



Obesity Policy Coalition submission to Treasury – February 2023

Consultation on ACCC's digital platforms regulatory reform recommendations

Background

The Obesity Policy Coalition (OPC) is a partnership between Cancer Council Victoria, VicHealth and the Global Centre for Preventive Health and Nutrition at Deakin University; a World Health Organization (WHO) Collaborating Centre for Obesity Prevention. The OPC advocates for evidence-based policy and regulatory change to address overweight, obesity and unhealthy diets in Australia, particularly among children. We welcome the opportunity to provide our views in response to the ACCC's digital platforms regulatory reform recommendations.

The OPC's key focus in this area is on children's exposure to unhealthy food marketing online, including on social media, and use of children's data and personal information to target and enhance its reach and influence. Children should be able to be online and use social media without being exposed to marketing that is harmful to their health, including marketing of unhealthy food. We know that digital media is an important part of children's daily lives, with Australian children going online as part of their education, to access information of all kinds, to communicate with their friends and family, and to have fun.

Instead of an environment that promotes their health and wellbeing, when children go online they are often targeted with sophisticated digital marketing campaigns for unhealthy food. These campaigns use technologies and delivery systems designed and supported by powerful online platforms and social media companies, to harness children's data and personal information to enable marketing to be highly targeted, engaging and effective.

There is clear and robust evidence that children's exposure to unhealthy food marketing influences their food choices, influences their diets, and can contribute to unhealthy diets, overweight and obesity.¹ Despite around a quarter of Australian children being above a healthy weight,² there are very few effective controls on marketing practices targeting children with and exposing children to advertisements for unhealthy foods and beverages in Australia.

We strongly advocate for broad government regulation to ensure children are fully protected from digital marketing of unhealthy food, including on social media. The Australian Government has an important role to play in protecting and creating an environment that restricts commercial exploitation of children and enables children to participate as digital citizens, while having their best interests protected when online. Our community expects and

¹ *Food marketing exposure and power and their associations with food-related attitudes, beliefs and behaviours: a narrative review*. Geneva: World Health Organization; 2022. Licence: CC BY-NC-SA 3.0 IGO.

² Australian Bureau of Statistics. 4364.0.55.001 - *National Health Survey: First Results, 2017-18*. 2018.

supports government action in this area – with around 7 in 10 Australian adults agreeing that the government should protect children from unhealthy food marketing and advertising.³

We ask the Government to consider and address this issue as part of its regulatory response on digital platforms, and more broadly as part of other reform processes.

We provide the following response aimed to address issues raised in these questions in one combined response:

Question 1: Do you agree with the ACCC’s conclusion that relying only on existing regulatory frameworks would lead to adverse outcomes for Australian consumers and businesses? What are the likely benefits and risks of relying primarily on existing regulatory frameworks?

Question 2: Can existing regulatory frameworks be improved or better utilised?

Question 3: Are there alternative regulatory or non-regulatory options that may be better suited?

Question 7: Do you agree with the evidence presented by the ACCC regarding the prevalence and nature of harms to consumers resulting from the conduct of digital platforms?

Question 8. Do you agree with the ACCC recommendation to introduce targeted measures on digital platforms to prevent and remove scams, harmful apps and fake reviews? Are there any other harms that should be covered by targeted consumer measures, for example, consumer harms related to the online ticket reselling market for live events?

We agree with the ACCC’s conclusion that relying only on existing regulatory frameworks would lead to adverse outcomes for Australian consumers, and that new measures are needed to protect consumers on digital platforms.

We highlight the ACCC’s discussion on excessive tracking and dark patterns as part of its discussion on unfair trading practices and agree that regulation is needed to address these issues. We consider, however, that consideration of consumer harms linked to marketing must be a lot broader. Specifically, regulatory reform in relation to digital platforms must also address the consumer harms arising from harmful industry marketing, in particular children’s exposure to unhealthy food marketing online. This issue was highlighted by the OPC and other public health organisations in the ACCC’s Digital Platforms Inquiry and noted by the ACCC in its final report. It was also raised by the OPC in its April 2022 submission to the ACCC about updating competition and consumer law for digital platform services, and in our submission to the ACCC’s Digital Platforms Services Inquiry on social media harms. To date, however, the ACCC has not made any recommendations around how this issue should be addressed.

In developing its response and its plan to regulate digital platforms, we ask the Australian Government to protect children from harmful industry marketing and to stop harmful data practices by digital platforms that facilitate children’s exposure to harmful industry marketing, particularly unhealthy food marketing.

³ Nuss T, Chen YJM, Dixon H, Morley B. (2020). Australians’ support for initiatives to protect children from unhealthy food and drink marketing and advertising. Research brief, prepared for: Obesity Policy Coalition. Melbourne, Australia: Centre for Behavioural Research in Cancer, Cancer Council Victoria.

Australian children are active digital citizens and participate in the digital environment in many of the same ways adults do – to learn, communicate and for entertainment. We know that children are accessing platforms that offer a wide range of content for all ages, not just child specific content.⁴ Social media platforms popular with children include YouTube, TikTok, Instagram, Snapchat and Facebook, as well as online gaming.⁵ Australian children also spend significant amounts of time online and, as they do so, are often exposed to large amounts of unhealthy food marketing. Australian research shows that Australian teens aged 13-17 years are exposed to almost 100 online promotions for unhealthy food every week.⁶ The types of marketing that children see on digital platforms include paid advertising, for example in social media feeds; brand owned content, for example on a brand's own social media page, and that can then be promoted or shared, content created or shared by influencers and content shared by friends.⁷

While children are online there are few protections in place to prevent them from being exposed to harmful marketing and from harmful data practices. With half of all global advertising spending spent online, online platforms and social media are key spaces for commercial marketing.⁸ In addition to the cost effectiveness of marketing online, the reach and access companies have to consumer information is unprecedented. Online platforms can collect, use and disclose large amounts of personal information, including specific information about an individual's online behaviour, purchase preferences, social networks and physical location.⁹ This information is being used by marketers, including corporations who market unhealthy food, to target their marketing directly to particular groups of consumers, including children, based on their individual profiles.¹⁰ This poses a significant risk to children's privacy, health and wellbeing. This marketing is also often likely to be 'dark', meaning that it is only visible to those who are targeted, is fleeting, and is not published for public viewing and oversight. For example, a recent citizen science study on young people's exposure to harmful industry marketing by VicHealth, Monash University and The University of Queensland found that 97% of the ads seen and shared by the citizen scientists were 'dark' to some degree.¹¹ This 'dark' nature of marketing means it is difficult for parents or others to monitor or assess the amount and nature of harmful industry marketing that children are exposed to online, including on social media.

The marketing of harmful industries, like unhealthy food and drinks, alcohol and gambling, is particularly concerning. Unhealthy food marketing has been shown to impact on food

⁴ Mascheroni G, Olafsson K, *Met children go mobile. Risks and Opportunities*. 2nd edition. Milan; Educatt; 2014.

⁵ VicHealth (2020), *Under the radar: Harmful industries' digital marketing to Australian children*. A report prepared by the Victorian Health Promotion Foundation, Melbourne. <https://doi.org/10.37309/2020.C1910>. See p7.

⁶ Kelly, B., Bosward, R., & Freeman, B. (2021). Australian Children's Exposure to, and Engagement With, Web-Based Marketing of Food and Drink Brands: Cross-sectional Observational Study. *Journal of medical Internet research*, 23(7), e28144. <https://doi.org/10.2196/28144>.

⁷ VicHealth (2020), *Under the radar: Harmful industries' digital marketing to Australian children*. A report prepared by the Victorian Health Promotion Foundation, Melbourne. <https://doi.org/10.37309/2020.C1910>. See discussion of types of digital marketing on page 13.

⁸ Enberg J. Global digital ad spending 2019. Available from: <https://www.emarketer.com/content/global-digital-ad-spending-2019>.

⁹ World Health Organisation Regional Office for Europe, *Tackling food marketing to children in a digital world: trans-disciplinary perspectives* (2016), page 8.

¹⁰ World Health Organisation Regional Office for Europe, *Tackling food marketing to children in a digital world: trans-disciplinary perspectives* (2016), pages 8-9.

¹¹ See https://www.vichealth.vic.gov.au/media-and-resources/citizen-voices-against-harmful-marketing?utm_source=VH&utm_medium=social&utm_campaign=CitizenScience&utm_content=report

preferences and consumption patterns.¹² In light of the evidence, the World Health Organization (WHO) has called for countries to implement effective controls to limit children's exposure to unhealthy food marketing, to reduce their risk of an unhealthy diet, weight gain and chronic disease.¹³ This is now reflected in Australia's National Obesity Strategy, which includes a strategy to reduce exposure to unhealthy food marketing, promotion and sponsorship especially for children,¹⁴ as well as the National Preventive Health Strategy, which includes a policy achievement to further restrict children's exposure to unhealthy food and drink marketing, branding and sponsorships across all forms of media, including through digital media.¹⁵

There is also growing recognition on the importance of action to address digital marketing specifically. For example, the UN Committee on the Rights of the Child has released its General Comment on children's rights in the digital environment, a broad framework to ensure children are protected online while still being able to participate. This includes that States should prohibit digital profiling or targeting of children for commercial purposes and that targeted or age-inappropriate digital marketing should be regulated to prevent children's exposure to the promotion of unhealthy products, including certain food and drinks.¹⁶

We support broad government regulation to ensure Australian children are not exposed to any digital marketing of unhealthy food. See our 2021 report [Brands off our kids!](#) for more detail.

We ask the Government to develop regulatory solutions to address this issue in its response to the ACCC's recommendations.

Recommendation: The Australian Government must introduce comprehensive, mandatory regulation to protect children from unhealthy food marketing. This should ensure children are not exposed to any unhealthy food marketing when online or using social media.

Digital platforms and the collection, use and disclosure of data and personal information

We recommend that as part of its digital platforms regulatory response, the Government address harms to children caused by the collection, use and disclosure of children's data by digital platforms, including specific consideration of the harms caused in relation to exposure to harmful industry marketing such as for unhealthy food and drinks.

In relation to the use of data, we recommend the following protections be legislated:

¹² *Food marketing exposure and power and their associations with food-related attitudes, beliefs and behaviours: a narrative review*. Geneva: World Health Organization; 2022. Licence: CC BY-NC-SA 3.0 IGO.

¹³ World Health Organization. Set of recommendations on the marketing of foods and non-alcoholic beverages to children. Geneva: World Health Organization, 2010, endorsed by the World Health Assembly, of which Australia is a member, in 2010:
http://apps.who.int/iris/bitstream/10665/44416/1/9789241500210_eng.pdf.

¹⁴ National Obesity Strategy 2022-2032, Available at:
<https://www.health.gov.au/resources/publications/national-obesity-strategy-2022-2032>.

¹⁵ National Preventive Health Strategy 2021-2030, Available at:
<https://www.health.gov.au/resources/publications/national-preventive-health-strategy-2021-2030>

¹⁶ United Nations Committee on the Rights of the Child, *General comment No. 25 (2021) on children's rights in relation to the digital environment*, Available at:
<https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx>

- children’s personal information and data cannot be collected, used or disclosed by digital platforms for marketing purposes. It is important that this applies to all children and cannot be overridden by parental consent. Where such marketing is not for harmful products, this may be subject to some exceptions where it is in children’s best interests, such as for public health social marketing campaigns.
- harmful industries, including unhealthy food, alcohol and gambling, cannot collect, use or disclose children’s personal information or data for the purposes of analysing or influencing children’s behaviour or decisions in any circumstances.
- tracking, profiling or monitoring the behaviour of children for commercial purposes online should not be permitted.

As well as protections specific to children, we also ask the Government to address the harm caused by the collection, use and disclosure of data by digital platforms that may enable particular individuals to be targeted with marketing in a way that may be more likely to result in harm. This is particularly the case for marketing of harmful products. The use of data in this way must be stopped without enabling or encouraging the collection, use or disclosure of additional personal and sensitive information in order to identify a user as vulnerable. For example, in our submission to the review of the Privacy Act, we recommended that the Act be amended to prohibit the collection, use or disclosure of personal information related to a person’s physical or mental health and wellbeing or financial situation, for the purposes of marketing harmful products.

We also ask the Government to address harms caused by the collection, use and/or disclosure of adult individual’s personal information or data for the purposes of commercial marketing without express consent. This is particularly important in the case of commercial marketing for harmful products, including unhealthy food, alcohol and gambling. We recommend that express consent be required for digital platforms, including social media services, to collect, use or disclose an individual’s personal information or data for commercial marketing purposes, particularly in terms of marketing for unhealthy food and drinks. Such protections should enable individuals to effectively opt-out of commercial marketing, and in particular harmful industry marketing. This is an important tool in empowering adult individuals to shape their online environment in a limited way, in a way that best supports them in line with their own preferences. Recent survey data from FARE and VicHealth based on 220 people who wanted to reduce or stop use or consumption (or maintain their already reduced or stopped use or consumption) of gambling, alcohol or unhealthy foods, found that over 90% of participants were concerned about online marketing for the products they are trying to reduce, stop or maintain as reduced/stopped and 83% felt that seeing marketing for these products makes it harder for them to reduce, stop or maintain as reduced/stopped their use or consumption of these products.¹⁷

We also recommend additional protections be required to ensure data is used in a way that does not cause or promote harm and is fair and reasonable in the circumstances.

¹⁷ Foundation for Alcohol Research and Education: Experiences with online marketing of alcohol, gambling and unhealthy food: A survey. Canberra: FARE, 2023 Feb. Available at: <https://fare.org.au/experiences-with-online-marketing-of-alcohol-gambling-and-unhealthy-food-a-survey/>

Recommendation: Certain practices should not be permitted in relation to children, including:

- collecting, using or disclosing children’s personal information for the purposes of commercial marketing, particularly marketing by harmful industries, including unhealthy food and drinks, alcohol and gambling. Parental consent should not be an option for enabling this. For marketing that is not for harmful products, some limited exceptions may be appropriate where such practices might overall be in children’s best interests and do not put children at risk of harm. For example, public health social marketing campaigns.
- harmful industries, including unhealthy food, alcohol and gambling, cannot collect, use or disclose children’s personal information for the purposes of analysing or influencing children’s behaviour or decisions in any circumstances. No exceptions should apply and parental consent cannot be obtained to enable this.
- tracking, profiling, or monitoring the behaviour of children for commercial purposes online.

Recommendation: Certain protections should apply to adult users of digital platforms, including social media services:

- An individual’s data or personal information cannot be collected, used or disclosed by digital platforms for the purposes of commercial marketing without express consent, particularly in the case of marketing for harmful industries, including unhealthy food. This consent must be clear, voluntary, specific and unincentivised, and provided on an opt-in basis.
- Digital platforms cannot collect, use or disclose (or enable collection, use or disclosure to occur) personal information or data related to a person’s physical or mental health and wellbeing or financial situation, for the purposes of marketing harmful products, including unhealthy food.

Transparency

As well as protections specific to harmful industry marketing and the collection, use and disclosure of information, we strongly recommend the introduction of regulatory requirements to ensure digital platforms improve transparency.

While the role of data in developing and delivering marketing continues to grow, there is currently little requirement for organisations to report on digital marketing practices, and on the overall digital marketing model generally. Transparency is important to ensure that digital platforms are accountable for the harm caused by the digital marketing model and for specific forms of harmful marketing, including by unhealthy food, gambling and alcohol companies.

We strongly support regulation to require digital platforms, including social media services, to provide information to the Information Commissioner about how they collect, use and disclose individuals' data and personal information for the purposes of marketing. This must extend to information on how automated systems and algorithms are used to deliver marketing to individuals or groups of individuals. The detail of what should be provided and when should be subject to further consultation.

Recommendation: Social media organisations and large online platforms should be required to disclose information or report on how they collect, use and disclose individuals' data and personal information for the purposes of marketing, including how automated systems and algorithms are used to deliver marketing to individuals or groups of individuals.