

10 September 2019

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Dear Mr McDonald,

SUBMISSION TO THE *DIGITAL PLATFORMS INQUIRY CONSULTATION*

Thank you for the opportunity to provide a submission to the Government's consultation on the final report of the Australian Competition and Consumer Commission's (ACCC) *Digital Platforms Inquiry*.

The Alcohol Programs Team at the Public Health Advocacy Institute of WA (PHAIWA), Curtin University, is committed to reducing harms from alcohol by promoting evidence-based approaches. We have been actively involved in work to draw attention to the need for more effective regulation of alcohol marketing in Australia for a number of years. Our team provided comment on the ACCC *Digital Platforms Inquiry* preliminary report, highlighting the evidence of the extent of alcohol advertising on digital platforms and its impact on children and young people, and the need for the final report to prioritise the health and wellbeing of children and young people in Australia.

We were pleased to see the final report recognise that the regulatory disparity between online platforms and other media means consumers may be exposed to advertising that is subject to fewer controls. We strongly urge the Government to use this opportunity to regulate to keep children safe online and stop their exposure to alcohol, gambling and unhealthy food marketing.

Core Principles

In responding to the ACCC's recommendations, we urge the Government to be guided by four principles.

1. Children should be safe online. A strong regulatory framework to protect children from unhealthy marketing, including alcohol, unhealthy food and gambling, should be applied to all media formats, including digital platforms.
2. Children should not be tracked, surveilled and monetised, and nor should children's data be collected, disclosed and used for any profiling or marketing purposes.

3. Digital platforms must comply with the law and societal standards. An independent regulator should be responsible for proactive monitoring of platforms to encourage compliance, backed by strong enforcement with meaningful sanctions.
4. Public interest journalism, including health journalism, is important to Australia and it should be supported and fostered.

Unhealthy marketing must be addressed as a priority in a harmonised media regulatory framework (ACCC Recommendation 6)

The interests of the child and protection of vulnerable consumers should be primary considerations of the proposed platform-neutral harmonised media regulatory framework, particularly when it comes to the regulation of alcohol marketing. Alcohol is one of the most heavily marketed products in the world.¹ Australian children and young people are exposed to unacceptably high levels of alcohol advertising and promotion. Over half of school students aged 12 – 17 years report seeing alcohol advertising on television, and over a third report having seen alcohol ads on billboards, in print publications, and online.² Of concern, many alcohol promotions contain features and themes that appeal to young people.³

The evidence for the impact of alcohol advertising on young people is consistent and comprehensive. Exposure to alcohol advertising influences young people's beliefs and attitudes about drinking, and increases the likelihood that adolescents will start to use alcohol and will drink more if they are already using alcohol.^{4,5}

In Australia, alcohol advertising is largely self-regulated by the alcohol and advertising industries, and the system has been found to be ineffective.⁶ Recognised weaknesses include that code provisions are narrowly worded and important forms of marketing are not covered, and the system is voluntary (non-signatories go unregulated). There are concerns from public health organisations about the adequacy of existing advertising restrictions on media platforms such as outdoor and television, but the absence of regulation for advertising on digital platforms is undermining these restrictions even further and leading to considerable consumer harm.

With strong concerns about the ineffectiveness of alcohol marketing regulation under the current self-regulatory system, PHAIWA's Alcohol Programs Team, in conjunction with Cancer Council WA, established the Alcohol Advertising Review Board (AARB). The AARB accepts and reviews complaints from the Australian community, free of industry influence. In over seven years of operation, the AARB has received a substantial number of complaints about digital alcohol marketing. Concerning examples include social media influencers under the age of 25 promoting alcohol on Instagram,⁷ an

¹ Jernigan D. The extent of global alcohol marketing and its impact on youth. *Contemp Drug Probl.* 2010; 37:57–89.

² Faulkner A, Azar D, White V. 'Unintended' audiences of alcohol advertising: exposure and drinking behaviors among Australian adolescents. *J Subst Use.* 2017;22(1).

³ Chen M, Grube JW, Bersamin M, et al. Alcohol Advertising: What Makes It Attractive to Youth? *J Health Commun.* 2005; 10(6):553-565.

⁴ Jernigan D, Noel J, Landon J, et al. Alcohol marketing and youth alcohol consumption: a systematic review of longitudinal studies published since 2008. *Addiction.* 2016; 112(Suppl. 1):7-20.

⁵ Anderson P, de Bruijn A, Angus K, Gordon R, Hastings G. Impact of Alcohol Advertising and Media Exposure on Adolescent Alcohol Use: A Systematic Review of Longitudinal Studies. *Alcohol Alcohol.* 2009; 44(3):229–243.

⁶ Reeve B. Regulation of Alcohol Advertising in Australia: Does the ABAC Scheme Adequately Protect Young People from Marketing of Alcoholic Beverages? *QUT Law Review.* 2018;18(1):96-123.

⁷ Alcohol Advertising Review Board determination ref 681/18. Available from: <https://alcohol.phaiwa.org.au/assets/aarb/Ref-681-18-Sponsored-Rekorderlig-Instagram-post-determination-report.pdf>

alcohol ad placed before a Dora the Explorer video on YouTube,⁸ and Facebook promotions encouraging excessive consumption of alcohol.⁹

One in five young people aged 16 to 24 years reported that they had visited an alcohol brand page on Facebook, including 10% of those aged under 18 years.¹⁰ There does not appear to be in place any effective controls to prevent young people's exposure to online alcohol advertising, with research finding that age verification controls on websites are largely ineffective.¹¹ The evidence shows liking or following alcohol marketing pages on social media is common among young Australians and is associated with riskier alcohol use and an earlier start to drinking.¹² Significant associations exist between exposure to internet-based alcohol-related content and intentions to drink and positive attitudes towards drinking among young people.¹³ As the ACCC identified, vulnerable consumers and children are the ones most likely to be impacted by exposure to unsuitable advertising.

In setting the regulatory framework for a converged media landscape the first priority must be to identify the outcomes required, the protection of children and vulnerable people. The Australian Communications and Media Authority (ACMA) raised and highlighted the need to ensure enduring policy objectives of the current regulatory frameworks continue to underpin the harmonised media framework. Community safeguards was one such enduring concept. We strongly support moves to ensure that community safeguards to protect against inappropriate and dangerous advertising be considered as a priority reform area.

The ACCC's recommendation six considers that the framework should include advertising restrictions that are consistent across online and offline delivery methods, and should contain "appropriate monitoring and enforcement mechanisms accompanied by meaningful sanctions." We support this recommendation. In application, we strongly believe that this must be done by raising the regulatory standards for digital platforms, and not by lowering in any way the existing public interest regulations for broadcasters. Indeed, we believe that the current community safeguards that exist for media including outdoor and television could be further strengthened to better capture age restrictions, time of day, and contextual and cultural events for all unhealthy products.

The order and scope of the stepped reforms is important. Advertising restrictions, and specifically unhealthy marketing, were identified as a key area of regulatory disparity. They are also of broad concern, have high impact on the Australian community and require strong regulation. We support the prioritisation of alcohol, gambling and unhealthy food advertising as the first step of the staged regulatory reforms. Starting with this area of advertising would see the development of the most comprehensive initial regulatory architecture that could then be adapted to other areas of advertising as appropriate.

⁸ Alcohol Advertising Review Board determination ref 446/15. Available from:

<https://alcohol.phaiwa.org.au/assets/aarb/Ref-446-15-Bundaberg-Rum-ad-before-Dora-the-Explorer-YouTube-video-determination-report.pdf>

⁹ Alcohol Advertising Review Board determination ref 582/16. Available from:

<https://alcohol.phaiwa.org.au/assets/aarb/Ref-582-16-Thirsty-Camel-NT-Facebook-post-determination-report.pdf>

¹⁰ McClure AC, Tanski SE, Li Z, et al. Internet alcohol marketing and underage alcohol use. *Pediatrics*. 2016; 137(2).

¹¹ Jones SC, Thom JA, Davoren S, et al. Internet filters and entry pages do not protect children from online alcohol marketing. *J Public Health Policy*. 2014; 35(1):75-90.

¹² Carrotte ER, Dietze PM, Wright CJ, et al. Who 'likes' alcohol? Young Australians' engagement with alcohol marketing via social media and related alcohol consumption patterns. *Aust N Z J Public Health*. 2016; 40(5):474-479.

¹³ Gupta H, Pettigrew S, Lam T, et al. A Systematic Review of the Impact of Exposure to Internet-Based Alcohol-Related Content on Young People's Alcohol Use Behaviours. *Alcohol Alcohol*. 2016; 51(6):763-771.

Recommendation for implementation:

- 1. Mandatory regulatory settings to protect children and vulnerable groups from unhealthy marketing must be established and harmonised across media platforms, including digital platforms, in the first stage of the media regulation reform process.**

Improving the public's digital media literacy must not occur in isolation (ACCC recommendations 12 and 13)

We broadly support the ACCC's recommendations to establish a government digital media literacy program, and include digital media literacy in schools for consideration as part of the upcoming Australian Curriculum review.

Media literacy education should focus on broader media literacy issues, such as digital marketing, not just news literacy. Media literacy is a key skill that young people need to develop in order to be able to critically engage with media and the increasing barrage of marketing messages.

These recommendations must support a comprehensive regulatory framework and cannot be used as a standalone solution.

Recommendation for implementation:

- 2. Programs to improve media literacy should include marketing literacy, and the identification of digital marketing techniques and tricks.**

Data should not be collected and used in ways that damage vulnerable groups including children (ACCC recommendations 16, 17, 18)

We broadly support the ACCC's recommendations to support increased privacy and more meaningful choice and control for consumers relating to their data. The priority is the protection of children and ending the exploitative data practices of both the digital platforms and other corporate entities. Children are not a product. Children should not be turned into data points, packaged and sold to the highest bidder. While we strongly support an enforceable privacy code for the digital platforms, we believe that the restrictions proposed for children's data should extend beyond the digital platforms to other commercial entities dealing in children's personal information.

Recommendation for implementation:

- 3. The Digital Platforms Privacy Code should be developed in consultation with community and health organisations and implemented as a matter of priority.**
- 4. The government should specifically prohibit the collection, use and disclosure of children's data for targeted advertising and/or online profiling. This restriction should apply to online and offline entities.**

The specialist digital platforms branch to be established within the ACCC must proactively investigate, monitor and enforce arising consumer harms (Recommendation 4)

We support the introduction of a specialist digital platforms branch within the ACCC. It has accumulated knowledge and connections in this subject area. The ACCC has expressed an interest in working closely with other relevant agencies including the OIAC and ACMA as well as international agencies. We support this proposed coordination.

The ACCC flagged their concern regarding vulnerable consumers in the Report. We believe that the branch should investigate consumer harms arising from the predatory marketing tactics of alcohol, gambling and unhealthy food companies, and user generated content, for example undisclosed influencer marketing, as well as data privacy of vulnerable consumers.

We support the collection of data from digital platforms for the purposes of investigating, monitoring and enforcing issues within the markets that digital platforms operate in. Public reporting should be conducted on issues not meeting the threshold of breaching the *Competition and Consumer Act*.

Recommendation for implementation:

- 5. The specialist regulatory branch within the ACCC should be established immediately and be tasked with investigating consumer harms. Dedicated funding should be provided to the ACCC to support the establishment and operation of the specialist branch.**

Broader structural reform is required to address consumer rights and protections (additional recommendation)

The Report does not question whether the collection, usage and analytics of consumer data is a legitimate market and stops short of proposing structural reform to how the digital platforms monetise consumer data.

The ACCC acknowledged that the problematic data practices are not limited to the digital platforms. The ACCC also noted concerns with current practices, including the potential for “a seller to use their knowledge of consumers to target vulnerable consumers or discriminate against customers on the basis of gender, race or sexual orientation.”

We support a separate inquiry into the broader issues of the collection and use of consumer data, with a particular focus on vulnerable consumers. The inquiry should consider any social harms emerging from data practices and whether there should be limitations placed on data collection and usage across the economy. The establishment of such an inquiry should not preclude the privacy recommendations from the Report being implemented. These recommendations generally tackle the issues at an individual level, which are still required in addition to structural reform.

Recommendation for implementation:

- 6. An inquiry be held into the broader issues of the collection and use of consumer data, with a particular focus on vulnerable consumers and societal harm. The establishment of such an inquiry should not preclude the privacy recommendations from the Report being implemented, such as the Digital Platforms Privacy Code.**

Additional support is needed for health and science journalism (ACCC recommendations 10 and 11)

We broadly support the proposals to provide additional support for public interest journalism. We support the moves to enhance rural journalism, but more support is needed for health and science journalism. Health and science journalism is not a niche area. It should be fostered and not be left solely to digital natives such as Croakey.

The Report focuses on the quantity of reporting, rather than the quality of reporting. Further consideration should be given to providing support for quality journalism and for monitoring poor journalism and preventing misinformation.

Recommendation for implementation:

- 7. Health journalism, in addition to local journalism, should be given additional funding and support. Grants are a positive start, but over the medium-term these should be replaced with sustained and ongoing resources.**

All Recommendations:

- 1. Mandatory regulatory settings to protect children and vulnerable groups from unhealthy marketing must be established and harmonised across media platforms, including digital platforms, in the first stage of the media regulation reform process.**
- 2. Programs to improve media literacy should include marketing literacy, and the identification of digital marketing techniques and tricks.**
- 3. The Digital Platforms Privacy Code should be developed in consultation with community and health organisations and implemented as a matter of priority.**
- 4. The government should specifically prohibit the collection, use and disclosure of children's data for targeted advertising and/or online profiling. This restriction should apply to online and offline entities.**
- 5. The specialist regulatory branch within the ACCC should be established immediately and be tasked with investigating consumer harms. Dedicated funding should be provided to the ACCC to support the establishment and operation of the specialist branch.**
- 6. An inquiry be held into the broader issues of the collection and use of consumer data, with a particular focus on vulnerable consumers and societal harm. The establishment of such an inquiry should not preclude the privacy recommendations from the Report being implemented, such as the Digital Platforms Privacy Code.**
- 7. Health journalism, in addition to local journalism, should be given additional funding and support. Grants are a positive start, but over the medium-term these should be replaced with sustained and ongoing resources.**

Thank you once again for the opportunity to raise these important issues with you. We welcome the prospect of meeting with the Structural Reform Division to discuss these matters further.

Yours sincerely,

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