



Australian  
Human Rights  
Commission

# OAIC Children's Online Privacy Code

Australian Human Rights Commission

Submission to Office of the Australian Information Commissioner

30 July 2025

ABN 47 996 232 602  
Level 3, 175 Pitt Street, Sydney NSW 2000  
GPO Box 5218, Sydney NSW 2001  
General enquiries 1300 369 711  
National Information Service 1300 656 419  
TTY 1800 620 241

Australian Human Rights Commission  
[www.humanrights.gov.au](http://www.humanrights.gov.au)

1 Introduction ..... 4

2 Recommendations..... 4

3 Best interests of children ..... 5

4 Scope of services..... 6

4.1 Social media ban..... 6

4.2 Evolving capacity ..... 7

5 Privacy law reform ..... 8

# 1 Introduction

1. The Australian Human Rights Commission (Commission) welcomes the opportunity to provide input to the Office of the Australian Information Commissioner (OAIC) Children's Online Privacy Code (Code).
2. The Commission has consistently advocated for the privacy rights of children and called for the creation of the Code in previous submissions on the:
  - [\*Privacy and Other Legislation Amendment Bill 2024 \[Provisions\] \(Cth\)\*](#)
  - [\*Privacy Act Review Report 2022\*](#)
  - [\*Exposure draft of the Privacy Legislation Amendment \(Enhancing Online Privacy and Other Measures\) Bill 2021 \(Cth\)\*](#).
3. The Commission welcomes further opportunities to engage with the OAIC on the privacy rights of children and young people.

# 2 Recommendations

4. The Commission makes the following recommendations:

## **Recommendation 1**

The Office of the Australian Information Commissioner must embed the principle of the 'best interests of the child' as the primary test used in the Children's Online Privacy Code, with a positive duty on Australian Privacy Principles (APP) entities to demonstrate that the principle is applied.

## **Recommendation 2**

The Office of the Australian Information Commissioner must ensure that the Children's Online Privacy Code adopts a broad definition of services that are 'likely to be accessed by children', which recognises that children and young people may access digital spaces not intended for them.

## **Recommendation 3**

The Office of the Australian Information Commissioner must ensure that in determining what services are 'likely to be accessed by children', the Code must consider the evolving capacity of children and young people - not relying solely on chronological age.

#### **Recommendation 4**

The Office of the Australian Information Commissioner must ensure the Code includes age-based guidance to Australian Privacy Principles (APP) entities regarding the development needs of children and young people at different ages.

#### **Recommendation 5**

The Australian Government must set out a clear timeline for when each 'agreed' and 'agreed in principle' amendment to the Privacy Act will be introduced.

### **3 Best interests of children**

5. Online privacy measures must be developed in accordance with article 3 of the *Convention on the Rights of the Child*, which requires the best interests of the child be a primary consideration in all actions concerning them.
6. Policymakers, technology companies, parents and caregivers must make the best interests of every child a primary consideration in the digital environment.<sup>1</sup> This requires 'all children's rights, including their right to seek, receive and impart information, to be protected from harm and to have their views given due weight' in addition to ensuring transparency over the criteria applied to determine best interests.<sup>2</sup>
7. Children's privacy should be viewed broadly beyond just data protection measures and should recognise the importance of children's autonomy and choice in their private lives. A best interests approach may require implementing clear boundaries to prevent practices that both infringe upon children's rights and are contrary to their best interests.<sup>3</sup>
8. Best interest considerations should not be based on assumptions about what is in the interests of children. Their views must be actively considered.<sup>4</sup> In this regard, the Special Rapporteur on the Right to Privacy notes that an 'adult's interpretation of children's privacy needs can impede the healthy development of autonomy and independence and restrict children's privacy in the name of protection'.<sup>5</sup> The Special Rapporteur elaborates:

While children's dependency, hence vulnerability, can result in risks, risk does not equate to harm and navigating some risk is necessary for children to develop resilience and coping skills. Defining children by their vulnerability only, without

consideration of their capacity or potential, is likely to result in overly protectionist agendas, potentially harmful to children's personality.<sup>6</sup>

9. The OAIC must ensure the Code reflects the varied experiences and voices of children and young people. The Commission welcomes the participation of children and young people in the first phase of consultations through the OAIC's partnership with Reset.Tech Australia,<sup>7</sup> including those with out-of-home-care experience and those from migrant backgrounds.<sup>8</sup> It is also critical to include the views of First Nations children and young people as well as those children and young people with disability. The OAIC must also embed ongoing formalised and rights-respecting consultation mechanisms in the Code's design to ensure the voices of children and young people continue to shape decisions in an ever-evolving digital landscape. The importance of this has been highlighted by the UK Children's Commissioner in her work on futureproofing the UK Children's Code.<sup>9</sup>

**Recommendation 1: The Office of the Australian Information Commissioner must embed the principle of the 'best interests of the child' as the primary test used in the Children's Online Privacy Code, with a positive duty on Australian Privacy Principles (APP) entities to demonstrate that the principle is applied.**

## 4 Scope of services

10. The Code applies to Australian Privacy Principles (APP) entities, which include social media services, where those platforms are likely to be accessed by children.<sup>10</sup>
11. It is important that in determining whether a child is likely to access a social media service, the Code recognises the reality that children often access content which is age restricted.

### 4.1 Social media ban

12. From December 2025, under the *Online Safety Act 2021* (Cth) children and young people under the age of 16 will no longer be lawfully able to have an account on social media platforms.<sup>11</sup> The Commission has previously indicated its [concerns](#) regarding a blanket ban.<sup>12</sup>
13. For example, it is recognised that children and young people will find ways to avoid the social media ban – with eSafety Commissioner, Julie Inman-Grant stating that 'various teenage work-around attempts are inevitable ...'.<sup>13</sup> So

while technically banned from having social media accounts, a portion of children will inevitably find ways around the ban and continue to use social media.

14. It is insufficient to limit the application of 'likely to be accessed by children' to just online services which are legally accessible to children and young people as this could result in the code not applying to those under 16 years who access social media. The application must reflect how children and young people actually engage online.
15. It will also be important for the Code to be prepared for the increasing presence of generative AI products and services online. The UK Children Commissioner recently called for a strengthened Children's Code in the UK,<sup>14</sup> which is futureproofed against the speed at which technology, and particularly artificial intelligence, is developing.<sup>15</sup>

**Recommendation 2: The Office of the Australian Information Commissioner must ensure that the Children's Online Privacy Code adopts a broad definition of services that are 'likely to be accessed by children', which recognises that children and young people may access digital spaces not intended for them.**

## **4.2 Evolving capacity**

16. In determining the threshold for what services are 'likely to be accessed by children', the evolving capacities of the child must be considered. As noted by the Special Rapporteur 'children vary enormously in their physical, intellectual, social and emotional capacity'.<sup>16</sup>
17. Children from different cultural backgrounds may also experience and interpret digital risks and opportunities differently. The Code should give culturally sensitive guidance and support that reflects the diverse realities of children and the communities who support them to realise their rights.<sup>17</sup>
18. Consideration of services that children are likely to access should not be entirely age-based. The Special Rapporteur cautioned that the 'notion of age-appropriateness sits uneasily with the principle of evolving capacity' and recommended that State parties 'adopt age-appropriate standards as a regulatory instrument only with the greatest of caution when no better means exist'.
19. As discussed in our previous submissions,<sup>18</sup> the UK Code takes a flexible and age-sensitive approach to online safety by requiring platforms to consider a child's developmental stage in all aspects of design. A one-size fits all

approach for children and young people is not an effective way to protect their privacy and associated rights. The UK Children's Commissioner has emphasised the need for greater accountability, calling for stronger and faster enforcement to ensure the Code is effectively upheld.

**Recommendation 3: The Office of the Australian Information Commissioner must ensure that in determining what services are 'likely to be accessed by children', the Code must consider the evolving capacity of children and young people - not relying solely on chronological age.**

**Recommendation 4: The Office of the Australian Information Commissioner must ensure the Code includes age-based guidance to Australian Privacy Principles (APP) entities regarding the development needs of children and young people at different ages.**

## 5 Privacy law reform

20. The right to privacy is a cornerstone human right. It also underpins freedoms of association, thought and expression, as well as freedom from discrimination.<sup>19</sup> Children's right to privacy is often more complex than adults right to privacy. This is largely due to:

- the vulnerability of children
- parental rights and duties to raise their children
- children's evolving capacities and development impacting on consent mechanisms.

21. While the Commission welcomes the development of this Code, its development represents only a fraction of the necessary reforms to the *Privacy Act 1988* (Cth) (Privacy Act) which the Australian Government has committed to.<sup>20</sup> The Privacy Act in its current form is no longer fit-for-purpose, with the previous Attorney-General stating that it 'has not kept pace with the changes in the digital world'.<sup>21</sup>

22. Whilst this Code will help to address some of the most pressing privacy issues faced by children and young people, it must be supported by broader reforms to the Privacy Act. The full suite of reforms is urgently required to address the increasing threat to privacy in the modern world. To facilitate this, the Australian Government must set out a clear timeline for introducing the other reforms that were previously 'agreed' and 'agreed in principle'.<sup>22</sup> For example the introduction of a 'fair and reasonable test' would operate as a 'shield'

against excessive data collection for all people – including children and young people.<sup>23</sup>

**Recommendation 5: The Australian Government must set out a clear timeline for when each 'agreed' and 'agreed in principle' amendment to the Privacy Act will be introduced.**



## Endnotes

---

- <sup>1</sup> Convention on the Rights of the Child, *General Comment 25* 12-13.
- <sup>2</sup> Convention on the Rights of the Child, *General Comment 25* 13.
- <sup>3</sup> Convention on the Rights of the Child, *General Comment 25* 75.
- <sup>4</sup> Convention on the Rights of the Child, *General Comment 25* 16-18.
- <sup>5</sup> Joseph Cannataci, Report of the Special Rapporteur on the Right to Privacy, *Artificial Intelligence and Privacy, and Children's Privacy* (Human Rights Council, UN Doc A/HRC/46/37, 2021) 80.
- <sup>6</sup> Joseph Cannataci, Report of the Special Rapporteur on the Right to Privacy, *Artificial Intelligence and Privacy, and Children's Privacy* (Human Rights Council, UN Doc A/HRC/46/37, 2021) 118.
- <sup>7</sup> Office of the Australian Information Commissioner, *Children, young people and parents invited to help shape online privacy protections* (Media Release, 16 May 2025).
- <sup>8</sup> Reset.Tech Australia, *Children's Online Privacy Code* (Webpage) <<https://au.reset.tech/news/children-s-online-privacy-code/>>.
- <sup>9</sup> Didem Özkul, Steven Vosloo & Bella Baghdasaryan, *Best Interests of the Child in Relation to the Digital Environment* (Working Paper, February 2025) 7; see also UK Children's Commissioner, *We need you to protect us – some hard truths about children's access to pornography* (Blog, 16 June 2025).
- <sup>10</sup> Office of the Australian Information Commissioner, *Children's Online Privacy Code* (Issues Paper, 12 June 2025) 10.
- <sup>11</sup> *Online Safety Act 2021* (Cth) ss 63C.
- <sup>12</sup> Australian Human Rights Commission, *Proposed Social Media Ban for Under-16s in Australia* (Webpage) <<https://humanrights.gov.au/about/news/proposed-social-media-ban-under-16s-australia>>.
- <sup>13</sup> Jule Inman-Grant, *Swimming between the digital flags: helping young Australians navigate social media's dangerous currents* (Speech, 24 June 2025).
- <sup>14</sup> UK Children's Commissioner, *Statement from the Children's Commissioner on Ofcom's new Children's Safety Codes* (Blog, 24 April 2025).
- <sup>15</sup> UK Children's Commissioner, *We need you to protect us – some hard truths about children's access to pornography* (Blog, 16 June 2025); see also UK Children's Commissioner, 'The need to build a safer online world' (Media Release, 21 May 2025).
- <sup>16</sup> Joseph Cannataci, Report of the Special Rapporteur on the Right to Privacy, *Artificial Intelligence and Privacy, and Children's Privacy* (Human Rights Council, UN Doc A/HRC/46/37, 2021) 96.
- <sup>17</sup> Convention on the Rights of the Child, *General Comment 4* 12.
- <sup>18</sup> Australian Human Rights Commission, Submission to the Attorney-General's Department, *Exposure draft of the Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021 (Cth)* (1 December 2021) 8.
- <sup>19</sup> Convention on the Rights of the Child arts 2, 13 & 15.
- <sup>20</sup> See generally, Attorney-General's Department, *Government Response Privacy Act Review Report* (Report, 2023).
- <sup>21</sup> The Hon Mark Dreyfus KC MP, *Landmark Privacy Act Review report released* (Media Release, 16 February 2023).
- <sup>22</sup> See Attorney-General's Department, *Government Response Privacy Act Review Report* (Report, 2023).
- <sup>23</sup> Attorney-General's Department, *Government Response Privacy Act Review Report* (Report, 2023) 8, proposals 12.1-12.3.