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Re: Submission to the Digital Platforms Inquiry Consultation

Dear Mr McDonald,

Thank you for the opportunity to make a submission to the Government's consultation on the final report of the Australian Competition and Consumer Commission's (ACCC) Digital Platforms Inquiry. The Alliance for Gambling Reform strongly urges the Government to use this opportunity to regulate to keep children and vulnerable people safe online by preventing their exposure to gambling marketing, and supporting people already harmed by gambling from being exposed to the advertising of dangerous and addictive products online.

The Alliance for Gambling Reform is a national advocacy organisation and registered health charity formed out of an urgent need to address the harmful and unfair impacts of gambling and its normalisation in Australia. We are a non-partisan alliance of more than 60 organisations who share our objectives of preventing and minimising harm from gambling, and we are entirely funded by individuals, foundations and local governments that do not have any ties with the gambling industry.

We take a public health approach to gambling reform. We seek to collaborate meaningfully with elected representatives, local councils, service agencies, faith and community groups to prevent and reduce harm through policy change. The Alliance also provides coordination, expert advice and practical resources to our supporter organisations, community groups and the media.

Our Champions for Change program centres those with lived experience of gambling harm at the core of our work, based on the principle that those closest to the harm are those closest to the solutions. This submission draws upon the lived experience of program participants. In some cases testimony has been provided on the condition of anonymity, however, the Alliance is able to furnish further evidence of these claims should this be required.

The Alliance is interested in the outcome of this Inquiry given the rise of online wagering and the accessibility gambling products to Australians through the growing use of digital technologies. We regularly hear from community members of their experience being targeted online with gambling advertising, in some cases, despite explicitly self-excluding from online wagering firms. To our knowledge, most digital platforms do not offer the opportunity for users to self-exclude from gambling advertising. In some cases, users are forced to stop using these platforms entirely to avoid being targeted. The impacts of this can be far-reaching and often further stigmatising and isolating. We consider those experiencing gambling harm a class of vulnerable consumers that must be given adequate attention in the context of the government's response.

The Alliance is also particularly interested in the report's recommendations as they relate to children's exposure to gambling advertising. We note, despite recent regulatory changes in the form of the 'siren to siren' ban, children are still exposed to high levels of gambling advertising due to loopholes in broadcast rules such as sponsorship and boundary signage, and online

marketing which continues to allow advertising to surround inplay vision. We note the growing concern of parents around the lack of visibility of the online marketing to which their children are being exposed, and lack of transparency around data collection and use.

Overview of Sports Gambling in Australia

Online wagering has grown substantially in the last decade and is emerging as a significant contributor to gambling-related harm. Intensive marketing combined with rapid development in mobile technologies has led to an expansion of the industry and growing normalisation of the relationship between gambling and sport.¹

Australian Gambling Statistics indicate this industry is currently growing by 15% per annum. The money lost to online sports gambling has doubled in the five years to 2016-2017 and now equates to over \$1 billion.² According to the Federal Government's own figures, there are an estimated one million Australians actively using online wagering accounts, 25% percent of which are at-risk of or already experiencing significant harm caused by online gambling. The rate of those experiencing high-levels of gambling harm online is triple that of gambling on other traditional platforms.³

Online and broadcast advertising is an integral strategy used to grow industry influence and market share. A recent 7:30 Report found between January 2013 and June 2018, Sportsbet paid more than 1,500 entities a combined sum of \$490.5 million in marketing and promotional endeavours. Among the entities was data analytics firm Quantum, who was supplied with de-identified customer transaction data by the National Australia Bank from all NAB account holders. Quantum is part-owned by Woolworths (Australia's largest poker machine operator) and uses the NAB data to analyse spending habits for sectors including online gambling, raising serious concerns around the opaque nature of data consent and privacy, particularly as it relates to the targeting of vulnerable consumers.⁴

The rapid rise in sports gambling advertising and accessibility is having a particularly acute impact on Australian children. This has already led to three in four children thinking that gambling is a normal part of sport, and on average, one child in every Australian high school classroom experiencing high levels of gambling harm.⁵ One in five adults who experience gambling harm started before they turned 18 years of age.⁶ For some people, the addictive nature of gambling creates financial stress that exacerbates mental ill-health, family breakdown and family violence. Recent research found that gambling causes twice as much harm to the health of Australians as diabetes, bipolar disorder and cannabis dependence combined.⁷

¹ Thomas, SL, Pitt, H, Bestman, A, Randle, M, Daube, M & Pettigrew, S (2016) Child and parent recall of gambling sponsorship in Australian sport, *Victorian Responsible Gambling Foundation*, Melbourne.

² Australian Gambling Statistics (2018) *Queensland Government Statistician's Office*, 34th Edition
<https://www.qgso.qld.gov.au/statistics/theme/society/gambling/australian-gambling-statistics#current-release-australian-gambling-statistics>

³ National Consumer Protection Framework Factsheet (2018) Australian Government *Department of Social Services*
https://www.dss.gov.au/sites/default/files/documents/11_2018/ncpfow-fact-sheet28-nov-2018-2.pdf

⁴ 7:30 Report: Sportsbet's big punt (2019) *Australian Broadcasting Corporation*
<https://www.abc.net.au/news/2019-03-05/sportsbet-documents-reveal-millions-spent-on-marketing/10833196>

⁵ Purdie, N, Matters, G, Hillman, K, Murphy, M, Ozolins, C & Millwood, P (2011) *Gambling and young people in Australia, Gambling Research Australia*, Melbourne.

⁶ Hare, S (2009) *A study of gambling in Victoria – problem gambling from a public health perspective*, Victorian Government Department of Justice, Melbourne.

⁷ Assessing gambling-related harm in Victoria: a public health perspective (2016) *Victorian Responsible Gambling Foundation*
<http://www.responsiblegambling.vic.gov.au/information-and-resources/research/recent-research/assessing-gambling-related-harm-in-victoria-a-public-health-perspective>

Core Principles

In responding to the ACCC's recommendations, the Alliance urges the government to be guided by a number of principles.

1. Children should be safe online. A strong regulatory framework to protect children from unhealthy marketing, including gambling, alcohol and unhealthy food, should be applied to all media formats, including digital platforms.
2. Children should not be tracked, surveilled and monetised, and children's data should not be collected, disclosed and used for any profiling or marketing purposes.
3. Vulnerable people, particularly those experiencing gambling or alcohol harm, should not be exposed to the marketing of dangerous and addictive products online.
4. Digital platforms must comply with the law and community expectations and an independent regulator should ensure proactive monitoring of platforms to ensure compliance, backed by strong enforcement with meaningful sanctions.
5. Public interest journalism, including health journalism, is important to Australia and it should be supported and fostered.

We welcome the Government's announcement on 25 March 2019 to strengthen privacy protections for Australians.⁸ The Alliance looks forward to the implementation of the measures in legislation. We note the reforms include increased penalties for all entities covered by the *Privacy Act*, which includes social media and online platforms operating in Australia. Other reforms announced were:

- Provide the Office of the Australian Information Commissioner (OAIC) with new infringement notice powers backed by new penalties of up to \$63,000 for bodies corporate and \$12,600 for individuals for failure to cooperate with efforts to resolve minor breaches.
- Expand other options available to the OAIC to ensure breaches are addressed through third-party reviews, and/or publish prominent notices about specific breaches and ensure those directly affected are advised.
- Require social media and online platforms to stop using or disclosing an individual's personal information upon request.
- Introduce specific rules to protect the personal information of children and other vulnerable groups.

We welcome that this penalty and enforcement regime will be backed by legislative amendments which will result in a code for social media and online platforms which trade in personal information. The code will require these companies to be more transparent about any data sharing and requiring more specific consent of users when they collect, use and disclose personal information. Platforms will be required to implement a mechanism to ensure they can take all reasonable action to stop using an individual's personal information if a user requests them to do so and have even stronger regimes to address these issues when the user is a child or other vulnerable person.

The OAIC will be provided with an additional \$25 million over three years to give it the resources it needs to investigate and respond to breaches of individuals' privacy and oversee the online privacy rules.

⁸ The Hon Christian Porter and The Hon Mitch Fifield, "Tougher penalties to keep Australians safe online", 25 March 2019, <https://www.minister.communications.gov.au/minister/mitch-fifield/news/tougher-penalties-keep-australians-safe-online#>

Unhealthy marketing must be addressed as a priority in a harmonised media regulatory framework (ACCC Recommendation 6)

The interests of the child and protection of vulnerable consumers should be foremost considerations of the proposed platform-neutral harmonised media regulatory framework. Despite modest legislative changes in an effort to reduce children's exposure to gambling advertising, children are still being exposed to gambling marketing during live sports broadcast across media platforms. Parents have expressed deep concern about the impact this is having. As Caroline, a financial counsellor explains:

My experience is confined to watching sports programs, during which gambling is advertised and actively encouraged, when children are present. Having regard to the significant problems resulting from gambling that I observe in my capacity as a financial counsellor, I find the advertising of gambling to children unconscionable.

Parents report frustration at not being able to protect their children from exposure, as Steve told us: *My children are being exposed at a young age just watching sport on TV.* Mark also explains: *I am deeply concerned that children are exposed to sport gambling ads & essentially 'groomed' as they watch their (or their family's) favourite sport on TV.*

The pervasive nature of gambling advertising across all media platforms mean that is often not fully visible to parents the extent to which these messages are being absorbed. As Joanne told us:

My husband and I were both concerned when our then-7 year old constructed his own football oval and spent most of his time on designing betting ads around its perimeter. We had completely overlooked that our son would be absorbing this advertising from watching the game, even tho [sic] we switched to fox sport to limit his exposure to gambling ads (and all the other rubbish ads that are broadcast on free to air tv).

Parents also expressed concern over the nature of the advertising, and children's inability to distinguish gambling as a dangerous and addictive product. As Jack explains:

[gambling companies] make it seem happy, risk free, colourful and exciting impacts children's ability to discern between their fun and other peoples (adults) ability to exploit their vulnerability... the extent of electronic media now makes it available to them in numerous platforms without any adult supervision.

In terms of how this impacts children and families, many have simply reported not being able to watch sport at all, as Murray explains:

My 9yo, 8yo and 6yo boys and I try to watch the AFL/NRL as a family but the boys are constantly exposed to betting ads which is ruining the experience of watching sport on TV/internet. If we go to the game live the boys are exposed to way too much betting advertising as well. My wife and I feel so strongly about this that we are considering just giving up on the sport altogether.

The absence of regulation for advertising on digital platforms is undermining existing advertising restrictions on other platforms and leading to considerable consumer harm. As the ACCC identified, vulnerable consumers and children are the ones most likely to be impacted by exposure to unsuitable advertising.

In setting the regulatory framework for a converged media landscape the first priority must be to identify the outcomes required, the protection of children and vulnerable people. The Australian Communications and Media Authority (ACMA) raised and highlighted the need to ensure enduring policy objectives of the current regulatory frameworks continue to underpin the harmonised media framework. Community safeguards was one such enduring concept. The Alliance strongly supports moves to ensure that community safeguards to protect against inappropriate and dangerous advertising be considered as a priority reform area.

The ACCC's recommendation six considers that the framework should include advertising restrictions that are consistent across online and offline delivery methods, and should contain "appropriate monitoring and enforcement mechanisms accompanied by meaningful sanctions." The Alliance supports this recommendation. In application, The Alliance strongly believes that this must be done by raising the regulatory standards for digital platforms, and not by lowering in any way the existing public interest regulations for broadcasters. Indeed, The Alliance believes that the current community safeguards could be further strengthened to better capture age restrictions, time of day and contextual and cultural events for all unhealthy products.

The order and scope of the stepped reforms is important. Advertising restrictions, and specifically unhealthy marketing, were identified as a key area of regulatory disparity. They are also of broad concern, have high impact on the Australian community and require strong regulation. The Alliance supports the prioritisation of gambling, alcohol and unhealthy food advertising as the first step of the staged regulatory reforms. Starting with this area of advertising would see the development of the most comprehensive initial regulatory architecture that could then be adapted to other areas of advertising as appropriate.

Recommendation for implementation:

- 1. Mandatory regulatory settings to protect children and vulnerable groups from unhealthy marketing must be established and harmonised across media platforms, including digital platforms, in the first stage of the media regulation reform process. The onus must be on digital platforms to ensure they are not marketing to children and vulnerable groups.**

Improving the public's digital media literacy must not occur in isolation (ACCC recommendations 12 and 13)

The Alliance broadly supports the ACCC's recommendations to establish a government digital media literacy program, and include digital media literacy in schools for consideration as part of the upcoming Australian Curriculum review.

Media literacy education should focus on broader media literacy issues, such as digital marketing, not just news literacy. Media literacy is a key skill that young people need to develop in order to be able to critically engage with media and the increasing barrage of marketing messages.

These recommendations must support a comprehensive regulatory framework and cannot be used as a standalone solution.

Recommendation for implementation:

- 2. Programs to improve media literacy should include marketing literacy, and the identification of digital marketing techniques and tricks.**

Data should not be collected and used in ways that damage vulnerable groups including children (ACCC recommendations 16, 17, 18)

The Alliance broadly supports the ACCC's recommendations to support increased privacy and more meaningful choice and control for consumers relating to their data.

As Andrew* (not his real name), a 33 yrs old communications/advertising professional who experienced harm from sports gambling for 15 years told us:

"I have self excluded myself from the majority of major gambling companies in Australia HOWEVER they still target me with advertising. I am constantly served ads on social media (Facebook and Twitter) - I report these every time however why am I being served these ads? Surely there should be the capability for major betting companies to remove me from their targeting given that I have self excluded and no longer wish to bet. You would think this would be a simple fix but it clearly hasn't been addressed.

Melanie also told us of her husband's exposure to gambling advertising online and how this is impacting their relationship:

My husband is a gambler. He gets bombarded with gambling ads every time he goes on the internet on his phone. His gambling affects our relationship. He only has time for his addiction. Sometimes also wakes up in the middle of the night to check if he has won. I have to empty our bank every week so he doesnt gamble it all away. He lives and breathes gambling.

Vulnerable groups must be protected from exploitative data practices of both the digital platforms and other corporate entities. While The Alliance strongly supports an enforceable privacy code for the digital platforms, The Alliance believes that the restrictions proposed for children's data should extend beyond the digital platforms to other commercial entities dealing in children's personal information.

Recommendation for implementation:

- 3. The Digital Platforms Privacy Code should be developed in consultation with community and health organisations and implemented as a matter of priority.**
- 4. The government should specifically prohibit the collection, use and disclosure of children's data for targeted advertising and/or online profiling. This restriction should apply to online and offline entities.**

The specialist digital platforms branch to be established within the ACCC must proactively investigate, monitor and enforce arising consumer harms (Recommendation 4)

The Alliance supports the introduction of a specialist digital platforms branch within the ACCC. It has accumulated knowledge and connections in this subject area. The ACCC has expressed an interest in working closely with other relevant agencies including the OIAC and ACMA as well as international agencies. We support this proposed coordination.

The ACCC flagged their concern regarding vulnerable consumers in the Report. The Alliance believes that the branch should investigate consumer harms arising from the predatory marketing tactics of gambling, alcohol and unhealthy food companies, and user generated content, for example undisclosed influencer marketing, as well as data privacy of vulnerable consumers.

The Alliance supports the collection of data from digital platforms for the purposes of investigating, monitoring and enforcing issues within the markets that digital platforms operate in. Public reporting should be conducted on issues not meeting the threshold of breaching the Competition and Consumer Act.

Recommendation for implementation:

- 5. The specialist regulatory branch within the ACCC should be established immediately and be tasked with investigating consumer harms. Dedicated funding should be provided to the ACCC to support the establishment and operation of the specialist branch.**

Broader structural reform is required to address consumer rights and protections (additional recommendation)

The Report does not question whether the collection, usage and analytics of consumer data is a legitimate market and stops short of proposing structural reform to how the digital platforms monetise consumer data.

The ACCC acknowledged that problematic data practices are not limited to the digital platforms. The ACCC also noted concerns with current practices, including the potential for “a seller to use their knowledge of consumers to target vulnerable consumers or discriminate against customers on the basis of gender, race or sexual orientation.” This has certainly been the case for members of our lived-experience community, including Peter* (not his real name) a statistician and researcher in his 40s, with 20 years experience of gambling harm:

I used to have a Sportsbet account and long suspected that they were on-selling my personal information. I received a text message on 12/7/19 from Racepal trying to get me to use their racing tips for free. I still have this text on my phone. I tried to unsubscribe but the message would not deliver. I have never subscribed to Racepal nor heard of them. They were trying to induce me to gamble again. Would love them to get sanctioned for this.

I received an email from Punting Pal on 12/11/2014. Never heard of them or had any contact with them yet they had my details.

I received an email from ClassicBet years ago when I had nothing to do with them. They claimed to be a boutique betting agency and better than the other bookmakers with a personal service. I ignored their offer at the time. I also recall they rang me and I told them to never call me again and asked how they got my number – to which I didn't get a proper response. They also cold emailed me and I have no idea how they got my details. Unfortunately during my gambling addiction I ended up opening an account with them when I was desperate. Their cold email worked eventually and I lost money to them.

I have also received multiple contacts from international betting agencies to take up their offers.

The Alliance supports a separate inquiry into the broader issues of the collection and use of consumer data, with a particular focus on vulnerable consumers. The inquiry should consider any social harms emerging from data practices and whether there should be limitations placed on data collection and usage across the economy. The establishment of such an inquiry should not preclude the privacy recommendations from the Report being implemented. These recommendations generally tackle the issues at an individual level, which are still required in addition to structural reform.

Recommendation for implementation:

- 6. An inquiry be held into the broader issues of the collection and use of consumer data, with a particular focus on vulnerable consumers and societal harm. The establishment of such an inquiry should not preclude the privacy recommendations from the Report being implemented, such as the Digital Platforms Privacy Code.**

Additional support is needed for health and science journalism (ACCC recommendations 10 and 11)

The Alliance broadly supports the proposals to provide additional support for public interest journalism. We support the moves to enhance rural journalism, but more support is needed for health and science journalism. Health and science journalism is not a niche area. It should be fostered and not be left solely to digital natives such as Croakey.

The Report focuses on the quantity of reporting, rather than the quality of reporting. Further consideration should be given to providing support for quality journalism and for monitoring poor journalism and preventing misinformation.

Recommendation for implementation:

- 7. Health journalism, in addition to local journalism, should be given additional funding and support. Grants are a positive start, but over the medium-term these should be replaced with sustained and ongoing resources.**

All Recommendations:

1. Mandatory regulatory settings to protect children and vulnerable groups from unhealthy marketing must be established and harmonised across media platforms, including digital platforms, in the first stage of the media regulation reform process. The onus must be on digital platforms to ensure they are not marketing to children and vulnerable groups.
2. Programs to improve media literacy should include marketing literacy, and the identification of digital marketing techniques and tricks.
3. The Digital Platforms Privacy Code should be developed in consultation with community and health organisations and implemented as a matter of priority.
4. The government should specifically prohibit the collection, use and disclosure of children's data for targeted advertising and/or online profiling. This restriction should apply to online and offline entities.

5. The specialist regulatory branch within the ACCC should be established immediately and be tasked with investigating consumer harms. Dedicated funding should be provided to the ACCC to support the establishment and operation of the specialist branch.
6. An inquiry be held into the broader issues of the collection and use of consumer data, with a particular focus on vulnerable consumers and societal harm. The establishment of such an inquiry should not preclude the privacy recommendations from the Report being implemented, such as the Digital Platforms Privacy Code.
7. Health journalism, in addition to local journalism, should be given additional funding and support. Grants are a positive start, but over the medium-term these should be replaced with sustained and ongoing resources.

Thank you once again for the opportunity to raise these important issues with you. The Alliance welcomes the prospect of meeting with the Structural Reform Division to discuss these matters further.

Yours sincerely,



Tony Mohr
Executive Director