



Australian Competition and Consumer Commission

digitalmonitoring@accg.gov.au

26 April 2022

Dear Australian Competition and Consumer Commission,

The **Public Health Association of Australia** (PHAA) is Australia's peak body on public health. We advocate for the health and well-being of all individuals in Australia. We believe that health is a human right, a vital resource for everyday life, and a key factor in sustainability. The health status of all people is impacted by the social, commercial, cultural, political, environmental, and economic determinants of health. Specific focus on these determinants is necessary to reduce the root causes of poor health and disease. These determinants underpin the strategic direction of PHAA. Our focus is not just on Australian residents and citizens but extends to our regional neighbours. We see our well-being as connected to the global community, including those people fleeing violence and poverty, and seeking refuge and asylum in Australia.

PHAA welcomes the opportunity to provide input to the Australian Competition and Consumer Commission - digital platform services inquiry 2020-2025, September 2022 Interim Report, and notes the recent launch of The Australian National Preventative Health Strategy, which recognises the commercial and digital influence in the promotion of unhealthy products leading to adverse health outcomes.¹

PHAA aligns this response with the submission from the Foundation of Alcohol Research and Education. PHAA strongly supports a strengthened policy and regulation reform to: 1) protect consumers from digital platform services, 2) prevent harm from commercial marketing on digital platforms, and 3) creating transparency in digital platform marketing systems.

PHAA propose a core theme derived from our policy priority action areas² which should be considered under the Terms of Reference: **protect against harmful products**. This includes alcohol, gambling, formula milk, fast and ultra-processed foods, sugar-sweetened beverages, and tobacco (including e-cigarettes and vapes).

1. Protect consumers from digital platform services

Like our response to the review of the Australian Attorney-General's Department *Privacy Act review*³ and submission on Australian Parliament Select Committee on Social Media and Online Safety⁴, we promote the need to protect children (and all Australians) from harmful digital data practices including the collection, exploitation, and disclosure of their personal information to market harmful products.

The digital marketing of products and services that are harmful to children is not merely a public health issue; it is a human rights issue. Emerging advertising strategies and practices such as advergames, personalised and integrated advertising are infiltrating the digital environments in which children play, communicate and search for information, and are based on a model of collecting and commercially exploiting children's data.

Digital marketing models collect, exploit and disclose large amounts of personal information, including specific information about an individual's online behaviour, purchase preferences, social networks and

20 Napier Close Deakin ACT Australia 2600 – PO Box 319 Curtin ACT Australia 2605

T (02) 6285 2373 E phaa@phaa.net.au W www.phaa.net.au @ _ PHAA _ /PublicHealthAssociationofAustralia/

physical location.^{5,6} This information is being used by marketers, including corporations who market unhealthy food and beverages, alcohol, commercial milk formula, tobacco, e-cigarettes, vaping products (including nicotine-free vaping products) and gambling to target their marketing directly to particular groups of consumers, including children, based on their individual profiles.⁷ From a child rights perspective, these new practices raise concerns, including in relation to, inter alia, children's best interests, and their rights to non-discrimination, health and development, privacy, protection from economic exploitation and from inappropriate information, freedom of thought, and education.

Marketing is part of everyday life, experienced by virtually everyone. Digital marketing, however, of harmful products is different from the marketing of everyday items such as homewares, shampoo and sports shoes. For example: healthy dietary practices are initiated early in life and form the foundation for good nutrition and healthy development. Our food environment, which includes the nature and extent of food marketing, influences food values and impacts dietary practices.

Two recent World Health Organization reports expose digital marketing strategies as pervasive, exploitative, undermining of parents', compromising childhood nutrition and demonstrate that industry self-regulation does not work.⁸⁻⁹

All children are exposed to severe threats from the commercial sector,

- by marketing that exploits their vulnerability,
- by governments not regulating products that harm their growth and development, and
- by use of their data and images without their knowledge and permission.

2. Preventing harm from commercial marketing on digital platforms

The WHO-UNICEF *Lancet* Commission on Child Health raised concern about the commercial influence of marketing harmful products, stating "it is one of the most underappreciated risks to their health and well-being".¹⁰

It is estimated that 72 million data points will have been collected by companies on each child by the age of 13,¹¹ which can be sold to industries to target their marketing of harmful products. This influences unhealthy consumer habits and behaviours in adulthood and increases their risk of chronic disease.¹²

Current strategies to protect children from harmful products on digital platforms is limited, and lags international human rights standards.¹³

PHAA supports reform to better protect Australian children as well as for wider reform for all Australians, to better protect individual privacy and reduce the risk of harm, particularly in the digital environment.

Consumer reforms should prohibit personalised targeted marketing of addictive or harmful products – including alcohol, gambling, formula milk, tobacco (including e-cigarettes/vapes) and unhealthy food – on digital platforms unless the person has provided active, informed, and non-incentivised opt-in consent.

This must be facilitated by mechanisms that are not designed to nudge or coerce individuals to provide this consent. It should also be accompanied by additional protections so that even where consent has been provided companies are still required to:

- Ensure data processing and digital marketing activities meet ethical standards so that they do not pose a potential risk of harm,
- Enable a person to object or withdraw consent at any time and to have information collected for commercial marketing purposes erased, and
- Not process sensitive information, such as factors relating to physical or mental health and well-being, whether actual, inferred or generated.

For children, the following should be explicitly prohibited (regardless of consent):

- The tracking, profiling, monitoring or targeting of children for commercial purposes (as per recommendations by the United Nations Committee on the Rights of the Child),⁸ and
- The processing of children’s information for commercial marketing purposes, particularly by, or for, companies selling or marketing addictive or harmful products, including alcohol, gambling, tobacco (including e-cigarettes/vapes), and unhealthy food.

3. Creating transparency in digital platform marketing systems

Regulatory measures on transparency and accountability are essential for protecting people from harmful digital marketing practices and prioritising people’s health and safety. PHAA supports the recommendation to implement mandatory measures requiring digital platforms to make information accessible about advertising and their practices around the use of data and automated decision systems. Specifically, digital platforms should be required to:

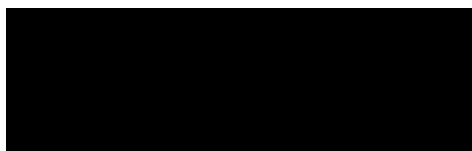
- Provide clear and simple explanations addressing the kinds of personal information the platform collects and holds, how personal information is collected or generated, and how an individual may access and seek correction of this information.
- Be transparent about how automated decision systems are used to make predictions, recommendations, or decisions about which, and how, specific marketing content is sent to individuals.

In the case of children, it is recommended that the collection, use and disclosure of children’s personal information for commercial marketing purposes is a prohibited practice that is not considered fair and reasonable.

PHAA appreciates the opportunity to make this submission and the opportunity to protect the health and well-being of people in Australia, including children from harmful products marketed online.

Please do not hesitate to contact PHAA should you require additional information or have any queries in relation to this submission.

Yours Sincerely,



Terry Slevin
Chief Executive Officer
Public Health Association of Australia

References:

1. Department of Health. National Preventative Health Strategy 2021-2030. Canberra: Australian Government, 2021. <https://www.health.gov.au/resources/publications/national-preventive-health-strategy-2021-2030>
2. Public Health Association of Australia. (2022). *The 2022 Federal Election Campaign*. <https://voteforpublichealth.com/wp-content/uploads/2021/12/phaa-vote-for-public-health-2022-election-campaign-brochure-images.pdf>
3. Public Health Association of Australia (2022). PHAA submission on the Privacy Act Review <https://www.phaa.net.au/documents/item/5470>
4. Public Health Association of Australia (2022). PHAA submission on Social Media and Online Safety. <https://www.phaa.net.au/documents/item/5510>
5. World Health Organization Executive Board, 150. (2022) Scope and impact of digital marketing of breastmilk substitutes. World Health Organization. Available from: https://apps.who.int/gb/ebwha/pdf_files/EB150/B150_23-en.pdf
6. Holloway D. Surveillance capitalism and children's data: the internet of toys and things for children. *Media Int Aust Inc Cult Policy* 2019; 170: 27–36.
7. World Health Organization. Regional Office for Europe. (2016). Tackling food marketing to children in a digital world: trans-disciplinary perspectives: children's rights, evidence of impact, methodological challenges, regulatory options, and policy implications for the WHO European Region. World Health Organization. Regional Office for Europe. Available from: <https://apps.who.int/iris/handle/10665/344003>
8. World Health Organization. (2022). Food marketing exposure and power and their associations with food-related attitudes, beliefs and behaviours: a narrative review. World Health Organization. Available from: <https://apps.who.int/iris/handle/10665/351521>
9. World Health Organization & United Nations Children's Fund (UNICEF). (2022). How the marketing of formula milk influences our decisions on infant feeding. World Health Organization. Available from: <https://apps.who.int/iris/handle/10665/352098>
10. Clark, Helen, et al. (2020). "A future for the world's children? A WHO–UNICEF–Lancet Commission." *The Lancet*. 395.10224. 605-658. <https://www.thelancet.com/commissions/future-child>
11. VicHealth (2020). Under the radar report, Harmful industries' digital marketing to Australian children. <https://www.vichealth.vic.gov.au/-/media/ResearchandEvidence/Under-the-radar--Harmful-industries-digital-marketing-to-Australian-children.pdf?la=en&hash=960D0ED61D543DE331A5C8306EC87E95422FADC2>
12. World Health Organization. (2022). Food marketing exposure and power and their associations with food-related attitudes, beliefs, and behaviours: a narrative review. <https://www.who.int/publications/i/item/9789240041783>
13. United Nations Committee on the Rights of the Child (2021). General comment No. 25 (2021) on children's rights in relation to the digital environment. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation>