



# Submission in response to Children's Online Privacy Code Consultation

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31 July 2025



australia  
new zealand  
screen  
association

[anzsa.film](http://anzsa.film)

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## 1 About ANZSA

This submission is made on behalf of the Australia New Zealand Screen Association (**ANZSA**). ANZSA represents the film and television content and distribution industry in Australia and New Zealand, and includes Motion Picture Association; Amazon Studios LLC; Walt Disney Studios Motion Pictures; Netflix, Inc.; Paramount Pictures; Sony Pictures Releasing International Corporation; Universal International Films, Inc.; Warner Bros. Pictures International, a division of Warner Bros. Entertainment Inc. ANZSA's core mission is to advance the business and art of filmmaking, increasing its enjoyment around the world and to support, protect and promote the safe and legal consumption of movie and TV content across all services.

ANZSA's members operate several Subscription Video on Demand (**SVOD**) services in Australia; these vary from mainstream services such as Disney+, Netflix, Paramount+ and Prime Video, to niche services such as Hayu and Crunchyroll.

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## 2 Low inherent risk of SVOD services

SVOD services are of inherently low risk to the types of privacy harms intended to be addressed under the Online Children's Privacy Code (the **Code**), for the reasons set out below.

### SVOD services are directed to adults and less 'likely to be accessed by children'

1. SVOD services are subscription-based and directed to adults, requiring a method of payment (such as a credit card or similar payment instrument) to set up and maintain a subscription. Such methods of payment are generally only issued to individuals who are at least 18 years old, providing a natural age gate, as recognised and supported by Australia's Restricted Access System.<sup>1</sup> As a result, any children accessing an SVOD service will do so under the supervision of an adult account holder (who can implement additional safety mechanisms such as child profiles or pin-codes).

### SVOD services typically do not collect children's personal information

2. The nature of SVOD services typically means that only minimal information is required to establish an account and provide an age-appropriate and personalised experience for members. Children are not required to provide personal information to use the service, nor is personal information collected or inferred based on a user's interaction with the service. Beyond the account holder, SVOD services typically do not collect personal information for other individuals who may be accessing the service through the account holder's account. This means that children can engage with these services anonymously or under a pseudonym. This approach aligns with privacy principles that encourage the minimisation of personal data collection, particularly for children, and supports the right to anonymity and pseudonymity as outlined in the Australian Privacy Principles.
3. Relevantly, the enjoyment which a user, including a child, derives from using SVOD services is neither diminished or changed if they interact with the service anonymously or under a pseudonym. Again, this may be contrasted with social media services and relevant electronic services. We submit that this is a relevant consideration for the development of the Code – that is, the degree to which the business interest of operators (or in the case of SVOD services, the lack of a business interest in identifying child users) may align or conflict with the objects of the Code. SVOD services are naturally aligned

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<sup>1</sup> Explanatory Statement, *Restricted Access Systems Declaration 2021* (Cth) 8.

through their commercial interest in recommending age-appropriate content that its users will enjoy, thereby encouraging their continued subscription.

#### SVOD services provide a curated content service

4. Fundamental to the offering of SVOD services is providing viewers the ability to watch professionally produced TV shows and films. SVOD services are already designed to ensure age-appropriate content is surfaced to children, while minimising the amount of personal information collected from children. While practices will vary across SVOD services, SVOD services seek to help users make choices that are most likely to appeal to them from a very large catalogue of titles available on the service.
5. Personalisation is inherently diverse and unique to the individual, as individuals tend to appreciate a diverse variety of content. Personalisation will typically be based on the user's interaction with the service; for example, viewing history or search history (as opposed to extraneous data sources). This type of personalisation, developed using minimal user data, is inherently different to the personalisation that occurs with other internet services that are driven by user generated content personalisation and recommender systems. The collection of this kind of data, for the limited purpose of presenting content choices to users, is a widely accepted practice that is consistent with a consumer's expectations of SVOD services and clearly disclosed to consumers at the time they sign up for the service. This is particularly so given that personalisation will typically be linked to "profiles" created by the adult account holder, which are designed to ensure age-appropriate content will be surfaced in these profiles.

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### **3 Recommendations**

The ANZSA make the following recommendations for the Code, broadly aligned with the UK Information Commissioner's Officer's Age Appropriate Design Code (AADC).

#### Proportionate and flexible risk-tiering mechanism

6. In considering the application of the Code, it is essential to recognise that not all online services present the same level of risk to children's privacy. The AADC adopts a proportionate approach, requiring more stringent measures for high-risk services, while allowing for less stringent measures for lower-risk services such as SVOD services. The ANZSA supports a similar approach for the Australian Code.
7. The ANZSA recommends that SVOD services are specifically identified in the Code as low-risk and subject to only minimal compliance obligations, in line with the DIS Online Safety Standard, in which SVOD services fall under a low Tier 3 risk level.
8. To ensure that regulatory requirements are proportionate and effective, we recommend that the Code incorporates a risk-tiering mechanism. This would involve categorising online services according to the level of risk they pose to children, based on factors such as:
  - the nature and extent of user interaction (for example, whether the online service provides features that allow users to interact with one another);
  - the nature of how content is controlled (for example, whether the content is curated and exclusively controlled by the service provider, or content can be uploaded by any user that participates in that platform, such as user-generated content that may not have appropriate controls or moderation);

- the access to the content and therefore the accountability and barriers to entry (for example, whether it is free for anyone to sign up or requires a paid account);
  - the volume and sensitivity of personal data collected and processed;
  - the nature and extent of personal information that is collected, as well as how it is used and disclosed;
  - the presence of features that facilitate direct communication, sharing or public posting;
  - the type of restrictions for children which already exist (for example, the credit card method of payment or other forms of age gating, or the presence of an adult account owner who actively decides to give their children access); and
  - the target audience for the service, namely whether it is directed at adults or children (demonstrated through the type of content, the product design and communications).
9. Further, the Code should not place undue regulatory requirements on services that collect certain data solely to support service's operations or compliance with existing legislative requirements. For example, SVODs collect IP information to ensure that Australian members are presented only with films and series licensed to the Australian market, and that these display local, Australian ratings.
10. Adopting such an approach would also allow the nature of SVOD services to evolve over time, with the relevant level of risk assessed at the time any new functionality is introduced.

#### Guidance on when a service is 'likely to be accessed by children'

11. The ANZSA supports the adoption of the 'likely to be accessed by children' threshold contained in the AADC. This is derived from the AADC's risk-based approach which is partly governed by whether a child is likely to access a service. When determining whether a child is likely to access a service, the AADC requires online service providers to consider:
- the nature and content of their service and whether this has appeal for children;
  - the way in which the service is accessed; and
  - any measures put in place to prevent children gaining access.
- This risk-based approach is practical and flexible, accounting for both a child's actual and potential use of a service, while having regard to a provider's existing safeguards.
12. We welcome OAIC guidance on when a service is 'likely to be accessed by children'. This should be based on the AADC and tailored to the Australian context.
13. At a high level, the AADC's threshold ensures that enhanced privacy protections apply where children are exposed to "significant risk". That is, the 'likely to be accessed by children' threshold is tied to "*clear evidence of significant risk arising from the use of children's data*".<sup>2</sup> We encourage the OAIC to take a similar approach. This would avoid a blanket application of stringent requirements to all online services, understanding that different online services will bring varying degrees of risk to children's privacy.
14. Further, Code requirements should only apply to parts of a service that are 'likely to be accessed by children'. Code requirements should not apply to other parts of the service which are **not** likely to be accessed by children (whether due to access controls or the content of such materials).
15. Such an approach is also more likely to give effect to the principle of the 'best interests of the child'. Overly prescriptive or burdensome obligations that apply in circumstances where the risks to children are low would likely operate to prevent children from accessing services. This is a risk highlighted in the AADC. In the context of SVOD services, this could prevent children from accessing age-

<sup>2</sup> Information Commissioner's Office (UK), *Age appropriate design: a code of practice for online services – About this code* (Web Page, 2025) <<https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/age-appropriate-design-a-code-of-practice-for-online-services/about-this-code/>>.

appropriate entertainment and educational content. In this regard, we note that it is commonly accepted that age-appropriate media content has a positive effect on a child's intellectual, social and emotional development.

The Code should be anchored on the UNHCR principle of the 'best interests of the child'.

16. This principle provides a clear foundation upon which services can assess what is most beneficial to the child's overall well-being, development and protection as compared against other interests. As cited by the UNCRC General Comment 25, the best interests of the child is a dynamic concept that requires an assessment appropriate to the specific context, but suggests that parties "ensure that, in all actions regarding the provision, regulation, design, management and use of the digital environment, the best interests of every child is a primary consideration".<sup>3</sup> Adopting the 'best interests of the child' principle would also align with recommendation 16.4 from the 2022 Privacy Act Review Report which recommended that "entities have regard to the best interests of the child as part of considering whether a collection, use or disclosure is fair and reasonable in the circumstances", and recommendation 16.5 which recommended that "the substantive requirements of the Online Children's Privacy Code could address how the best interests of child users should be supported in the design of an online service".<sup>4</sup>

#### Age gating and access control mechanisms

17. The ANZSA takes the view that age gating and access control mechanisms are helpful in determining whether obligations under the Code should apply, as well as the extent to which they should apply. For example, such tools can help online service providers to:
  - prevent children from accessing services that are not intended for them, thereby reducing the risk of inappropriate data collection; and
  - ensure that, where children do access a service, the provider is aware of their age and is in a position to apply relevant privacy protections.
18. SVOD services often implement age gating tools to restrict access to their platforms or certain content. For example, requiring a credit card to sign up for a subscription acts as a form of recognised age assurance, generally ensuring that only adults can create accounts. This reduces the likelihood of children accessing the service on their own accord (and without supervision), thereby minimising the collection of their personal information (for example, in the process of sign-up).
19. Many SVOD services also offer parental controls and the ability to create child-specific profiles. These profiles can limit the type of content accessible (including by use of a PIN) and restrict the collection of unnecessary personal information from child-specific profiles.
20. Although SVOD services already conduct age assurance, we submit that the Code should not prescribe mandatory age assurance methods for online services which children are not likely to use. Rather, the Code should be focused on those services that pose the highest risks to minors. In line with the AADC, the Code ought to recognise that services should have the flexibility to use age assurance methods that suit the specifics, and risk categorisation of that service. As noted in the AADC, services must determine "*whether the level of certainty they have about the age of their individual users is appropriate to the risks that arise from data processing*".<sup>5</sup> Lastly, there are practical

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<sup>3</sup> UN Committee on the Rights of the Child, *General Comment No 25: Children's Rights In Relation to the Digital Environment* (2021) [12].

<sup>4</sup> Attorney-General's Department, *Privacy Act Review Report* (2022) 124.

<sup>5</sup> Information Commissioner's Office (UK), *Age appropriate design: a code of practice for online services – Age appropriate application* (Web Page, 2025) <<https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/age-appropriate-design-a-code-of-practice-for-online-services/3-age-appropriate-application/>>.

questions on how age assurance should be conducted. For example, how it would be conducted on televisions, a common shared device on which families watch SVOD content.

21. Although it should not be made mandatory for SVOD services, age gating – using the National Classification Scheme’s age-ratings – should be recognised as one of the mechanisms that may be used by SVOD services to respond to the privacy risks of children where appropriate.

#### Flexible age-based guidance

22. The ANZSA supports the provision of age-based guidance to the extent that it is voluntary and flexible, in line with the AADC. While the AADC provides developmental age ranges (0-5, 6-9, 10-12, 13-15 and 16-17), “*there is no requirement for you to design services for development stages that aren’t likely to access your service, or to use these exact age ranges if you can justify why slightly different age groupings are more appropriate for your particular service*”.<sup>6</sup> We encourage the OAIC to take a similar approach.
23. As mentioned above, the National Classification Scheme applies to the content provided by SVOD services, where regulated services are required to rate content as G, PG, M, MA15+ and R18+. Australia’s classification ratings are well known to the public, designed to ensure that appropriate materials are able to be viewed by children and relied upon by parents and guardians when making viewing decisions for their children.
24. If mandatory, adopting a different set of age ranges from the National Classification Scheme would make it very difficult (if not impossible) for SVOD services to organise their services in an efficient way, and would make using the service harder and more cumbersome for its users, including adult account holders. This would make it more difficult for parents to ensure that only age-appropriate content is presented to children. We also struggle to see what the incremental benefit would be if such an approach were taken in the SVOD context. Furthermore, such an approach is likely to require the collection of additional personal information about child viewers.
25. For completeness, we note that the AADC itself recognises the need for flexibility, stating that there is no requirement to design services for developmental stages that are not likely to access a particular service, nor to use the exact age ranges set out in the Code if an entity can justify why different groupings are more appropriate.<sup>7</sup> For the reasons set out above, the Code should give effect to this principle in the Australian SVOD context.

#### Recognition of other existing regulatory frameworks

26. In the context of SVOD, existing regulatory frameworks already address many of the harms that the Code might otherwise address. While we acknowledge that the purpose of the *Online Safety Act 2021* (Cth) (**Online Safety Act**) is different from the proposed Code, we note that the recent Rickard Review of the Online Safety Act (**Rickard Review**) proposed that content which is subject to the National Classification Scheme (which covers the content provided by SVOD services) should be excluded from eSafety’s remit (except where features that are uniquely interactive are enabled). We submit that the OAIC should consider whether the Code will overlap with any existing regulatory frameworks, whether it is more appropriate to rely upon those existing regulatory frameworks and the potential burden that is placed on businesses which are the subject of overlapping regulatory frameworks.

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<sup>6</sup> Information Commissioner’s Office (UK), *Age appropriate design: a code of practice for online services – Age appropriate application* (Web Page, 2025) <<https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/age-appropriate-design-a-code-of-practice-for-online-services/3-age-appropriate-application/>>.

<sup>7</sup> Information Commissioner’s Office (UK), *Age appropriate design: a code of practice for online services – Age appropriate application* (Web Page, 2025) <<https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/age-appropriate-design-a-code-of-practice-for-online-services/3-age-appropriate-application/>>.

27. The ANZSA encourages the OAIC to consider whether using definitions carried over from the Online Safety Code is the most suitable approach, and we suggest tiering services based on risk, rather than the Online Safety Act's categorisation, may be more suitable.

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## 4 Conclusion

Thank you for the opportunity to provide this submission. Please do not hesitate to contact me if the ANZSA can provide any further information, details or examples or otherwise assist with this review process.

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