



8 August 2025

Office of the Australian Information Commissioner  
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Dear Office of the Australian Information Commissioner,

### OAIC Children's Online Privacy Code – Issues Paper

ISA welcomes the opportunity to make this submission to the OAIC's consultations on the development of the Children's Online Privacy Code (the Code).

#### About ISA and Independent schools

Independent Schools Australia (ISA) represents almost 745,000 students, 1,230 schools and a workforce of over 128,000 people. We work closely with our member organisations, the eight state and territory Associations of Independent Schools (AISs),

Independent schools are long-established partners in Australia's education system, alongside government and Catholic schools. They make a valuable contribution to society and the learning and wellbeing of Australian children.

The latest available data shows that more than one in six Australian school students attends an Independent school. For secondary students, it is over one in five. Students at Independent schools reflect the full diversity of Australian society – including those who experience one or multiple forms of disadvantage. These students include high-needs students with disability attending special schools, Aboriginal and Torres Strait Islander students attending remote 100 per cent Indigenous schools, students living in regional, rural and remote locations, and highly disadvantaged and disengaged young people attending Independent special assistance schools.

Most non-government schools, both Independent and Catholic, are either an APP entity or part of a larger school system which is an APP entity. This means that they are subject to the privacy obligations under the Privacy Act.

#### The Children's Online Privacy Code

ISA acknowledges the need for, and supports the provision of, more protections for children who are more vulnerable to online harms, including the impacts of social media. ISA's submission to the Joint Select Committee on Social Media and Australian Society's *Inquiry into and report on the influence and impacts of social media on Australian society* noted that "social media provides many opportunities to connect with people and learn new information but also comes with significant risks for young Australians that need careful consideration."<sup>1</sup>

In the area of online privacy, it is clear that children are more vulnerable to the misuse of personal data than adults and equally, that legislation has not kept pace with the changing digital environment. The Children's Online Privacy Code Issues Paper demonstrates that children are seeking to have less data collected about them, to have control over data

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<sup>1</sup> ISA Submission to the Joint Select Committee on Social Media and Australian Society's *Inquiry into and report on the influence and impacts of social media on Australian society*, June 2024 - <https://isa.edu.au/documents/isa-submission-joint-select-committee-on-social-media-and-australian-society/>

retention and destruction, and to be better protected from hackers, scammers and other bad actors.

### Scope of services covered by the Code

The Act sets out that the Code will apply to APP entities if they provide a:

- Social media service: online services where users connect, share content and interact (e.g. social networks, media-sharing sites, forums, review platforms)
- Relevant electronic service: online services that facilitate communication (e.g. messaging apps, email, video calling platforms, online games with chat)
- Designated internet service: online services that allow users to access or receive material over the internet. (e.g. cloud storage, websites that let users receive/access content, streaming platforms, consumer IoT devices).

In each case, the service must be likely to be accessed by children and must not be a health service provider.

Schools use a variety of software tools, apps and programs for use by staff, students and in some cases parents/guardians. The large majority of products used in Independent schools are commercial products however there are instances where a school has created its own service or product for use in the school by staff, students and parents/guardians. Additionally, there are a few examples where Independent schools may develop, host and support products for other Independent schools by mutual agreement.

How the Code will be applied to products and services used in schools needs to be made very clear and a significant part of that is understanding what is meant by the 'provision' of a service of the types to be included in the Code.

ISA queried if the Code is intended to apply the company that had created and sold or licensed a product, such as product that enables messaging between student and between students and teachers, or to the school that is using the product, or to both.

The answer that ISA received is that the obligation to comply with the proposed Code would fall on the provider of the service, as opposed to the party who is using the services of the provider. And that in the example provided, the school would not be considered as the provider of the service. If the school however had created its own service, and this service was implemented within the school or beyond, this would be subject to the proposed Code.

This differentiation needs to be very clear for schools to enable them to understand how the Code may apply to them and to enable them to make informed choice about the products and services they decide to use or develop in their school's context.

The following examples illustrate the ambiguity that could be associated with the Code. Microsoft Teams Chat; What's App groups hosted by the school; SharePoint Intranet sites that allow unmoderated commentary; reflective parent/guardian/student commentary in a school's online reporting system; etc.

### Other concerns


It has also been noted that while the Code is intended to apply to children under the age of 18, the social media ban will apply to children under the age of 16. While seeking to reduce the online harm to children, the social media ban will most likely pose issues for schools that, for example, use YouTube as a learning tool. If the Code were to also include age verification/gating, there is a high likelihood of further increasing the difficulties faced by schools in managing different requirements for different age cohorts and in relation to different products and services.

ISA is also concerned that the Code has the potential to impact Independent and Catholic schools and systems that developed their own products or services to facilitate teaching and sharing of resources, as well as communication between staff, students and parents/guardians, while not being applied in the government school sector as government school systems are not APP entities.

It is noted that schools also collect and hold personally identifiable data on staff, students and their parents/guardians however this data is not likely to be accessed by children.

ISA looks forward to further engaging in the on-going consultation process for the development of the Children's Online Privacy Code.

Yours sincerely

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