



**Public Health Association**  
AUSTRALIA

## **Public Health Association of Australia submission on Digital Platforms**

**Contact for recipient:**

Director,  
Content and Digital Services  
Australian Competition and Consumer Commission  
**A:** GPO Box 3131 Canberra ACT 2601  
**E:** [platforminquiry@accc.gov.au](mailto:platforminquiry@accc.gov.au)

**Contact for PHAA:**

Terry Slevin – Chief Executive Officer  
**A:** 20 Napier Close, Deakin ACT 2600  
**E:** [phaa@phaa.net.au](mailto:phaa@phaa.net.au) **T:** (02) 6285 2373

**18 February 2019**

# Contents

Preamble ..... 3

Introduction..... 4

Protecting children from unhealthy marketing ..... 4

Public interest journalism ..... 5

Influence on public policy ..... 5

Conclusion ..... 8

# Preamble

## The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia.

The PHAA works to ensure that the public's health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people's health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

## Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

## Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.



**Public Health Association**  
AUSTRALIA

## Introduction

PHAA welcomes the opportunity to provide input to the Australian Competition and Consumer Commission (ACCC) inquiry into Digital Platforms.

PHAA is aware that this is a large topic, and extends to areas of consumer protection and news media industry structure that is not squarely within the ACC's traditional domain (or at least, responsibilities are shared with other regulators). We commend the Commission for taking on such a broad and highly important topic of inquiry.

## Protecting children from unhealthy marketing

PHAA joins with the Foundation for Alcohol Research and Education (FARE) and other public interest organisations in a submission which you will receive from Michael Thorn, CEO of FARE. This submission highlights the critical vulnerability of children to advertising of unhealthy products across digital platforms. Australian law limits or bans some forms of such advertising, and the challenge will be to ensure that digital platforms are not able to evade the intent of such legislation and regulation.

As highlighted in the Preliminary Report, the current regulatory framework is failing consumers because digital platforms and online marketing are largely unregulated. Content regulation, including advertising content and marketing of unhealthy products aimed at children, is especially concerning.

The emergence and growth of marketing on digital platforms, including social media, has created new opportunities for marketers of unhealthy commodities such as alcohol, unhealthy food and gambling. Digital platforms offer several advantages to marketers. As well as being cheaper than traditional media, they enable targeted marketing, lack transparency, make parental surveillance more difficult, and have only minimal regulatory requirements.

The joint submission addresses issues relating to children and advertising, children's engagement with online platforms, and the use of data about children in targeted advertisements.

The submission **recommends** that the ACCC:

1. Acknowledge that in regulating digital platforms consideration must be given to the protection of children and their ability to safely use digital platforms.
2. Recommend that regulations designed to protect children from unhealthy marketing, including unhealthy food, alcohol and gambling, are applied to all media formats, including digital platforms.
3. Recommend that all minors are automatically opted out of targeted advertising and prohibit the use of children's personal data for tracking, targeted advertising and other marketing strategies.
4. Recommend increasing data collection on targeted advertising used by unhealthy commodity industries to promote transparency and accountability and ensure compliance, potentially through an expanded role for digital platforms' regulatory authorities.
5. Impose sanctions and monetary penalties for regulatory breaches involving the marketing of unhealthy products to children and the use of children's personal data.
6. Consider international cross-border strategies to protect the integrity of Australia's regulatory system.

## Public interest journalism

PHAA also joins in the concerns raised by the Croakey Health Media and other media organisations to warn of the impact on public interest journalism of the design, operation and use of digital media platforms. Specifically, PHAA has seen the submission which Croakey will and we endorse its recommendations.

Croakey notes that the ACCC's preliminary report does not consider the development of non-profit journalism models, and warns that the current policy environment is not supportive of such models, despite their potential to contribute significantly to the public interest and to compensate for market failure in the provision of public interest journalism services.

The maintenance of strong independent media to hold not only governments but also corporations to account for their messaging in the public domain is an essential public interest goal. We are pleased that ACCC has recognised that this important public interest issue lies within the scope of the ACCC's attention.

We note in particular the [arguments](#) made by Croakey relating to the impact of public interest journalism on health policy and health outcomes.

We support the specific **recommendations** to the ACCC made by Croakey, including that:

7. A regulatory authority should be established to monitor, investigate and report on the ranking of news and journalistic content by digital platforms and the provision of referral services to news media businesses.
8. The Government should conduct a separate, independent review to design a regulatory framework that is able to effectively and consistently regulate the conduct of all entities which perform comparable functions in the production and delivery of content in Australia, including news and journalistic content, whether they are publishers, broadcasters, other media businesses, or digital platforms. Such a framework should accommodate the needs and aspirations of independent media organisations, and should be driven by public interest considerations rather than corporate media interests.
9. ACMA should work with the leading digital platforms to develop a broad campaign targeted at all Australians, to improve their understanding of how news and journalism is curated and displayed on social media and other digital platforms, and that such a campaign includes a specific focus on public interest journalism and why it matter.

In addition, PHAA recommends that:

10. As part of developing final recommendations in this space, the need to maintain diverse and independent public interest media players should be of paramount concern to the ACCC. The need for that media to operate effectively in the course of reporting on public policy discourse is an inherent part of that goal.

## Influence on public policy

PHAA also wishes to draw the ACCC's attention to the role that digital platforms have come to play in public discourse relating to policy-making in Australia.

PHAA notes the increasing number of parliamentary, regulator and other studies worldwide into the role played by digital media platforms in relation to policy debates as well as influencing parliaments and governments. The situation is developing rapidly, and even as this submission was being finalised a major

UK parliamentary report was released calling for stronger regulator control of Facebook and of digital platform in general.<sup>1</sup>

PHAA is particularly concerned that the lack of transparency and regulation of the use of these platforms is increasingly allowing forms of policy and political campaigning which are part of the operating model of corporations and industries which sell unhealthy goods or services. These campaigns include attempts to influence policy and regulatory decisions by parliaments and governments, as well as exercises to damage the reputations of political parties, individual politicians and even unelected officials who take public interest stances against such interests.

### *Corporate influence on policy debates and political outcomes*

In fact, the impacts of unfettered intervention in political discourse by corporate interests through modern social media platforms is pervasive. Campaigns to influence public opinion and the public policy decisions of politicians and regulators by sectors such as tobacco, alcohol, food and beverages, gambling, gun manufacturers and others are too numerous to need mention.

Corporate attempts to alter regulatory regimes to their commercial advantage have existed throughout history, of course, and have expanded rapidly in recent centuries as open market economies developed. Historical examples of serious impacts on the health of populations are easy to identify:

- the initially unregulated space for the marketing of tobacco through the 20<sup>th</sup> century
- the free space allowing the advance of sugar addition to food and beverages through the second half of the 20<sup>th</sup> century, which continues to this day
- In the United States, the political efforts to clear the way for unfettered marketing and sales of gun weaponry in the united states, which stepped up in the 1980s and are only recently coming under effective challenge
- The relatively open regulatory landscape for gambling, still rampant in Australia.

The mischiefs which powerful corporations can cause through the use of modern digital platforms are various. They can – and do – create false or ‘fake’ opinions within the community about basic facts and about matters of science, medicine and human physiology. They can mislead the public about the virtues (or vices) of various policy options, or about their practicality or effectiveness. They can engage in malicious damage to the reputations of, and indeed sabotage the careers of, politicians and also non-elected officials who make a stand against corporate interests.

These effects are very real and have been undertaken for many decades. However the rise of digital platforms, in the hands of well-resourced players, have made these all the more effective. High-profile impacts on public discourses such as Brexit and the most recent US presidential election (and indeed many other elections) are only the tip of the iceberg. The same practices are operating constantly on a wide array of corporate-interest areas of public policy. Many relate to health policy and ultimately to the public’s actual health.

Needless to say, digital platforms have been useable for positive public-interest purposes as well. Individuals across the community are greatly empowered by modern means of communication, and in many cases individuals can combine their directions into social movements more effectively that would be possible without social media. In addition, public interests organisations – such as PHAA – are able to employ the power of these platforms for the purpose messaging into public discourses. However, the

---

<sup>1</sup> House of Commons Digital Culture Media and Sport Committee. Disinformaiton and 'fake news': Final report. 2019.



financial resources available to the public interest sector to participate in online discourse are far inferior to those of the corporate sector.

### *The role of the ACCC*

We anticipate a jurisdictional objection to raising this issue, which is that public discourse is neither a subject which the ACCC is set up to regulate, nor on which it can make recommendations to government. However, because digital platforms now form part of the communications ‘infrastructure’ on which modern society operates, PHAA believes that this is a subject which in fact falls within the remit of the ACCC in respect of the present inquiry.

Firstly, this infrastructure, in addition to being used for commercial purposes to advertise, sell and buy commercial goods and services, is simultaneously used by consumers for policy and political discourse. While much of this community ‘political’ usage is non-commercial in nature, the act of selling the use of platforms to the public as a means of political communication is itself a commercial activity, and thus creates a market, which is properly a domain of interest to the ACCC.

Secondly, the ACCC has a separate role in protecting consumers from harm from the actions of commercial entities. Many products which corporations attempt to sell are in fact highly harmful, including noxious poisons (tobacco/nicotine), products unhealthy to their consumers (alcohol, sugar-added food and beverages, etc) or to users (asbestos, toxic chemicals, lead paint), products causing harm to others (firearms, alcohol), and products causing other loss of economic or social wellbeing (gambling). The complex, dynamic process by which commercial providers of goods and services influence the political process to shape the regulatory environment to their advantage in which they market their goods and services is thus a proper field of interest to ACCC.

An argument is sometimes made that political discourse is inherently unregulatable, and/or that it should not be regulated. It is often said that all ‘speech’ relating to public policy should be ‘free’. The extent to which it is in fact ‘free’, let alone equitably available to all, is endlessly debatable. But in any case an entirely unregulated response to this question is neither a desirable position on public interest grounds, nor is it an accurate description even of existing legal regimes.

Granted, governments and agencies should never seek to regulate the content of public discourse from a partisan political perspective. However it remains appropriate to establish regulatory frameworks relating to (for example) false or misleading statements by corporations relating to public policy, the imposition of requirements of transparency and accountability for public issue messaging, and in some specific cases the prohibition of tightly defined types of speech (most notable where such messaging promotes harm to any class of people). Indeed, governments and legislatures around the world currently regulate public policy discourse in various ways.

Further, it is often said that *internet*-based communication is particularly difficult to effectively regulate, for reasons relating to the logistical capacities of governments in respect of modern technologies. No doubt that is correct to a considerable degree. But this does not absolve governments and regulatory agencies from making reasonable efforts to keep up with technological advances so as to effect public interest responses appropriate to the times. From a reading of the recent Preliminary Report, it is clear that the ACCC is well aware of this responsibility in undertaking the current inquiry.

Finally, we note that debates in other nations – notably Britain and the United States – relating to the regulation of Facebook and Google have led towards proposals for new roles for corporate and-or competition regulators to address these complex issues. Given the international nature of online platforms, Australia should develop regulatory responses in alignment with other nations wherever possible.

## Recommendations

The regulating political discourse or 'free speech' is inherently difficult. While PHAA is not arguing that ACCC is equipped to grapple with that topic directly, this is a subject that is specifically relevant to the ACCC's current inquiry. Appropriate regulatory and transparency initiatives could be developed to support the ultimate protection of consumer interests.

Taking these issues into account, PHAA **recommends** that ACCC should:

11. In finalising recommendations to Government, carefully consider:
  - a. corporate interest influence on public policy debates through the use of digital platforms through both product advertising and also policy and political campaigns
  - b. the protection of the long-term health of consumers from harmful products.
12. Widen the focus of its present inquiry to develop recommendations for greater accountability and transparency in the manner in which corporate interests use digital platforms to influence public discourse for their commercial advantage. These might include:
  - a. New or stronger regulation of the making of false and misleading statements on digital platforms relating to the harmfulness of products or services, or to public policies regulating such products or services
  - b. New or stronger obligations on corporations (including placing effective legal accountabilities on executives and directors) to report on the extent to which they expend shareholders' funds on online influence strategies directed at public policy discourse
  - c. Obligations on digital platform providers to adopt practices or codes which in turn regulate false information, false claims about regulatory options, malicious attacks on officials, or other malign practices by corporations or business sector lobby groups.

To be effective any such regulation of corporations should extend into appropriate regulation of secondary representative associations, lobbying entities or campaign vehicles (whether overt or covert) through which multiple corporations often choose to act.

## Conclusion

The PHAA appreciates the opportunity to make this submission. This is an important inquiry which offers the potential for a thorough analysis and solid recommendations to government. PHAA commends the ACC for its efforts to date and looks forward to working with the Commission as the inquiry progresses.

Please do not hesitate to contact me should you require additional information.

Yours Sincerely,



Terry Slevin  
Chief Executive Officer  
Public Health Association of Australia