31st July 2025

Office of the Australian information Commissioner
e-mail: copc@oaic.gov.au

<u>Submission: OAIC Children's Online Privacy Code</u>

To whom it may concern,

We thank you for the opportunity to a provide feedback in relation to the Office of the Australian information Commissioner's (OAIC) development of the Children's Online Privacy Code (the Code).

As an agency that is focussed on the prevention of sexual harm against children, and the protection of all children in our communities, Bravehearts' focus is on ensuring, first and foremost, that systems are established to increase the safety of children and young people, while ensuring their rights and wellbeing, including in the digital environment.

In addition to this submission, Bravehearts and our Youth Advisory Council (BYAC) have assisted in the Australian Child Rights Taskforce (ACRT) submission. We give our full support and endorsement for the ACRT submission.

General Statement

The protection of children and young people's privacy online is a critical component of upholding their rights, safety, and digital wellbeing. In Australia, children engage with digital technologies from an early age for social, educational, and recreational purposes. While these technologies offer significant benefits, they also expose children to privacy risks, including the collection of sensitive personal data, profiling, behavioural targeting, and, in more serious cases, online grooming or exploitation.

The Australian Human Rights Commission and various inquiries, such as the ACMA's Privacy and Children in the Digital Environment (2021), have highlighted that current regulatory and platform-based responses often fail to meet the unique developmental needs of children. The UN Convention on the Rights of the Child, to which Australia is a signatory, affirms a child's right to privacy (Article 16), and this must be upheld with greater urgency in online spaces.

We welcome the OAIC's work in developing the Children's Online Privacy Code to specifically respond to the vulnerability of children and young people through strengthening privacy protections across social media and other internet services.

Protecting children's privacy online is not only about preventing harm, but it also enables their autonomy, identity formation, and safe participation in digital life. When children are exposed to excessive data collection or lack control over their personal information, it can inhibit self-expression and increase vulnerability. Research in Australia suggests that children and young people are acutely aware of the risks to their privacy but often feel disempowered to take action, particularly when platforms present complex or misleading consent mechanisms

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(Notley et al., 2021). There is also growing concern about the role of data-driven business models in shaping children's digital experiences, often without clear accountability or child-specific safeguards.

Essential Considerations

Key considerations in the drafting of the Children's Online Privacy Code, should include:

1. Child-Centric Principles
   - Best Interests of the Child: The primary consideration in all data processing decisions.
   - Evolving Capacities: Tailor protections based on age and maturity, recognising differing abilities to understand risks.
   - Participation Rights: Children should be empowered to understand and influence how their data is used.
2. Age-Appropriate Design
   - Age Assurance Mechanisms: Ensure services can reliably identify child users without excessive intrusion.
   - Data Minimisation by Default: Avoid collection of personal data unless strictly necessary.
   - High Privacy Settings by Default: Automatically enable privacy-protective settings for child users.
3. Transparency and Communication
   - Clear, Age-Appropriate Language: Privacy policies and explanations must be understandable to children.
   - Just-in-Time Notices: Real-time prompts when data is collected, explaining what, why, and how.
   - Visual and Interactive Tools: Use symbols, animations, or storytelling to explain complex concepts.
4. Parental Involvement and Safeguards
   - Balanced Control: Involve parents or guardians without undermining the child's autonomy and confidentiality where appropriate.
   - Consent Mechanisms: Ensure meaningful, informed consent with mechanisms to verify parental consent for younger children.
5. Data Collection and Processing Limits
   - Purpose Limitation: Restrict use of children's data to what is strictly necessary for the service.
   - Prohibition of Profiling and Targeted Advertising: Ban or heavily restrict profiling for behavioural advertising purposes.
   - Retention Limits: Mandate deletion of data once it's no longer needed, with easy data erasure processes.
6. Risk Assessment and Safety Measures
   - Privacy Impact Assessments: Mandatory for digital services accessed by children.
   - Design Safety Testing: Evaluate digital products for privacy and safety risks to children before launch.
7. Governance and Enforcement
   - Clear Accountability: Assign data protection responsibility within organisations.
   - Compliance Monitoring: Independent oversight, audits, and penalties for breaches.

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- Accessible Complaints Mechanisms: Child- and family-friendly avenues to raise concerns or complaints.

Best Interests

Developing a children's online privacy code that meaningfully protects and empowers young people requires centring children's rights, as articulated in the United Nations Convention on the Rights of the Child (UNCRC), particularly Article 16 (right to privacy), Article 12 (right to be heard), and Article 17 (access to information). A rights-based privacy code must go beyond compliance-focused approaches to address the evolving capacities of children and the asymmetries of power in digital environments. This includes ensuring that children's data is only collected and processed where it is necessary, proportionate, and in their best interests. Moreover, the principle of data minimisation and the prohibition of profiling or behavioural advertising for children under a certain age are central to safeguarding their autonomy and dignity online (Livingstone & Third, 2017).

Consent and Transparency

Another critical consideration is the need for developmentally appropriate consent and transparency mechanisms. Traditional privacy policies and terms of service are often inaccessible to children due to complex legal language and abstract concepts. The code should mandate that digital service providers use age-appropriate design, through simplified language, visuals, or interactive tools, to ensure children understand how their data is being used. Empowering children also means giving them meaningful control over their personal data, including accessible mechanisms to review, delete, or restrict data sharing. These safeguards are essential for building digital literacy, agency, and trust. Moreover, the code must ensure that parents or guardians are supported in their role as protectors of children's rights without overriding children's evolving capacities or autonomy, particularly in adolescence

Codesign

Bravehearts welcomes the approach being undertaken by the OAIC, noting the engagement of the voices and views of children and young people.

Embedding the voices of children and young people in the design and governance of privacy protections is essential to ensuring these measures are relevant, accessible, and empowering. This participatory approach, aligned with principles of child rights-based governance, affirms children not just as passive recipients of protection but as active digital citizens whose rights must be respected and prioritised in a data-driven society.

BYAC Members Feedback

Bravehearts Youth Advisory Council have been engaged in several discussions around the development of the Code and have provided feedback for the Australian Child Rights Taskforce submission. Below are comments for both the ACRT and Bravehearts' submissions (Attachment A contains all BYAC feedback):

<u>The need for a Privacy Code</u>

"[Privacy settings] *are good if they protect the consumer, but I expect lots of them don't always*"

"*I understand very little, and educational campaign would be a great start, because I don't think this is unique to youth, in fact I would say adults have less of an understanding of privacy/data etc*" (in relation to data security and privacy measures)

"*how do we sort of promote the code and the rights that children and young people have? Or how do we promote good like apps and websites?*"

Data collection and retention

"I'm scared about my data being collected but there's also so much fear mongering and ways for our data to be accessed/leaked that Ive kind of given up. I assume my data is out there and accessible and have somewhat lost my belief in holding privacy online."

"I make efforts to minimise this but often it is hard especially when you are trying to access information quickly"

"I think a lot of young people and adults included hand over privacy in return for not missing out on an app or a site or a purchase etc."

"I would love the understanding to control it better, but also the ability to delete data and manage what is out there related to me would be great" (in relation to control over personal data collected)

Complaint mechanisms

"To improve accessibility, platforms could implement clear, age-appropriate complaint processes using simple language and visual cues. Providing anonymous or confidential reporting options would support children in more sensitive situations. Integrating direct links to support services within platforms and reinforcing that it is acceptable to raise concerns can also be effective. Responses should be timely, appropriate to the child's age and needs, and lead to meaningful outcomes to help build trust in the process."

"When it comes to children making privacy complaints, there are lots of barriers that can prevent them from taking action. These include fear of getting in trouble, especially if they have broken platform rules (such as sharing personal images), and a lack of awareness about their rights or how to make a complaint. I know that shame and concern about not being taken seriously can also discourage them."

"From my perspective, one of the biggest barriers is that complaint processes are not designed with children or young people in mind. Even when platforms offer mechanisms to raise concerns, these are often buried in settings menus or written in complex, legalistic language that assumes a high level of digital literacy. I've also noticed that children and young people often don't feel empowered to speak up because they're unsure whether their complaint will be taken seriously or whether they even have the right to challenge how their data is used (likely because children and young people aren't often seen as 'rights holders' in and of themselves in wider society). This lack of confidence is compounded when young people feel overwhelmed or coerced by lengthy privacy policies, or unclear consent processes. In some cases, children and young people may not know who to go to, what information they're allowed to request, or whether reporting something will make a difference. This leads many to just disengage entirely."

"To support children and young people in raising complaints, there needs to be a shift in how we communicate and structure those processes. Personally, I think it starts with making the existence of complaint options visible and accessible across different devices and interfaces. Using plain language and symbols can help explain what a complaint is and what a young person can expect once they submit one. It's also important that the process is designed to feel safe and empowering. That likely means providing reassurance that children won't be punished or ignored for raising concerns."

Concluding Comments

While Bravehearts applauds the development of the Children's Online Privacy Code and acknowledge the important shift toward stronger obligations for online services likely to be

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accessed by children, we note this can only be one part of a holistic response. Policy alone is insufficient.

We look forward to providing feedback on the draft Code.

Please contact us on ██████████████████ should you have any questions relating to our submission.

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Director of Research

References

Australian Communications and Media Authority. (2021). Privacy and Children in the Digital Environment.

Australian Government. (2023). Privacy Act Review Report. Attorney-General's Department.

Notley, T., Dezuanni, M., & Zhong, H-F. (2021). Youth, data and the future of privacy: Expectations and experiences of young Australians. Western Sydney University & Queensland University of Technology.

Livingstone, S., & Third, A. (2017). Children and young people's rights in the digital age: An emerging agenda. *New Media & Society, 19*(5), 657–670.

United Nations Committee on the Rights of the Child. (2021). General Comment No. 25 on children's rights in relation to the digital environment.

United Nations. (1989). Convention on the Rights of the Child.

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