

26 February 2021

Australian Competition & Consumer Commission  
[adtechinquiry@acc.gov.au](mailto:adtechinquiry@acc.gov.au)

Dear ACCC

The Victorian Health Promotion Foundation (VicHealth) welcomes the opportunity to respond to the ACCC's interim report for the Digital Advertising Services Inquiry.

#### **About VicHealth**

VicHealth was established in 1987 as a statutory agency of the Victorian Government. We are a pioneer in health promotion – the process of enabling people to increase control over and improve their health. Our primary focus is promoting good health and preventing chronic disease. We seek to make health gains among Victorians by pre-empting and targeting improvements in health across our population, fostered within the day-to-day spaces where people spend their time, and with benefits to be enjoyed by all.

#### **Overview**

Digital settings provide many educational, informational, communication and entertainment benefits to our community, and can be used to promote physical and mental health and wellbeing across the population. Digital advertising is commonly used to fund content in those settings, but in some cases, the products and services being advertised have the potential to cause considerable harm to Australians' health and wellbeing. Industries such as the alcohol, unhealthy food and beverage, and gambling industries ('harmful industries') are increasingly prioritising digital settings to promote their products and services, often leading to increased consumption and therefore increased harm. This is particularly true for children and people already at risk of harm from those products and services, and yet they are the groups that are most at need of protection from harmful industries.

As noted in the interim report, advertising is generally targeted at the individual consumer based on their characteristics, preferences and interests. Data collection, analysis and insights drive that targeted approach. These mechanisms have the potential to exacerbate harm and create opportunities for harmful industries to further target current and potential consumers that are likely to experience the greatest negative impacts to their health and wellbeing.

VicHealth believes that this is a significant risk to the health of Australians that are already vulnerable, and that it is unfair for harmful industries to target their advertising so they can profit from those groups that require the greatest protection. Australians should be able to benefit from the positive aspects of digital settings, without being targeted by harmful industries' advertising or having their privacy breached.

For more information on harmful industries' digital marketing to children, see VicHealth's report, [Under the radar: Harmful industries' digital marketing to Australian children](#).

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The Honourable Linda Dessau AC  
Governor of Victoria (Patron-in-Chief)  
Sir James Gobbo  
Professor Emeritus  
Sir Gustav Nossal AC CBE

The reforms proposed in the ACCC's final report for the Digital Advertising Services Inquiry could have the potential to prevent those harms and protect at-risk Australians. Therefore, VicHealth makes a number of recommendations to inform the reforms proposed in the final report, as well as outlining supporting evidence, as provided below.

### **Supporting evidence: The impact of harmful industries' digital advertising on children and at-risk Australians**

VicHealth recognises that the ad tech sector has raised a number of concerns regarding markets for the supply of digital advertising technology services and digital advertising agency services. However, the interim report does not sufficiently consider the potential impacts of the sector's practices on Australians' health and wellbeing, and instead focuses on harms to industry, technology services and agency services.

It is important that this inquiry prioritises health and wellbeing in its findings, particularly at this point in time. There are hundreds of examples from over 90 countries around the world, demonstrating how the alcohol, unhealthy food and gambling industries have leveraged the coronavirus pandemic to market their products.<sup>1</sup>

#### *Alcohol*

Harmful industries use a number of digital marketing tactics that can cause or exacerbate harm to consumers' health and wellbeing. A clear example of that is harm from alcohol. According to the Australian Institute of Health and Welfare, in 2019 7.5% of Australians aged 14 years and older were suffering from some form of alcohol dependence and would benefit from treatment. This equates to over 1.5 million Australians.<sup>2</sup> Given so many Australians are at risk of significant harm, it is vital that there are adequate consumer protections put in place to ensure that the digital advertising of alcohol products is not targeted to people already experiencing harm from alcohol.

Currently, there is very limited information available on the range of tactics the alcohol industry uses to target consumers. However, VicHealth research exploring Victorians' use of on-demand alcohol services (i.e. alcohol retailers who deliver alcohol within two hours) found the following:

- 40% of Victorians using on-demand services recalled receiving direct messages via email, text, phone calls and private messages on social media in the seven days prior to the survey.
- That increased to 79% of very risky drinkers – that is, people consuming 11 or more standard drinks in a sitting at least once a week.<sup>3</sup>
- Over half (55%) of very risky drinkers who had received a direct message purchased alcohol as a result on all or most occasions.<sup>4</sup>

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<sup>1</sup> NCD Alliance 2020, *Signal virtue, promoting harm – Unhealthy commodity industries and COVID-19*, viewed 25 February 2021, <https://ncdalliance.org/resources/signalling-virtue-promoting-harm>

<sup>2</sup> Australian Institute of Health and Welfare 2020, *National Drug Strategy Household Survey 2019*, Drug Statistics series no. 32, PHE 270, AIHW, Canberra.

<sup>3</sup> VicHealth 2020 (unpublished)

<sup>4</sup> VicHealth 2020 (unpublished)

This demonstrates that risky drinkers are specifically targeted by the alcohol industry, placing them at further risk of harm.

In addition, during the coronavirus pandemic, during a one hour period spent monitoring sponsored alcohol advertising on an adult's Facebook and Instagram accounts, 107 alcohol advertisements were displayed – an average of one advertisement every 35 seconds.<sup>5</sup>

### *Gambling*

Another example is the harms caused by gambling. In 2015, there were 1,408,012 Australians at risk of gambling harm.<sup>6</sup> Although the National Consumer Protection Framework for Online Wagering and the implementation of measures by state governments provides some protections for people experiencing gambling harm,<sup>7,8</sup> these alone would not be sufficient to prevent digital advertising services from collecting and selling the personal data of people experiencing gambling harm to either wagering operators or adjacent industries in financial services.

In 2018, it was reported that Facebook flagged 740,000 children as being interested in gambling and a further 940,000 children as being interested in alcohol products.<sup>9</sup>

### *Unhealthy food and beverages*

Australian children have the least protection from unhealthy food advertising. Unhealthy food advertising is crafted in a way that appeals to children through imagery, colours, and gamification, which is then compounded by the fact that unhealthy food companies are able to access children's personal data, including a child's online behaviour, purchase preference, social networks and physical location.

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<sup>5</sup> FARE 2020, *An alcohol ad every 35 seconds: A snapshot of how the alcohol industry is using a global pandemic as a marketing opportunity*, Foundation for Alcohol Research and Education, viewed 25 February 2021, <https://fare.org.au/wp-content/uploads/2020-05-08-CCWA-FARE-An-alcohol-ad-every-35-seconds-A-snapshot-final.pdf>

<sup>6</sup> Fogarty, M, Taylor, M & Gray, M 2018, *Trajectories of social and economic outcomes and problem gambling risk in Australia*, ANU Centre for Social Research & Methods, viewed 25 February 2021, <http://csrcm.cass.anu.edu.au/sites/default/files/docs/2018/11/GAMBLINGRISK-Publish-112018.pdf>

<sup>7</sup> Department of Social Services 2020, *National Consumer Protection Framework for Online Wagering*, Australian Government, viewed 25 February 2021, <https://www.dss.gov.au/communities-and-vulnerable-people-programs-services-gambling/national-consumer-protection-framework-for-online-wagering-0>

<sup>8</sup> Toscano, N 2019, 'Free bet crackdown as Victoria moves first to toughen online gambling rules', *The Sydney Morning Herald*, 22 May 2019, <https://www.smh.com.au/business/consumer-affairs/free-bet-crackdown-as-victoria-moves-first-to-toughen-online-gambling-rules-20190521-p51pjin.html#:~:text=Sports-betting%20companies%20will%20be%20prohibited%20from%20directly%20marketing,Australia-first%20laws%20to%20be%20rolled%20out%20in%20Victoria>

<sup>9</sup> Hern, A & Ledegaard, FH 2019, 'Children 'interested in' gambling and alcohol, according to Facebook', *The Guardian*, 10 October 2019, <https://www.theguardian.com/technology/2019/oct/09/children-interested-in-gambling-and-alcohol-facebook#:~:text=Facebook%20has%20marked%20hundreds%20of,Danish%20Broadcasting%20Corporation%20has%20found.&text=Some%20940%2C000%20minors%20%E2%80%93%20150%2C000%20of,being%20interested%20in%20alcoholic%20beverages>

Children are particularly at risk from digital advertising of unhealthy food and beverages, and data collection mechanisms that target that advertising. Australian children have the least protection from unhealthy food advertising. Unhealthy food advertising is crafted in a way that appeals to children through imagery, colours and gamification, which is then compounded by the fact that unhealthy food companies are able access children's personal data, including a child's online behaviour, purchase preference, social networks and physical location. The data can then be used by harmful industries to shape and deliver targeted advertising that normalises unhealthy behaviours, motivates unhealthy purchasing decisions for both the child and their caregivers, and builds brand awareness from an early age that can influence their behaviours throughout their lives.

It is vital that any proposals targeting digital advertising services do not exacerbate an already detrimental situation in which children or at-risk Australians are placed at greater risk of harm. Proposals aimed at increasing competition in the digital advertising services sector may also have the unintended consequence of increasing the volume and sophistication of harmful industry marketing that is already targeted at vulnerable groups.

### **Recommendations**

Based on this evidence, VicHealth makes the following recommendations to the inquiry to inform development of the ACCC's final report:

*1. The final report should expressly assess how each proposal will affect children and at-risk Australians*

The interim report does not sufficiently consider the impacts of digital advertising on children and at-risk Australians. VicHealth recognises that recommended reforms contained within the final report will focus on competitiveness, efficiency, availability, concentration of power and similar issues as they relate to ad tech services, agencies and markets. However, it is essential that the final report has a core focus on protecting consumers, particularly children and at-risk Australians, including and beyond privacy issues. All proposed reforms must take into account any health and wellbeing impacts, and ensure there is an overall net benefit to Australians, especially those at greater risk of harm.

*2. The final report should recommend that children's data is protected, so that children's data cannot be collected, used or disclosed for the purposes of any form of marketing. It should also recommend that children are excluded from the operation of all proposed reforms that enable expanded access to or portability of data*

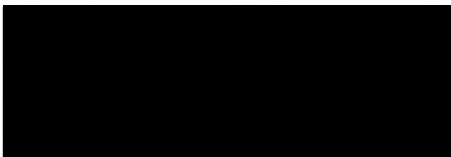
Children can greatly benefit from the educational, informational, communication and entertainment aspects of digital settings. However, the collection, analysis and disclosure of that data can put them at greater risk of being targeted by harmful industries, with potential harms to their health now and in the future. While the interim report discusses preventing harms to consumers in the context of providing informed consent to data collection, children are not sufficiently considered in this context, particularly given children do not have the capacity to give informed consent. This issue must be addressed in the recommended reforms included in the final report, as it is critical that children's protection is prioritised over industry profits.

*3. The final report should recommend a mandatory reporting system for advertising techniques used by harmful industries, to support action to protect children and at-risk Australians from harm*

Currently, it is not possible to scrutinise digital advertising in the same way that we can for other advertising mediums. To adequately monitor the two recommendations outlined above, a mandatory reporting system that requires advertisers, digital advertising technology services and digital advertising agency services to report on (a) products/services advertised and (b) targeting techniques and how consumer data was used to achieve this. This would provide evidence on whether children or at-risk Australians are being unfairly targeted in digital advertising, or whether consumer data is being exploited.

Again, thank you for the opportunity to provide input to this inquiry. Should you wish to discuss our submission further, please contact [REDACTED], Senior Policy Officer, on [REDACTED].

Kind regards

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**Dr Sandro Demaio**  
Chief Executive Officer