connotation that discourages the behaviour you don't want them to recreate in the real world. Giving drugs a serious drawback starts a discussion about addiction and how things can spiral out of control.

Guide developers to understand the power of the medium and use it for good. In the same vein, many games give the player favourable odds, and that encourages more risks when it comes to gambling. My recommendation would be that simulated gambling remain MA, and that depictions of gambling must have winning odds equal to or less than their real world counterparts. Let them experience how hard it is to win.

Laws are unevenly applied

For argument, let's say reform goes ahead. Children as young as 14 are still exposed to gambling ads every day[16].

The leader of the State Government said the proposed reforms would target social media platforms "that are utilising addiction to make money"[17], but the closest he wants to get to actual gambling reform is self-exclusion and suggesting punters maybe "take a break"[18].

Prohibition isn't the answer, as I've argued. But to introduce this legislation with the number of pokie machines in the country (WA thankfully excluded), and the amount of betting ads plastered on live sport is hypocritical at best.

Closing thoughts

Without clarity on enforcement and oversight, these reforms seem more aimed at expanding surveillance capabilities than at meaningful online safety. The unfortunate thing is that this whole section is conjecture, and I acknowledge that.

Take this as you will, but sincerely I doubt this aspect, like all the other reforms in this space, are at all about protecting minors. There's always been a veneer over the pushes to normalise surveillance and intrusions into our personal lives. Before protecting the children, it was stopping the terrorists. Before the terrorists, it was the communists.

- We must have a backdoor into encryption to protect the children.[19]
- We must have a backdoor into your application to protect the children. Also, we'll arrest you if you tell anyone we asked.[20]
- We need your metadata to protect the children.[21]

Remove children from the equation, and the reforms pave the way for a centralised government department to track an individual's online activity (searching, social media, games), and link it directly to the new Digital ID. The Australia Card, again. Moreover, this personal information database becomes a honeypot for hackers, and Australia has a notoriously bad track record on user privacy (due to a lack of repercussions)[22]; all built by the lowest bidder.

If the government is serious about protecting children from harmful content online then more needs to be done at the human level. Help them understand why this content is harmful. Implement measures that disempower the appeal of the harmful content.

I sincerely hope I've written something worth your consideration. Privacy and games are both matters that are very important to me, and I'm very keen to see how these reforms develop, and hopefully change for the better. If there's anything further I can add, please don't hesitate to be in touch.

Kind regards,



1. <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2005.065409>
2. <https://www.aihw.gov.au/reports/illicit-use-of-drugs/illicit-drug-use>
3. <https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/tobacco-tax-gap/latest-estimates-and-findings>
4. <https://theconversation.com/from-convicts-to-pirates-australias-dubious-legacy-of-illegal-downloading-39912>
5. <https://www.smh.com.au/national/teenager-cracks-govts-84m-porn-filter-20070825-gdqy8b.html>
6. <https://www.sciencedirect.com/science/article/abs/pii/S0167268123000793>
7. <https://www.finance.gov.au/government/whole-government-information-and-communications-technology-services/govlink>
8. <https://www.pcmag.com/how-to/what-is-a-vpn-and-why-you-need-one>
9. <https://www.theguardian.com/commentisfree/2013/jun/26/saints-row-4-censorship-australia>
10. https://en.wikipedia.org/wiki/Spoof_%28game%29
11. <https://www.classification.gov.au/about-us/media-and-news/news/new-classifications-for-gambling-content-video-games>
- 12.
13. https://theinventory.fandom.com/wiki/The_Inventory
14. https://issues.chicagoreader.com/pdf/050902/050902_section_1.pdf
15. https://en.wikipedia.org/wiki/Australian_Classification_Board
16. <https://iht.deakin.edu.au/2024/06/new-research-shows-kids-are-targeted-with-alcohol-gambling-and-junk-food-ads-online/>
17. <https://www.abc.net.au/news/2024-09-11/would-online-gaming-be-exempt-from-sa-social-media-ban/104329318>
18. <https://www.premier.sa.gov.au/media-releases/news-items/take-a-break-campaign-launches-to-support-those-at-risk-from-gambling-harm>
19. <https://fee.org/articles/australia-s-unprecedented-encryption-law-is-a-threat-to-global-privacy/>
20. <https://www.agilient.com.au/australias-encryption-laws-what-you-need-to-know/>
21. <https://privacy108.com.au/insights/metadata-access/>
22. <https://www.webberinsurance.com.au/data-breaches-list#twentyfour>