Australian Telecommunications Alliance

Setting The Standard.
Driving Progress.

AUSTRALIAN TELECOMMUNICATIONS ALLIANCE SUBMISSION

To: Office of the Australian Information Commissioner
Re: Children's Online Privacy Code Issues Paper

31 July 2025

TABLE OF CONTENTS

1. AUSTRALIAN TELECOMMUNICATIONS ALLIANCE

The Australian Telecommunications Alliance (ATA) is the peak body of the Australian telecommunications industry. We are the trusted voice at the intersection of industry, government, regulators, and consumers. Through collaboration and leadership, we shape initiatives that grow the Australian telecommunications industry, enhance connectivity for all Australians, and foster the highest standards of business behaviour. For more details, visit www.austelco.org.au.

For questions on this submission, please contact [redacted]

2. INTRODUCTION

2.1 The ATA appreciates the opportunity to make a submission in response to the Office of Australian Information Commissioner (OAIC) Children's Online Privacy Code (Code) Issues Paper (Paper) .

2.2 At this stage, we will confine our feedback to the services provided by our carrier and carriage service provider (C/CSP) members and the extent we believe they ought to be excluded from the scope of the Code.

2.3 Those services are:

1. Short Messaging Services (SMS) and Multimedia Messaging Services (MMS) (jointly referred to as SMS/MMS hereafter);
2. Email services;
3. Business/enterprise services;
4. Apps or websites for the management of the C/CSP services;
5. Resale of services (e.g. entertainment services); and
6. Internet carriage services.

2.4 The ATA and its members stand ready to work with the OAIC and other relevant stakeholders to develop a practical Code that appropriately protects the legitimate interests of one of the most vulnerable groups of our society, our children.

2.5 We look forward to providing additional feedback during the development of the Code, including as part of the public consultation on the draft Code.

3. SMS / MMS

3.1 SMS/MMS are relevant electronic services within the meaning of the *Online Safety Act 2021* (OSA).

3.2 The inclusion of SMS/MMS in the definition of relevant electronic services is unfortunate and, in our view, inappropriate. The inclusion has led to substantial uncertainty and complexities for the drafting of, and compliance with, regulatory instruments subordinate to the OSA, e.g. the (registered) *Consolidated Industry Codes of Practice for the Online Industry (Class 1A and Class 1B Material)*, the *Consolidated Industry Codes of Practice for the Online Industry (Class 1C and Class 2 Material)* (three codes registered with another five codes pending decision for registration), and the *Basic Online Safety Expectations* (BOSE). In fact, even the OSA itself struggles with the inclusion of SMS/MMS and contains provisions in relation to relevant electronic services (e.g. s 110 and s 114, removal notices) that are unenforceable as providers of SMS/MMS cannot comply with them.

3.3 These complexities and compliance issues arise due to an unfortunate conflation of telephony communications services, i.e. services that are transmitted via carrier telephony networks (e.g. SMS/MMS over 4G/5G)) and services that enable such communication online, i.e. over the internet. The issues also arise as the OSA fails to apply an appropriate risk lens and/or insufficiently considers technical and legal limitations of carriage services.

3.4 The *Report of the Statutory Review of the Online Safety Act 2021* by Delia Rickard (Rickard Report) recognises these issues and recommends (Recommendation 2) that:

> *"current definitions of the online industry sections should be simplified to online platforms, online search and app distribution services, online infrastructure services and equipment and operating system services. These should be included in the Act to better reflect online safety risks and future proof the Act."*[1]

and proposes a definition of online platforms as

> *"Online platforms*
>
> *This first category includes services where the majority of harmful content or conduct occurs. It would capture those services that enable:*
>
> - *Online social interaction or messaging; and/or*
> - *The provision of online content – including content that is user-generated, directly provided or generated by a service, or recommended by a service (such as by an algorithm)."*[2] [emphasis added]

3.5 The recommendation and proposed definition make clear that only online services ought to be the within scope of the definition of online platforms (which includes, albeit not exhaustively as we argue, relevant electronic services).

3.6 Similarly, the Paper and Proposal 16.5 of the *Privacy Act Review Report* also appropriately focus their scope on online services

> *"The Code will apply to online services likely to be accessed by children, which includes social media services (SMS), relevant electronic services (RES) and designated internet services (DIS).*[3] *These categories cover a wide range of online services, such as social media, messaging apps, websites and cloud storage services."*[4] [emphasis added]

and

> ***"Proposal 16.5** Introduce a Children's Online Privacy Code that applies to online services that are 'likely to be accessed by children'. To the extent possible, the scope of an Australian children's online*

[1] Delia Rickard. 2025 (p. 21). *Report of the Statutory Review of the Online Safety Act 2021*
[2] Ibid (p.40)
[3] Social media service, relevant electronic service and designated internet service are all within the meaning of the *Online Safety Act 2021*.
[4] Office of the Australian Information Commissioner. 2025 (p.3). *OAIC Children's Online Privacy Code Issues Paper*

privacy code could align with the scope of the UK Age Appropriate Design Code […].[5] [emphasis added]

3.7 In fact, the name of the Code itself – Children's Online Privacy Code – already clearly conveys the limited application to the online environment.

3.8 While the term 'online' has not been defined in the OSA (nor in the Rickard Report or the *Privacy Act Review Report*), we argue that the common meaning of the term implies transmission of material via the internet and/or for the purpose of accessing the material on the internet (as opposed to the term 'digital', which is broader, and could include material made available in electronic form or via electronic means but without the use of/access to the internet).

3.9 SMS/MMS are not online services. SMS/MMS are telephony services which are transmitted via mobile networks but do not use or make the transmitted material accessible on the internet.

3.10 Note on age-gating/restriction of SMS/MMS:

- SMS/MMS services can only be provided in conjunction with a mobile voice service, i.e. it is not possible to supply a voice service to an end-user in isolation.
- The risk of potential harm that emanates from SMS/MMS in the context of online privacy is very limited. In addition, end-users can disable the use of location services for SMS/MMS (for purposes beyond the necessary uses of the mobile network or legally required uses).
- Given the limited harms vector and widespread benefit derived from the use of SMS/MMS for essential communications by children, it is not feasible for providers of such services to age-gate the use of these services in circumstances where the end-user of a device or service may change where the customer permits this to occur.
- To the extent that SMS/MMS handle personal information relating to Australian children, it ought to be noted that C/CSPs have limited control of and visibility over the content that is transmitted by use of these services. In addition to technical limitations, existing legislation (Part 13, *Telecommunications Act 1997* and *Telecommunications (Interceptions and Access) Act 1979*) prohibits providers of such services from 'scanning' or otherwise accessing, disclosing or using the communications that are being transmitted through those services, unless a relevant exception applies .

3.11 The 'traditional' personal information (non-technical identifiers) that C/CSPs collect and/or use for the provision of SMS/MMS is either required under law and/or for the purpose of enabling the C/CSP to provide the service, and relates to the customer, rather than the end-user.

3.12 Technical identifiers, foreshadowed to be in scope in a future (revised) *Privacy Act 1988*, are used for service provision and/or service optimisation.

3.13 Geo-location data is used by C/CSPs for many important purposes and ought not be constrained. Such data is used, for example, in relation to scam and fraud prevention, misconduct and crime identification and prevention, updates on network coverage/outages, and for emergency purposes. The research cited in the Paper also highlights that such uses appear to fall into the category of use that is of lesser concern to children:

"While children highlighted fewer concerns about the use of geolocation data where the purpose of that usage was apparent (i.e. SnapMaps, Google Maps or Life360)' […]."[6]

3.14 **Against this background of:**

- SMS/MMS not being online services (and, consequently, not being in the envisaged scope of the Code);
- the infeasibility of age-gating SMS/MMS services; and

[5] Attorney-General's Department. 2023 (p. 27). *Privacy Act Review Report*
[6] Office of the Australian Information Commissioner. 2025 (p.9). *OAIC Children's Online Privacy Code Issues Paper*

- limited use of and need for simplified information provision on the collection and use of personal information for SMS/MMS;

we submit that telephony relevant electronic services (SMS/MMS) ought to be specified as exempt from the scope of the Code.

3.15 We note that Proposal 16.5 of the *Privacy Act Review Report* (agreed to in the Government's Response) proposes:

> *"To the extent possible, the scope of an Australian children's online privacy code could align with the scope of the UK Age Appropriate Design Code […]."*[7]

3.16 An exclusion of SMS/MMS appears to align with the scope of the UK Age Appropriate Design Code: while the definition of 'information society services likely to be accessed by children', which are the services in scope for the UK Age Appropriate Design Code, is broad, we understand from the information provided alongside the definition that services not delivered over the internet are not in scope.[8]

4. EMAIL SERVICES

4.1 Email services are relevant electronic services within the meaning of the OSA.

4.2 Some C/CSPs provide residential consumer email services as part of fixed-line internet carriage services that they offer.[9] Fixed-line internet carriage services are not being offered to children.

4.3 The email services offered by C/CSPs are different to over-the-top (OTT) email services, such as gmail, Hotmail or other email services that are not offered by C/CSPs but that travel across the infrastructure provided by C/CSPs in their capacity as internet carriage service providers.

4.4 In contrast to SMS/MMS, C/CSP email services are not 'likely to be accessed by children'. This is because the service, i.e. the email address, is usually coupled to the name of the contracting adult. While the email address may be altered by the customer, we believe it is highly unlikely that children seek to use a C/CSP email service, noting that the Information Commissioner's Office (UK)

> *"consider[s] that for a service to be 'likely' to be accessed, the possibility of this happening needs to be more probable than not."*[10]

4.5 To the extent children use email services (they often favour other forms of communication, e.g. WhatsApp), they tend to either use email services provided by their school/academic institution and/or by OTT email providers. C/CSP email services are typically used by an older demographic.

4.6 Importantly, the share of C/CSP email services in the overall residential consumer (i.e. not business/enterprise) email services market is very small. Many large internet carriage service providers have phased out their offerings or have announced their intention to do so.

4.7 **Consequently, we submit that email services provided by C/CSPs ought to be specified as exempt from the scope of the Code.**

[7] Attorney-General's Department. 2023 (p. 27). *Privacy Act Review Report*
[8] Information Commissioner's Office (UK). *Services covered by this code*
[9] Some C/CSPs may also permit customers to maintain an email service even if they no longer subscribe to a fixed-line internet carriage service provided by the C/CSP.
[10] Information Commissioner's Office (UK). *When are services 'likely to be accessed by children'?*

5. BUSINESS / ENTERPRISE SERVICES

5.1 We submit that social media services, relevant electronic services or designated internet services to enterprises (e.g. business-focused unified communications and cloud services and business email platforms for resale to enterprise customers) provided by C/CSPs are not 'likely to be accessed by children' and, therefore, ought to be interpreted as outside of the scope of the Code.

5.2 However, it is not technically infeasible for children to access these services or platforms if they are employed by customers that have implemented them (suggesting a degree of 'likeliness' that children access these services). If the employee records exemption is removed under *Privacy Act 1988* reforms, this may result in services unintentionally being captured by the Code in circumstances where there is certain yet low-level access by children.

5.3 In such cases, those customers would likely be considered the 'controller' of personal information collected and handled by the service or platform as they determine the purpose and means of processing the personal information. CSPs would merely act as a 'processor' of personal information (e.g. when providing cloud storage solutions). Noting that these concepts do not currently exist under Australian privacy law, they have been proposed. In light of this, the customers (as controllers) should be entirely responsible for complying with the obligations of the Code given their control over and access to personal information of children.

5.4 **In the event that these concepts are introduced to the *Privacy Act 1988*, we submit that the Code should include appropriate exemptions for processors of personal information.**

6. APPS OR WEBSITES FOR THE MANAGEMENT OF C/CSP SERVICES

6.1 C/CSPs may provide websites or apps designed to allow customers to manage their services, including prepaid services, which may be purchased by children.

6.2 Such services are designated internet services within the meaning of the OSA.

6.3 Personal information of children may be handled by a C/CSP as part of children engaging with such services.

6.4 **We submit that the use of such designated internet services for the purposes of facilitating telephony services equally ought to be specified as exempt from the scope of the Code as they are directly related to relevant telephony services that ought to be specified as exempt.**

7. RESALE OF SERVICES

7.1 C/CSPs may resell social media services, relevant electronic services, or designated internet services, for example gaming subscriptions, or entertainment services, such as television and music streaming services (where these services contain social features which enable users to post or share content like shared playlists, group watching features, or content recommendations). Under these arrangements, C/CSPs have limited control over the provision of the service, which is managed by the relevant provider. In the majority of cases, much like the case of business/enterprise services, the reselling C/CSP will merely operate as a 'processor' of personal information. To the extent that reselling C/CSPs engage with Australia children, their access to personal information is limited and confined only to what is necessary for facilitating access to and/or billing of the services.

7.2 **We submit that the resale of such services by C/CSPs ought to be specified as exempt from the scope of the Code as the potential privacy harms arise from personal information collected through an individual's activity and use of such services (which are not in the control of the reselling C/CSP), rather than through facilitating access to and billing of the service (which are the key functions of the reselling C/CSP).**

8. INTERNET CARRIAGE SERVICES

8.1 Sections 26CG(5) and (6) of the *Privacy Act 1988* provide that the to-be-developed Code applies as follows:

> *"Entities bound by code*
>
> *(5) Subject to subsection (7), an APP entity is bound by the Children's Online Privacy Code if:*
>
> *(a) all of the following apply:*
>
> *(i) the entity is a provider of a social media service, relevant electronic service or designated internet service (all within the meaning of the Online Safety Act 2021);*
>
> *(ii) the service is likely to be accessed by children;*
>
> *(ii)i the entity is not providing a health service; or*
>
> *(b) the entity is an APP entity, or an APP entity in a class of entities, specified in the code for the purposes of this paragraph.*
>
> *(6) Paragraph 26C(2)(b) does not apply in relation to the Children's Online Privacy Code."*

With section 26C(2)(b) providing:

> *"An APP code must […]*
>
> *(b) specify the APP entities that are bound by the code, or a way of determining the APP entities that are bound by the code."*

8.2 **Consequently, it is our understanding that internet carriage services will not be in scope for the Code as they do not fall within the scope described in Section 26CG(5) of the *Privacy Act 1988*.**

9. SCOPE OF THE CODE

9.1 To the extent that any of the above C/CSP activities are not expressly excluded from the Code and are caught by the 'likely to be accessed by children' threshold, we submit that the Code's obligations should be limited to providing simplified information in privacy notices to children.

9.2 We acknowledge the practical challenges in balancing transparency (particularly around the management and collection of personal information under APP 1 and APP 5) with the need to the delivery of simple and understandable information to children. Accordingly, we recommend that the any obligation to provide simplified privacy information to children be confined to the key aspects which are most relevant for children to understand (i.e. the collection and use of personal information).

9.3 Additionally, we believe that further consideration of the threshold 'likely to be accessed by children' is required to clearly exclude services that are possible for children to access, but for which they are not the targeted or intended user base. We recommend that the OAIC develop guidance materials that clearly define the threshold when a service or activity is considered 'likely to be accessed by children', including relevant assessment factors.

Ends

Australian
Telecommunications
Alliance

Level 25 / 100 Mount Street
North Sydney NSW 2060

T 02 9959 9111
E info@austelco.org.au
W austelco.org.au

ABN 56 078 026 507