

Submission to the Senate
Economics References
Committee Inquiry into
international digital platforms
operated by Big Tech companies.

February 2023



About FARE

The Foundation for Alcohol Research and Education (FARE) is the leading not-for-profit organisation working towards an Australia free from alcohol harms.

We approach this through developing evidence-informed policy, enabling people-powered advocacy and delivering health promotion programs.

Working with local communities, values-aligned organisations, health professionals and researchers across the country, we strive to improve the health and wellbeing of everyone in Australia.

To learn more about us and our work visit www.fare.org.au.

You can get in touch via email at info@fare.org.au

FARE is a registered charity, and every dollar you give helps fund projects keeping our communities healthy and safe. You can make a tax-deductible donation at: www.fare.org.au/donate.

Contents

About FARE	2
Executive summary	4
Harm from digital platform marketing systems	6
Preventing harm from marketing on digital platforms	10
Creating transparency in digital platform marketing	13
Ensuring safe digital systems by design	14
References	16

Executive summary

Everyone should be able to enjoy the benefits of using digital technologies to work, learn and play. This can happen when we have safe digital environments that support people's health and wellbeing. However, when it comes to addictive products like alcohol, digital platforms have designed marketing systems geared toward creating harm.

At present, digital platforms have designed marketing systems that target people's characteristics, interests and behaviours. Companies selling harmful and addictive products like alcohol, tobacco (including e-cigarettes and vapes), gambling and unhealthy food pay to access these sophisticated digital systems to aggressively market products that hurt people's health and wellbeing.¹⁻³

By design, people who purchase harmful and addictive products the most are also targeted by digital marketing models the most.^{2, 4, 5} Extensive data collection allows digital platforms to develop detailed psychometric profiles that are combined with detailed accounts of people's browsing behaviour.⁶ These insights are used to tailor marketing activities, including content and messaging, towards an individual's specific susceptibilities.⁶ In the case of alcohol marketing, this ability to prey on people's susceptibilities is particularly harmful because it can disproportionately target people experiencing alcohol dependence.⁷

The below-the-line and ephemeral nature of digital marketing also means that companies selling harmful and addictive products can target their digital marketing to children and young people out of sight. Children's exposure to alcohol marketing increases the likelihood that they will start drinking alcohol earlier and go on to drink at risky levels.⁸

In these ways, current digital platform systems are creating a harmful online environment that actively undermines people's health and wellbeing, particularly children and people experiencing or recovering from addiction.

A regulatory approach addressing the systemic issues with how digital platforms are designed is needed to ensure people are protected from potential harms driven by digital platforms. People's wellbeing must be prioritised over commercial profits from digital marketing practices.

Summary of recommendations to the consultation

We welcome the opportunity to provide a submission to the Senate Economics References Committee Inquiry into international digital platforms operated by Big Tech companies.

Our specific concern when it comes to protecting people on digital platforms relates to the harms that arise from the online promotion and sale of harmful and addictive products, primarily alcohol, but similarly gambling, tobacco (including e-cigarettes) and unhealthy foods.

The issue of harmful digital marketing practices is falling through the gaps of existing and recommended regulatory frameworks and warrants greater consideration in regulatory reforms seeking to prevent consumer harms online.

To this end, we make the overarching recommendation:

- **The Australian Government address harm from digital marketing practices.**

We make further recommendations specific to the consultation questions and inquiry terms of reference as below.

Relevant consultation question/ Inquiry term of reference (TOR)	Recommendation
<p>Inquiry TOR E: the adequacy and effectiveness of recent attempts, in Australia and internationally, to regulate the activities of international digital platforms, and</p> <p>Inquiry TOR G: any other related matters (to which we submit that digital marketing systems are not effectively regulated to prevent harmful digital marketing practices).</p>	<p>Develop a regulatory framework with a legislative basis that effectively governs digital platform marketing systems. This framework should incorporate:</p> <ul style="list-style-type: none"> • Protections for children and people most at risk of harm from digital marketing of harmful and addictive products like alcohol, gambling, and unhealthy foods, • Surveillance and enforcement systems that deter non-compliance, and • Appropriate resourcing and powers to ensure effective implementation.
<p>Data and Privacy, consultation Q3: Do further changes to privacy laws in Australia need to be made to better protect Australians and change corporate attitudes regarding data collection and management?</p> <p>Children’s Safety, consultation Q1: How effective is the current legislative framework in protecting children and preventing online harm from occurring?</p> <p>Children’s safety, consultation Q2: What more can be done to enhance online safety for child protection in Australia?</p>	<p>Prohibit personalised targeted marketing of addictive or harmful products – including alcohol, gambling, and unhealthy food – on digital platforms unless the person has provided active, informed, and non-incentivised opt-in consent.</p> <p>Adopt additional protections for data processing which reduce the risk of harm.</p> <p>Explicitly prohibit the tracking, profiling, monitoring or targeting of children for commercial purposes and the processing of children’s information for commercial marketing purposes by or for, companies selling or marketing addictive or harmful products, including alcohol, gambling, and unhealthy food.</p>
<p>Algorithm Transparency, TOR C: whether algorithms used by such international digital platforms lack transparency, manipulate users and user responses, and contribute to greater concentrations of market power and how regulating this behaviour could lead to better outcomes in the public interest.</p>	<p>Implement mandatory requirements for digital platforms to make advertising information accessible, including their data practices and automated decision systems.</p>
<p>The Metaverse, Q1: Given the currently ambiguous status of the Metaverse and its development, is it necessary to begin regulating it now, or should authorities wait in order to understand better how it will function?</p>	<p>Develop proactive and systemic regulatory measures that prevent harm from digital platforms and emerging technologies. This should include:</p> <ul style="list-style-type: none"> • A primary consideration of preventing harm from digital platform business activities, and • Minimum standards that require digital platforms do not act in ways that put people using platforms at risk of harm, including to their health and wellbeing. <p>This should apply to the regulation of the Metaverse, and other emerging technologies, and not be delayed.</p>

Harm from digital platform marketing systems

Inquiry TOR E: the adequacy and effectiveness of recent attempts, in Australia and internationally, to regulate the activities of international digital platforms

TOR G: any other related matters (to which we submit that digital marketing systems are not effectively regulated to prevent harmful digital marketing practices)

Recommendation: The Australian Government seek to address the issue of harm from digital marketing practices.

Everyone should be able to enjoy the benefits of using digital technologies to work, learn and play. This can happen when we have safe digital environments that support people's health and wellbeing, rather than undermining it. Our specific concern when it comes to protecting people on digital platforms relates to the harms that arise from the online promotion and sale of harmful and addictive products, primarily alcohol, but similarly gambling, tobacco (including e-cigarettes) and unhealthy foods.

Digital platform marketing systems are geared toward creating harm.

Digital platforms have designed algorithmic models that feed on people's intimate lives so that advertisers can learn and target people's predispositions with personalised advertising most likely to affect the individual.⁶ The algorithmic models are designed to target individual characteristics, interests and behaviours, to exploit an individual's specific susceptibilities to advertising content.⁶ Further, the programmatic advertising systems employed by digital platforms aim to identify people who are most likely to make a purchase, and to spend higher amounts when doing so, who then become a core target group for advertisements.^{2, 4, 5} To ensure the content of the advertisements are most likely to resonate with a person, 'dynamic' advertisements are used, tailoring the sales promotion, price and product in the advertisement automatically based on the information deduced about individuals.^{1, 2}

Companies selling harmful and addictive products – such as alcohol, gambling, tobacco and unhealthy food – use these sophisticated digital systems and tools to aggressively market products that hurt people's health and wellbeing.¹⁻³ This means people most at risk of harm from these products are being disproportionately targeted by marketing for these harmful products.

Alcoholic products cause significant harm to Australians. Alcohol use is causally linked to over 200 disease and injury conditions⁹ and nearly 6,000 lives are lost and more than 144,000 people hospitalised from use of alcoholic products each year.¹⁰ In 2018, alcohol use contributed to 4.5% of the total burden of disease in Australia.¹¹ Alcohol is an addictive substance. The 2019 National Drug Strategy Household Survey found that 10% of Australians who used alcohol products were likely to meet the criteria for alcohol dependence.¹²

In 2019 alcohol companies sold the most alcohol to the heaviest drinking 5% of the Australian population, with this group using 36.1% of all alcohol (drinking almost eight standard drinks per day). The heaviest drinking 10% of the Australian population accounted for 54.1% of all alcohol consumed (drinking almost four standard drinks per day).¹³ By design, platforms and companies target advertising to people who purchase or indicate interest in products the most.^{2, 4, 5} For example, if people are using alcoholic products in large quantities, alcohol companies target more marketing material to these people,⁷ encouraging them to continue a high level of alcohol use. With harmful and addictive products, this means that this form of targeting has the potential to cause the most harm.

The advertising methods afforded to alcohol companies by digital platforms enables them to deliver highly personalised digital marketing campaigns that target specific demographics and behavioural profiles,

including high frequency of alcohol use. The extensive information accessed for digital marketing can be joined together because of the deep integration between digital platforms and alcohol companies. Digital platforms use information from an alcohol company's website and loyalty program to generate 'custom' audiences made up of the alcohol company's existing customers, and then the platform develops 'lookalike' audiences of potential new customers who have similar characteristics to the alcohol company's most valuable existing customers (i.e., people who make more frequent purchases or spend large amounts on alcoholic products) and target this audience with advertisements for the alcohol company.¹

Alcohol companies know that these sophisticated marketing databases result in higher use of alcoholic products than traditional forms of marketing¹⁴ and continue to invest heavily in these marketing methods. For example, the alcohol and gambling corporation Endeavour Group have developed and continue to invest heavily in their EndeavourX initiative, which uses an AI-powered personalised marketing engine to drive increased sale of alcoholic products.¹⁵ Endeavour Group's personalised marketing engine is fuelled by information about individuals, including data collected on 6.2 million Australians through their My Dans program alone,¹⁶ and is trained to find and target people who are most likely to click through an advertisement to buy alcoholic products.¹⁵ Endeavour Group have described their digital marketing method as the "Netflix approach" whereby they collect extensive personal information to target individuals with personalised marketing – continually encouraging them to buy more alcohol.⁷

Alcohol advertising through digital platforms creates harmful online environments

The community are bombarded with advertising for alcohol when they are online. An analysis from FARE and The University of Queensland investigating alcohol advertising online found almost 40,000 distinct alcohol advertisements were published on Meta platforms in the last year from 351 alcohol producers, retailers and licenced venues. This averages 765 alcohol advertisements going out into the community each week through Meta platforms alone.¹⁷

The ability for alcohol companies to target an individual with alcohol marketing specifically designed to appeal to them, directly to the palm of their hand through their devices, means it is difficult for people wanting to reduce their alcohol use to escape this pervasive marketing.

A recent survey by FARE and VicHealth conducted with 220 people seeking to reduce alcohol, gambling and unhealthy foods found that over 90% of participants were concerned about online marketing for the products they are trying to reduce and 83% felt that seeing marketing for these products makes it harder for them to reduce their use or consumption of these products.¹⁸ Participants indicated they would prefer to see less or no online marketing for the products they are trying to reduce (between 89% and 96%) and 42% stated unprompted that they want to see better regulation of this marketing (see select quotes from survey participants below).¹⁸

"I struggle with alcohol and have struggled with gambling in the past so when I see [online advertisements], I sometimes get tempted and triggered...The constant bombardment with the marketing is wearing down my resilience." – Maz, 35-44 years old, Female

"I am an alcoholic and I feel targeted with marketing that promotes alcohol despite choosing preferences within browsers not to see alcohol." – Anonymous, 55-64 years old, Female

"I have found myself thinking about purchasing alcohol more when I see advertising all the time. I probably have started buying a bit more online as a result." – Kate, 35-44 years old, Female

"The fact that both gambling and alcohol seem to be 'self-regulating' is very concerning. There should be a ban on both." – Anonymous, 55-64 years old

A review of research with people experiencing alcohol problems suggests that the more a person uses alcohol, the more attentive they are to alcohol cues like marketing, which in turn leads to increased cravings for alcohol.¹⁹ This creates a harmful cycle in which alcohol marketing becomes more noticeable the more a person craves and uses alcohol, and the more a person notices alcohol marketing, the more they crave alcohol. Online marketing models fuel this cycle by sending more alcohol advertising to people who use more alcohol, as discussed in the section above.

Concerningly, social media advertisements are also becoming intrinsically linked to online sale and delivery of alcohol. In the recent research from FARE and The University of Queensland described above, most alcohol advertisements on Meta platforms contained a direct link to the advertiser's website through call-to-action buttons, with two-thirds of alcohol retailer advertisements collected containing a 'Shop Now' button, prompting the purchase of alcohol products. In this way, alcohol advertising on social media integrates advertising with retail, meaning social media platforms are now playing a role in significantly expanding alcohol availability.¹

This introduces an additional dimension to the issue of alcohol advertising, where the advertisement is the store. Additionally, there is also a rapid expansion and advertising of online alcohol delivery, which can see alcohol delivered to homes in less than 30 minutes. This is a concerning development as it creates a frictionless system for promoting and distributing alcohol via digital platforms by reducing the space between the emotional stimulus (advertisement) and rational response (to buy or not), which may prompt more impulse buying and use. FARE's 2020 Annual Alcohol Poll found the majority (70%) of people who ordered alcohol via rapid alcohol delivery drank alcohol at high risk levels, including 38% who drank more than 10 standard drinks on the day of delivery.²⁰

Digital platforms enable and encourage marketing of alcohol to children and young people

Digital platforms similarly engage in harmful profiling of children and young people to sell advertising opportunities, enabling and encouraging companies – including those selling harmful and addictive products – to target children and young people with marketing. Many examples have recently demonstrated this repeated behaviour by Meta (formerly Facebook).

Leaked Meta documents show that Meta gathered psychological insights on almost 2 million children in Australia and New Zealand to sell targeted advertising.²¹ This included monitoring children in real-time to identify their current mood, including when they feel 'overwhelmed' and 'anxious', to sell targeted advertising.²¹ Research has also found Meta tags children and young people as interested in harmful products such as alcohol, gambling and unhealthy food,^{22,23} and approves sponsored content promoting these harmful products to be targeted at children.²³ Further facilitating this harmful marketing to children, Meta charges approximately \$3 for alcohol advertising to be sent to 1000 Australian children aged 13-17 years old.²³

Recent research by VicHealth conducted with adolescents and young adults aged 16-25 years old provides further insight into the ways in which Meta's advertising model is tuned to learn and target young people's predispositions toward the consumption of harmful and addictive products.²⁴ The research found that, on average, the young participants had 194 advertisers upload data about them to Meta and that the Meta advertising model generated 787 advertising interests about them.²⁴ The Meta advertising model assigned an average of 6.3 alcohol-related advertising interests to the young participants, including 41 alcohol-related advertising interests that were assigned to 5 participants who were under the age of 18 (e.g., 'alcohol', 'bars', 'beer'). Two alcohol retailers had uploaded data about a participant under the age of 18 years old.²⁴ As a result, the young participants reported being frequently exposed to advertising for harmful and addictive products like alcohol and gambling on social media platforms, including participants aged under 18 years

old.²⁴ Combined, the 54 young people aged 16 and 17 years old captured 104 alcohol advertisements and over half reported seeing targeted alcohol advertisements on social media either regularly or sometimes (17.2% and 41.4% respectively).

Emerging research indicates that, in the same way described in the sections above, digital platform marketing systems target children and young people most likely to use alcohol with alcohol advertising. A recent Swedish study found that young people with previous alcohol use were seeing more alcohol advertising on social media platforms than young people without previous alcohol use.²⁵ Further, the study found social media platforms also facilitate young people under the legal age in purchasing alcoholic products, and that young people accessing alcohol through social media platforms were more likely to drink higher quantities of alcohol.²⁵

Evidence clearly shows that young people's exposure to alcohol marketing increases the likelihood they will start drinking alcohol at a younger age and that they will go on to drink alcohol at risky levels later in life.^{8, 26} This is similarly shown to be the case with digital marketing specifically, with exposure to alcohol digital marketing increasing young people's intention to drink alcohol, positive attitude toward alcohol use and actual alcohol use.^{27, 28}

Digital platforms are undermining children's rights by their extensive profiling and targeting of children and young people online. In the General Comment on children's rights in relation to the digital environment, the United Nations Committee on the Rights of the Child set out that businesses should be prohibited by law from "profiling or targeting children of any age for commercial purposes on the basis of a digital record of their actual or inferred characteristics."²⁹ The United Nations Committee on the Rights of the Child further set out that regulatory frameworks should be comprehensive in ensuring that digital platforms adhere to the highest standards of ethics, privacy and safety in relation to the design, engineering, development, operation, distribution and marketing of their products and services, and that this includes the need for high standards of transparency and accountability.²⁹

Harm from digital marketing is falling through the gaps of existing and recommended regulatory frameworks

The issues we raise during this consultation are similar to those we have raised during the recent Australian Government consultations on the review of the Privacy Act, the Basic Online Safety Expectations, and the Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill. However, these legislative instruments are all currently limited in their capacity to comprehensively address the issue of reducing harmful digital marketing practices by companies selling harmful and addictive products like alcohol. Comprehensive government regulation to protect people from harmful digital marketing practices is needed, and consumer law reform provides an opportunity to address this issue.

The Australian eSafety Commissioner has recently noted that harmful and targeted advertising, including advertising relating to alcohol and gambling, is a cross-cutting online harm concerning various government departments and regulators that is in need of regulatory attention.³⁰

The issue of harmful digital marketing has similarly been identified as a regulatory gap between online safety, privacy and competition and consumer protection regulations in the UK. In response, the UK Government is currently considering specific measures for regulating online advertising in the UK through their Online Advertising Programme consultation.³¹ The Online Advertising Programme aims to ensure holistic coverage across the online content that can create harm for consumers and businesses, spanning both illegal and harmful but legal content online.³¹ The Online Advertising Programme consultation specifically identifies

advertising for alcohol, gambling and unhealthy foods as harmful advertising content. It identifies a full statutory approach that addresses all actors within the digital marketing ecosystem as the most likely approach to be effective at increasing transparency and accountability of digital marketing, thus enabling effective action to prevent harms from digital marketing.³¹

Preventing harm from marketing on digital platforms

Recommendation: Develop a regulatory framework with a legislative basis that effectively governs digital platform marketing systems. This framework should incorporate:

- **Protections for children and people most at risk of harm from digital marketing of harmful and addictive products like alcohol, gambling, and unhealthy foods,**
- **Surveillance and enforcement systems that deter non-compliance, and**
- **Appropriate resourcing and powers to ensure effective implementation.**

A regulatory framework with a legislative basis is needed to govern digital platform marketing systems

A regulatory approach addressing the systemic issues with the way digital platform design is geared toward creating harm is needed. We need to place greater responsibility on online platforms by implementing a regulatory approach beyond industry-developed and administered codes of practice. Online platforms have demonstrated that they will not proactively seek to change without legal and regulatory measures that set standards for online safety and ensure transparency and accountability. This is because online platforms have vested commercial interests that conflict with promoting a truly safe online environment.

This has most recently been made evident by leaked Meta research and documents showing Facebook is aware of how its platforms harm its users, including to children, but refuse to take meaningful actions to counter this because it conflicts with their core business objectives.^{32, 33} Speaking to these issues, former employee of Facebook, Frances Haugen, has stated:

“The thing I saw at Facebook over and over again, was there were conflicts of interest between what was good for the public and what was good for Facebook. And Facebook, over and over again, chose to optimise for its own interests, like making more money”³²...

Facebook has realised that, if they change the algorithm to be safer, people will spend less time on the site, they will click on less advertisements, they will make less money.”³⁴

It is evident from past and present examples, that alcohol and digital platform company codes are ineffective at meeting the needs of the public interest. In July 2021, ahead of the UK’s Age Appropriate Design Code, Facebook announced that they would “*only allow advertisers to target ads to people under 18 (or older in certain countries) based on their age, gender and location.*”³⁵ Following these claimed changes by Facebook, an investigation by Reset Australia found that Facebook continues to harvest children’s data, such as their browsing histories and other online activities, through their Facebook Pixel.³⁶ The Facebook Pixel provides even more information about individuals than traditional third-party cookie tracking.³⁷ There is no legitimate reason for Facebook to do this other than to fuel its advertising delivery system. In effect, the measure taken by Facebook does nothing to prevent their AI systems from identifying, selecting, and targeting children that are most likely to interact with an advertisement based on information about their daily activities.

Alcohol companies and their lobby groups are also known in Australia to seek to prevent, undermine, or delay the introduction of evidence-based regulatory measures,^{38, 39} including marketing regulations.^{40, 41} When it is

not possible to prevent reforms from occurring, the alcohol industry lobby for and adopt measures that are often ineffective. For example, research has consistently shown that industry codes of practice, such as the Alcohol Beverages Advertising Code Scheme, are ineffective at reducing exposure to alcohol advertising by people most at risk of harm from alcohol use, including young people.⁴²⁻⁴⁵

The failure of industry codes to effectively prevent harm in the online space has been acknowledged in the Australian Government consultation on the Basic Online Safety Expectations, which raised the need for government to develop regulations to ensure safe online environments. Similarly, the need to prevent vested commercial conflicts of interest in policymaking has recently been acknowledged in the National Preventative Health Strategy 2021-2030, which states that public health policies must be protected from influence by vested and commercial interests (p40).⁴⁶

Given that many online platforms are built for selling marketing opportunities to companies and subsequently target their users with marketing via their platforms, we cannot expect, or trust, online platforms to implement effective measures that limit current marketing activities to ensure a safe online environment. Their interests are too conflicted on this matter.

A regulatory framework with a legislative basis that effectively governs marketing on digital platforms is needed. This must incorporate surveillance and enforcement systems that seek to hold digital platforms and advertisers accountable for their digital marketing systems and activities to ensure that meaningful implementation of regulations ensues. Appropriate resourcing will be required to ensure the required surveillance and enforcement measures needed to address complex digital environments.

Protecting children and others most at risk of harm from digital marketing of harmful and addictive products

Data and Privacy, Q3: Do further changes to privacy laws in Australia need to be made to better protect Australians and change corporate attitudes regarding data collection and management?

Children's Safety, Q1: How effective is the current legislative framework in protecting children and preventing online harm from occurring?

Children's safety, Q2: What more can be done to enhance online safety for child protection in Australia?

Recommendations:

- **Prohibit personalised targeted marketing of addictive or harmful products – including alcohol, gambling, and unhealthy food – on digital platforms unless the person has provided active, informed, and non-incentivised opt-in consent, Adopt additional protections for data processing which reduce the risk of harm, and**
- **Explicitly prohibit the tracking, profiling, monitoring or targeting of children for commercial purposes and the processing of children's information for commercial marketing purposes by or for, companies selling or marketing addictive or harmful products, including alcohol, gambling, and unhealthy food.**

Government regulation is needed to protect the community from harmful digital marketing practices. The Privacy Act has an important role to play, particularly in addressing some of the most harmful digital marketing practices that are data-driven and enabled through the processing of extensive amounts of data about people.

Complex privacy policies and disingenuous ‘consent’ mechanisms enable companies to extensively profile and track people, developing intimate insights into their lives, to increase profit from digital advertising. This commercial cyberstalking enables advertisers to learn people’s individual susceptibilities and vulnerabilities to target them with advertising that is most likely to influence their perceptions and behaviour.

These insights are used by companies selling addictive and harmful products such as alcohol, to aggressively market their products.¹⁻³ This means that intimate information, such as indicators of individuals experiencing addiction or other related mental health challenges, are being used to disproportionately target marketing to people who are most at risk of harm from these products.

As discussed above, current measures are not effectively protecting children and others most at risk of harm from digital marketing of harmful and addictive products online. As we have recommended above, the Australian Government should seek to address the issue of harm from digital marketing practices. This should include the introduction of protections for children and others most at risk from digital marketing of harmful and addictive products like alcohol, gambling, tobacco (and e-cigarettes) and unhealthy foods. The overarching goals should be:

- To prevent children being exposed to digital marketing of harmful and addictive products in online environments, and
- To prevent harmful data-driven marketing for harmful and addictive products.

Regarding the latter goal, we recommend that reforms prohibit personalised targeted marketing of addictive or harmful products – including alcohol, gambling, 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 wellbeing, 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),²⁹ 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.

These recommendations are similar to those that we made in our response to the review of the Privacy Act discussion paper⁴⁷ and align with the direction of the EU Digital Services Act which reflects a ban on the use of sensitive data in targeted advertisements and a ban on targeted advertisements to minors (Article 26 and Article 28).⁴⁸

These requirements would be appropriate to implement via the Privacy Act, for example through restricted or prohibited practices.

Creating transparency in digital platform marketing

Algorithm Transparency, TOR C: whether algorithms used by such international digital platforms lack transparency, manipulate users and user responses, and contribute to greater concentrations of market power and how regulating this behaviour could lead to better outcomes in the public interest)

Recommendation: Implement mandatory requirements for digital platforms to make advertising information accessible, including their data practices and automated decision systems.

Digital marketing is becoming increasingly personalised, targeted and ephemeral. While digital platforms are developing increasingly complex data-driven digital marketing systems that provide marketers with intimate insights into people's lives, their activities are becoming less visible to the public.

Research we are currently undertaking with The University of Queensland to understand the digital marketing landscape has demonstrated that leading social media platforms fail to make the operations of their advertising models transparent enough for independent observation and monitoring.⁴⁹ Although digital platforms and advertising agencies have access to detailed information about the digital marketing activities they provide, in the absence of regulatory requirements for transparency, they have failed to make this information accessible. This means that the true nature and extent of harmful digital marketing practices remain largely under the radar and digital platforms are not being held accountable for the harm perpetuated by their business actions.

Regulatory measures compelling transparency and accountability in the actions of digital platforms is essential for protecting people from harmful digital marketing practices and prioritising people's health and safety. We recommend that mandatory measures are implemented 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.

As a basic measure, digital platforms delivering marketing content via their platform should also be required to provide accessible information about the advertisements through a publicly accessible archive of sponsored content on the platform. This would enable the public, civil society organisations and Government to monitor advertising in real-time.⁴⁹ At a minimum, the archive should provide the following:

- The capacity to access and analyse data through a dedicated application programming interface
- Access to a searchable dashboard
- Permanency of advertisement in the archive to enable a retrospective analysis
- Access to deleted advertisements
- Extraction of the advertisements and metadata for analysis
- Information on specific targeting criteria used for individual advertisements
- Information on spend for advertisements
- Information on the reach of advertisements (i.e., how many and the demographics of people exposed).

Additionally, to address the increasing presentation of advertising as native content seamlessly integrated into the fabric of digital content, digital platforms should be required to mark all marketing content as such clearly, including influencer posts and other sponsored content, identifying the advertiser along with specific information about why an individual has been shown the advertisement (for example, as required by the EU Digital Services Act, Article 26⁴⁸).

Ensuring safe digital systems by design

The Metaverse, Q1: Given the currently ambiguous status of the Metaverse and its development, is it necessary to begin regulating it now, or should authorities wait in order to understand better how it will function?

Recommendation: Develop proactive and systemic regulatory measures that prevent harm from digital platforms and emerging technologies. This should include:

- **A primary consideration of preventing harm from digital platform business activities, and**
- **Minimum standards that require digital platforms do not act in ways that put people using platforms at risk of harm, including to their health and wellbeing.**

This should apply to the regulation of the Metaverse, and other emerging technologies, and not be delayed.

Alcohol companies are already active in the promotion and sale of alcohol via the Metaverse.^{50, 51} Without regulatory oversight, the harms described in this submission regarding current digital marketing practices will similarly apply to, and very likely be amplified in the Metaverse.⁵²

Alcohol companies are likely to continue to engage in targeted marketing which is linked to the retail and real-time delivery of alcohol via the Metaverse.⁵² However, the promotion and sale of alcohol in the Metaverse will be even more engaging than that available through the digital platforms discussed in the above sections of this submission as we see e-commerce transition to i-commerce (immersive commerce).⁵² This has implications for both the effect of alcohol marketing and also for the increasing availability of alcohol in the community.

The engaging nature of alcohol promotion and sale in the Metaverse is likely to have greater influence on people's attitudes toward and purchasing and use of alcoholic products. Research with Australian adolescents and young adults indicates that engaging with digital marketing for unhealthy food and beverages is associated with consumption of unhealthy food and beverages, and that engaging with this marketing has a stronger impact than exposure alone (i.e., as was previously the case with traditional media advertising).^{53, 54}

We are also highly concerned about the potential harm from data-driven marketing of addictive products like alcohol via the Metaverse (and similar technologies). The monitoring of biometric data such as heart rate, eye movement and pupil dilation, which are integrated into the development of immersive visual reality technology for functionality purposes could be used to provide real-time psychological insights for marketing and retail purposes.⁵² For alcohol and other addictive products, this could mean that addictive tendencies and stressors could be detected and used to target marketing and encourage the purchase and use of harmful and addictive products like alcohol.

The potential for emerging technologies such as the Metaverse to reinforce safety risks has similarly been raised in the recent position paper by the Australian eSafety Commission on recommender systems and algorithms, which specifically notes the potential harm from more visceral targeted advertising.³⁰

In the same way that a privacy-by-design and safety-by-design approach have been advocated in the current review of the Privacy Act and online safety reforms, a more critical systems wide approach is needed to ensure people are protected from potential harms driven by digital platforms – not only current platforms but also emerging and future platforms (and technologies more broadly).

The recent Privacy Act Review discussion paper raised similar issues. It proposed that the collection, use and disclosure of personal information must be fair and reasonable, with legislated factors relevant to whether the fair and reasonable principle has been met. These included preventing the foreseeable risk of unjustified adverse impacts or harm and ensuring that the child’s best interests are met. Similar principles are needed when considering regulation of digital platforms more widely, so that minimum standards are established to ensure digital platform business activities do not pose a risk of harm to individuals or society, including to health and wellbeing. This is an important step in holding digital platforms and emerging technology operators accountable for their business activities and ensuring that their business activities are not causing harm.

References

1. Carah N, Brodmerkel S. Alcohol marketing in the era of digital media platforms. *J Stud Alcohol Drugs*. 2021;82(1):18-27.
2. Montgomery K, Chester J, Nixon L, Levy L, Dorfman L. Big Data and the transformation of food and beverage marketing: Undermining efforts to reduce obesity? *Critical Public Health*. 2019;29(1):110-7.
3. Torrance J, John B, Greville J, O’Hanrahan M, Davies N, Roderique-Davies G. Emergent gambling advertising; A rapid review of marketing content, delivery and structural features. *BMC Public Health*. 2021;21:718.
4. World Health Organization. Monitoring and restricting digital marketing of unhealthy products to children and adolescents. Moscow: Regional Office for Europe, 2018.
5. Hootsuite. The Facebook pixel: What it is and how to use it 2021 [updated 2021 Apr 26; cited 2021 Jun 9]. Available from: <https://blog.hootsuite.com/facebook-pixel/>.
6. Winter S, Maslowska E, Vos AL. The effects of trait-based personalization in social media advertising. *Computers in Human Behavior*. 2021;114:106525.
7. House A. Dan Murphy’s introduces Netflix approach to marketing. *Drinks Trade*. 2019 Dec 5. Available from: https://www.drinkstrade.com.au/dan-murphys-introduces-netflix-approach-to-marketing?utm_medium=email&utm_campaign=TOP+NEWS%3A+Balter+reveals+plans+to+protect+its+brand+following+CUB+sale&utm_content=https%3A%2F%2F
8. Jernigan D, Noel J, Landon J, Thornton N, Lobstein T. Alcohol marketing and youth alcohol consumption: A systematic review of longitudinal studies published since 2008. *Addiction*. 2017;112:7-20.
9. Rehm J, Gmel GE, Gmel G, Hasan OSM, Imtiaz S, Popova S, Probst C, Roerecke M, Room R, Samokhvalov AV, Shield KD, Shuper PA. The relationship between different dimensions of alcohol use and the burden of disease—An update. *Addiction*. 2017;112(6):968-1001.
10. Lensvelt E, Gilmore W, Liang W, Sherk A, T. C. Estimated alcohol-attributable deaths and hospitalisations in Australia 2004 to 2015. Perth: National Drug Research Institute, Curtin University, 2018.
11. Australian Institute of Health and Welfare. Australian Burden of Disease Study. Impact and causes of illness and death in Australia 2018. Canberra: AIHW, 2021.
12. Australian Institute of Health and Welfare. National Drug Strategy Household Survey 2019. Drug statistics series no. 32. PHE 270. Canberra: AIHW, 2020.
13. Cook M, Mojica-Perez Y, Callinan S. Distribution of alcohol use in Australia. Bundoora: Centre for Alcohol Policy Research, La Trobe University, 2022.
14. Johnson L. With better targeting, alcohol brands bet big on digital: Annual budgets increase as much as 50 percent. *Adweek*. 2015 Jun 16. Available from: <http://www.adweek.com/news/technology/better-targeting-alcohol-brands-bet-big-digital-165357>.
15. Crozier R. Endeavour Group builds an AI-powered personalisation engine. 2021 May 27. Available from: <https://www.itnews.com.au/news/endeavour-group-builds-an-ai-powered-personalisation-engine-565124>.

16. Evans S. Dan Murphy's loyalists drive Endeavour Group. Australian Financial Review. 2022 Apr 3. Available from: <https://www.afr.com/companies/infrastructure/dan-murphy-s-loyalists-drive-endeavour-group-20220331-p5a9lf>.
17. Hayden L, Brownbill A, Angus D, Carah N, Tan XY, Dobson A, Robards B. Alcohol advertising on social media platforms – A 1-year snapshot. Canberra: Foundation for Alcohol Research and Education, 2023 Mar. Available from: <https://fare.org.au/alcohol-advertising-on-social-media-platforms/>.
18. Foundation for Alcohol Research and Education. Experiences with online marketing of alcohol, gambling and unhealthy food: A survey. Canberra: FARE; 2023 Feb. Available from: <https://fare.org.au/experiences-with-online-marketing-of-alcohol-gambling-and-unhealthy-food-a-survey/>.
19. Murray R, Leonardi-Bee J, Barker A, Brown O, Langley T. The effect of alcohol marketing on people with, or at risk of, an alcohol problem: A rapid literature review. University of Nottingham & SPECTRUM, 2022.
20. Foundation for Alcohol Research and Education. 2020 Annual Alcohol Poll. Attitudes and Behaviours. Canberra: FARE; 2020. Available from: <https://fare.org.au/wp-content/uploads/ALCPOLL-2020.pdf>.
21. Davidson D. Facebook targets 'insecure' young people. The Australian. 2017 May 1. Available from: <https://www.theaustralian.com.au/business/media/facebook-targets-insecure-young-people-to-sell-ads/news-story/a89949ad016eee7d7a61c3c30c909fa6>.
22. Hern A, Ledergaard F. Children 'interested in' gambling and alcohol, according to Facebook. The Guardian UK. 2019 Oct 10. Available from: <https://www.theguardian.com/technology/2019/oct/09/children-interested-in-gambling-and-alcohol-facebook>.
23. Williams D, McIntosh A, Farthing R. Profiling children for advertising: Facebook's monetisation of young people's personal data Sydney: Reset Australia; 2021. Available from: <https://au.reset.tech/news/profiling-children-for-advertising-facebooks-monetisation-of-young-peoples-personal-data/>.
24. VicHealth. Dark marketing tactics of harmful industries exposed by young citizen scientists: VicHealth; 2022. Available from: <https://www.vichealth.vic.gov.au/media-and-resources/citizen-voices-against-harmful-marketing>.
25. Guttormsson U, Åström V. Young people's alcohol supply via social media. A survey among 16-21 year olds: Swedish Council for Information on Alcohol and Other Drugs; 2022. Available from: <https://movendi.ngo/news/2022/02/21/young-swedes-get-hold-of-alcohol-via-snapchat-and-instagram/> (English summary provided by Movendi).
26. Smith LA, Foxcroft DR. The effect of alcohol advertising, marketing and portrayal on drinking behaviour in young people: Systematic review of prospective cohort studies. BMC Public Health. 2009;9(1):51.
27. Buchanan L, Kelly B, Yeatman H, Kariippanon K. The effects of digital marketing of unhealthy commodities on young people: A systematic review. Nutrients. 2018;10(2):148.
28. Gupta H, Pettigrew S, Lam T, Tait RJ. 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):763-71.

29. United Nations Committee on the Rights of the Child. General comment No. 25 (2021) on children's rights in relation to the digital environment. United Nations, 2021.
30. eSafety Commissioner. Position statement: Recommender systems and algorithms. Australian Government, eSafety Commissioner, 2022 Dec.
31. Department for Digital Culture Media & Sport. Online Advertising Programme consultation: UK Government; 2022. Available from: <https://www.gov.uk/government/consultations/online-advertising-programme-consultation/online-advertising-programme-consultation>.
32. Paul K, Milmo D. Facebook putting profit before public good, says whistleblower Frances Haugen. The Guardian. 2021 Oct 5. Available from: <https://www.theguardian.com/technology/2021/oct/03/former-facebook-employee-frances-haugen-identifies-herself-as-whistleblower>.
33. Milmo D, Paul K. Facebook disputes its own research showing harmful effects of Instagram on teen's mental health. The Guardian. 2021 Sep 30. Available from: <https://www.theguardian.com/technology/2021/sep/29/facebook-hearing-latest-children-impact>.
34. Pelley S. Facebook whistleblower Frances Haugen: The 60 Minutes interview. 60 minutes. 2021 Oct 4.
35. Facebook. Giving young people a safer, more private experience. 2021 Jul 27. Available from: <https://about.instagram.com/blog/announcements/giving-young-people-a-safer-more-private-experience>.
36. Yi-Ching E, Farthing R. How Facebook still targets surveillance ads to teens. Reset Australia, Fairplay and Global Action Plan, 2021.
37. Semerádová T, Weinlich P. Computer estimation of customer similarity with Facebook lookalikes: Advantages and disadvantages of hyper-targeting. IEEE Access. 2019;7:153365-77.
38. Foundation for Alcohol Research and Education. Alcohol industry fingerprints: Analysis of modifications to the national alcohol strategy Canberra: FARE; 2019. Available from: <https://fare.org.au/wp-content/uploads/NAS-Alcohol-industry-fingerprints.pdf>.
39. Bartlett A, McCambridge J. Doing violence to evidence on violence? How the alcohol industry created doubt in order to influence policy. Drug Alcohol Rev. 2021.
40. Stafford J, Chikritzhs T, Pierce H, Pettigrew S. An evaluation of the evidence submitted to Australian alcohol advertising policy consultations. PLOS ONE. 2021;16(12):e0261280.
41. Martino FP, Miller PG, Coomber K, Hancock L, Kypri K. Analysis of alcohol industry submissions against marketing regulation. PLOS ONE. 2017;12(1):e0170366.
42. Noel JK, Babor TF, Robaina K. Industry self-regulation of alcohol marketing: A systematic review of content and exposure research. Addiction. 2017;112:28-50.
43. Pierce H, Stafford J, Pettigrew S, Kameron C, Keric D, Pratt IS. Regulation of alcohol marketing in Australia: A critical review of the Alcohol Beverages Advertising Code Scheme's new Placement Rules. Drug Alcohol Rev. 2019;38(1):16-24.
44. Noel JK, Babor TF. Does industry self-regulation protect young people from exposure to alcohol marketing? A review of compliance and complaint studies. Addiction. 2017;112:51-6.

45. Aiken A, Lam T, Gilmore W, Burns L, Chikritzhs T, Lenton S, Lloyd B, Lubman D, Ogeil R, Allsop S. Youth perceptions of alcohol advertising: Are current advertising regulations working? *Aust N Z J Public Health*. 2018;42(3):234-9.
46. Department of Health. *National Preventative Health Strategy 2021-2030*. Canberra: Australian Government, 2021.
47. Foundation for Alcohol Research and Education. *Submission on the Privacy Act Review Discussion Paper: FARE*; 2022 Jan. Available from: <https://fare.org.au/wp-content/uploads/Privacy-Review-FARE-Submission.pdf>.
48. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act): *Official Journal of the European Union*; 2022 Oct 27. Available from: <http://data.europa.eu/eli/reg/2022/2065/oj>.
49. Hawker K, Carah N, Angus D, Brownbill A, Tan XY, Dobson A, Robards B. How transparent and observable is advertising on digital platforms? Canberra: Foundation for Alcohol Research and Education; 2022 Aug. Available from: <https://fare.org.au/transparency-report/>.
50. Brobowski M. What really happens at a metaverse bar: *The Australian*; 2022 Jun 8. Available from: <https://www.theaustralian.com.au/the-oz/internet/what-really-happens-at-a-metaverse-bar/news-story/8bd6be9c7179ab5e529f08522b7ce44b>.
51. Creasey S. Can drinks brands monetise the metaverse? : *Just Drinks*; 2022 Sep 12. Available from: <https://www.just-drinks.com/analysis/can-drinks-brands-monetise-the-metaverse/>.
52. Huckle T, Casswell S. Alcohol corporations and the metaverse: Threats to public health? *Drug Alcohol Rev*. 2022.
53. Buchanan L, Yeatman H, Kelly B, Kariippanon K. Digital Promotion of Energy Drinks to Young Adults Is More Strongly Linked to Consumption Than Other Media. *Journal of nutrition education and behavior*. 2018;50(9):888-95.
54. Gascoyne C, Scully M, Wakefield M, Morley B. Food and drink marketing on social media and dietary intake in Australian adolescents: Findings from a cross-sectional survey. *Appetite*. 2021;166:105431.



fare
Foundation for Alcohol
Research & Education