



Public Health Association
AUSTRALIA

Draft Children's Online Privacy Code (consultation for industry, civil society, academia)

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Public Health Association AUSTRALIA

The **Public Health Association of Australia** (PHAA) is Australia's peak body on public health. We advocate for the health and well-being of all individuals in Australia.

We believe that health is a human right, a vital resource for everyday life, and a key factor in sustainability. The health status of all people is impacted by the social, commercial, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the root causes of poor health and disease. These determinants underpin the strategic direction of PHAA. Our focus is not just on Australian residents and citizens, but extends to our regional neighbours. We see our well-being as connected to the global community, including those people fleeing violence and poverty, and seeking refuge and asylum in Australia.

Our mission is to promote better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

Our vision is for a healthy population, a healthy nation and a healthy world, with all people living in an equitable society, underpinned by a well-functioning ecosystem and a healthy environment.

Traditional custodians - we acknowledge the traditional custodians of the lands on which we live and work. We pay respect to Aboriginal and Torres Strait Islander elders past, present and emerging and extend that respect to all other Aboriginal and Torres Strait Islander people.

Introduction

PHAA welcomes the opportunity to provide feedback on the draft Children's Online Privacy Code.

PHAA supports a rights-based approach to children's privacy. Children are rights-holders under the United Nations Convention on the Rights of the Child (UNCRC), including rights to privacy, participation, protection and access to information.¹ PHAA welcomes the Code's focus on the best interests of the child and considers that implementation of the Code should be informed by the UNCRC and General Comment No. 25 on children's rights in relation to the digital environment.

PHAA strongly supports the development of an effective and enforceable Children's Online Privacy Code that prioritises the best interests, rights, safety and wellbeing of children and young people in digital environments.

Children's privacy has important implications for public health. Digital environments increasingly shape children's health behaviours, social development, mental wellbeing, access to information, consumer exposure and long-term health outcomes.² The large-scale collection, analysis and commercial use of children's personal information creates risks that extend well beyond privacy harms alone.

Online platforms, applications and digital services are now central environments in which children learn, socialise, play and consume media. These environments are frequently designed to maximise engagement, data extraction and commercial profit. As a result, children are exposed to behavioural profiling, personalised content, targeted advertising and manipulative design features in ways that they often cannot reasonably understand or meaningfully consent to.

PHAA considers that stronger protections are needed to reduce inappropriate commercial use of children's information and to ensure digital environments support, rather than undermine, child health and wellbeing.

The Code represents an important opportunity for Australia to establish a child-centred, prevention-focused and rights-based framework for digital privacy protections.

Response to the Exposure Draft and Explanatory Statement

Children's privacy as a public health issue

PHAA considers that children's online privacy has important implications for health and wellbeing. There is growing evidence that digital environments influence a wide range of outcomes, including mental health, social development, consumer behaviours and exposure to commercial marketing. The collection and use of children's personal information increasingly underpins many of these digital experiences.

Potential public health considerations include:

- Exposure to unhealthy food and beverage marketing³
- Exposure to gambling, vaping and other harmful commodity promotion⁴
- Addictive or highly engaging platform design features⁵
- Sleep disruption⁶
- Mental health and wellbeing impacts⁷
- Cyberbullying and harmful online interactions⁸
- Body image concerns⁹

Commercial determinants of health

PHAA notes that children's personal information may be used to facilitate targeted marketing of products and services associated with adverse health outcomes, including unhealthy foods and beverages, gambling products and vaping products.¹⁰ While these issues extend beyond the immediate scope of privacy regulation, they demonstrate the important public health implications of children's data collection and profiling. The Code provides an opportunity to reduce the capacity for children's personal information to be used in ways that support commercial practices that may be detrimental to health and wellbeing.

Consumer manipulation and commercial exploitation

PHAA is particularly interested in the role that data collection, profiling and targeted advertising may play in facilitating highly personalised forms of marketing and persuasion directed at children and young people.

These practices increasingly occur across a wide range of digital environments, including social media platforms, messaging services, gaming platforms, video-sharing services and other online applications commonly used by children. While these forms of targeting are often not visible to users, they may influence the content children see, the products they are exposed to and the behaviours they adopt.¹¹

PHAA notes that the draft Code appropriately recognises the potential risks associated with the collection and use of children's personal information for commercial purposes. However, further consideration may be warranted regarding how children's data are collected, shared and used

across increasingly sophisticated digital advertising and marketing systems, and whether existing safeguards are sufficient to protect children's interests.

PHAA is also interested in whether the scope of the Code adequately captures all child-facing services that may collect, use or share children's personal information. This may include emerging technologies and services that are not traditionally considered social media platforms, such as gaming environments, messaging applications, artificial intelligence-enabled services and other digital products commonly accessed by children and young people.

Further consideration may also be warranted regarding services that may fall outside the intended scope of the Code but nevertheless collect sensitive and substantial amounts of information about children. Examples may include health and wellbeing applications, mental health apps, telehealth services, wearable devices and other digital health technologies designed for, or commonly used by, children and adolescents.

PHAA also notes the rapid emergence of services incorporating generative artificial intelligence and large language models (LLMs). These technologies present new challenges for privacy regulation, particularly where children's personal information may be used to train, refine or interact with AI systems.¹² Further consideration may be warranted regarding how the Code will apply to AI-enabled services commonly accessed by children and young people.

PHAA welcomes feedback from stakeholders regarding whether there are important categories of child-facing services that are not adequately addressed by the current draft Code and whether additional safeguards may be required in relation to emerging technologies and digital health services.

Profiling and behavioural advertising

PHAA is broadly supportive of stronger protections relating to profiling, behavioural targeting and personalised advertising directed at children.

Children and young people may have limited capacity to understand the extent to which personal information is used to shape content, advertising and online experiences. Data-driven profiling can enable highly personalised marketing and behavioural influence, often in ways that are not visible or easily understood by users.¹³

Potential issues for consideration include:

- The use of personal information for behavioural advertising
- Profiling of children for commercial purposes
- Collection of information beyond what is reasonably necessary to provide a service
- Use of inferred or sensitive personal information
- Transparency regarding algorithmic decision-making. One study found that young children were likely to encounter inappropriate content on YouTube through algorithms, with limited protective features.¹⁴
- The potential cumulative impacts of profiling across multiple platforms and services.

PHAA considers that children's best interests should be a central consideration when determining whether particular forms of profiling or targeted advertising are appropriate. This is reflected in the European General Data Protection Regulation (GDPR) which recognises the need for a higher level of protection to children's data, including in relation to profiling.¹⁵

The draft Code's emphasis on information being "clear, simple and easily accessible" is a positive step and may help ensure children's interests remain central to privacy decision-making.

PHAA welcomes further input on whether the proposed protections are sufficient and whether stronger restrictions on profiling or behavioural advertising should be considered.

Manipulative design and "dark patterns"

PHAA notes there is growing concern regarding the use of manipulative design features, sometimes referred to as "dark patterns".

These practices may influence users to spend more time on platforms, disclose additional information or make decisions that are not in their best interests. Children and young people may be particularly susceptible to such practices due to their stage of cognitive and social development.¹⁶

Examples may include:

- Endless scrolling features
- Autoplay functions
- Frequent notifications
- Complex privacy settings
- Interface designs that discourage privacy-protective choices
- Gamified engagement mechanisms
- Personalised prompts designed to increase engagement or information sharing

PHAA welcomes provisions within the draft Code that seek to minimise unnecessary collection of children's information. However, further consideration may be warranted regarding whether the Code adequately addresses the use of personal information to drive engagement-maximising design features or other forms of behavioural influence.

For example, Section 9 requires online services to collect only information that is strictly necessary for service delivery. However, it is less clear whether safeguards sufficiently address the subsequent use of that information in ways that may encourage prolonged engagement, repeated use or other potentially manipulative behaviours.

PHAA welcomes further feedback regarding whether additional protections relating to manipulative design features should be considered.

Equity considerations

PHAA recognises that the impacts of digital environments, data collection and targeted advertising may not be experienced equally across the population.¹⁷

Particular consideration may be warranted for children experiencing socioeconomic disadvantage, Aboriginal and Torres Strait Islander children, children with disability, children living in regional and remote areas, and children experiencing mental ill-health or other forms of vulnerability.

PHAA welcomes feedback regarding whether there are specific equity, child rights or Indigenous data sovereignty considerations that should be reflected in the final submission.

The Code should support equitable protections for all children and young people while recognising that some groups may face greater exposure to privacy-related harms.

PHAA also notes that some children may not have straightforward access to a parent or guardian who can support privacy-related decisions. Consideration should be given to ensuring that privacy protections operate effectively for children in care, children experiencing family disruption and other vulnerable groups.

Conclusion

PHAA supports the broad direction of the draft Children's Online Privacy Code and welcomes the Australian Government's efforts to strengthen privacy protections for children and young people in digital environments.

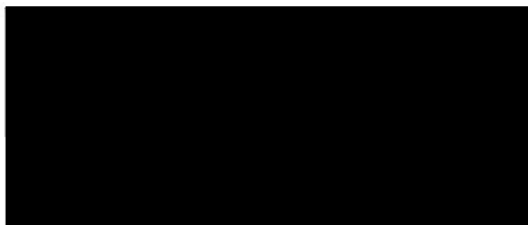
Children's privacy extends beyond consumer protection and technology policy considerations and has important implications for public health. The Code represents an important opportunity to ensure that children's best interests are prioritised in the collection, use and sharing of personal information.

In particular, PHAA considers that further consideration should be given to:

- The role of profiling, behavioural advertising and targeted marketing directed at children and young people;
- The use of children's personal information within complex digital advertising ecosystems, including emerging technologies and child-facing digital services;
- The potential impacts of manipulative design features and "dark patterns" that may encourage excessive engagement or undermine children's privacy and autonomy; and
- Equity considerations, including the impacts on vulnerable populations and the implications for children's rights and wellbeing.

PHAA looks forward to continued engagement as the Code is refined and implemented.

The Public Health Association of Australia appreciates the opportunity to contribute to this consultation. Please do not hesitate to contact us should you require additional information or clarification regarding this submission.




Manager, Policy & Advocacy
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