

Response to the draft *Children's Online Privacy Code*

Executive Summary

The Australian Child Rights Taskforce, Child Fund Australia and [REDACTED] welcome the development of the draft *Children's Online Privacy Code* (the 'Code'). In particular, we welcome that the Code:

- Uses child rights principles and has been developed with the aim of placing children and young people as key participants in its operation
- Seeks to align the Code as a key component of Australia's privacy framework
- Has acknowledged and supported children's right to participate, including through consultations with children and their supporters in the development of the draft Code
- Has the intention to advance children's rights in the digital world, including by:
 - Confirming that entities can only collect data by default when it is strictly necessary
 - Introducing requirements that collection, use and disclosure of children's information can only occur where it is in the best interest of the child
 - Clarifying that consent collection mechanisms must be effective to support children
 - Introducing the right to request data deletion and destruction.

The draft Code, or guidelines around the activities defined as 'health service providers', may require revisions to avoid unintended limitations in the provision of confidential, essential services to under-15-year-olds, such as legal and social services.

We note that guidance will be required to support understanding of the operation of the Code, and support needed to build the skills, knowledge and awareness of how the Code will operate in practice for all stakeholders. Formal guidance, in particular, will be needed to address the challenges of interpreting the best interests principles in accordance with international child rights jurisprudence and to ensure their effective implementation as regulation and best practice.

We recognise and support the intent of the Code, and its specific requirements, to shift many of the commercial practices of the digital industry that have embedded and normalised extractive and unfair data-handling practices, especially when engaging with children. Effectively challenging these practices will require a strong, proactive focus on enforcing the Code.

This will require additional resourcing for the OAIC and other relevant regulators, as well as to support ongoing collaboration with civil society and other relevant industry sectors to build and share knowledge, including to monitor the effective implementation of the Code.

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About the authors

The Australian Child Rights Taskforce is a civil society coalition of over a hundred organisations and individuals committed to the protection, promotion and fulfilment of the rights of all children and young people in Australia. The Taskforce contributes to policy and practice development in child rights and in supporting the participation of children and young people in decision-making in their lives. In listening to the views and experiences of children and young people, the Taskforce recognises and supports the importance of respecting their rights in the digital world as part of their lived experiences.

ChildFund Australia is an independent international development organisation working to end poverty for children in the world’s most vulnerable communities. We partner to create change for children and young people – in all their diversity – to realise and assert their rights. This includes advancing digital rights, equipping children and communities with online safety skills, advocating for system change, and strengthening support services when online harm occurs.

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Response to the Draft Code

The Code uses child rights principles

We welcome the draft *Children's Online Privacy Code* as a positive step towards a regulatory framework that advances children's rights in the digital world. Children's right to privacy is assured in Article 16 of the *Convention on the Rights of the Child*.¹ This was reinforced by the United Nations Committee on the Rights of the Child in its General Comment 25 on children's rights in the digital world, which outlined that:

*"Privacy is vital to children's agency, dignity and safety and for the exercise of their rights – it is also central to the realisation of children's rights as a whole. Children's personal data are processed to offer educational, health and other benefits to them."*²

The draft Code seeks to apply the 'best interest principle' and to require that children's best interests are a key consideration in decision-making processes involving children's data. The Code also seeks to integrate child rights alongside data protection principles. This is a welcome move towards mainstreaming child rights across digital and platform regulation.

The authors welcome this development. This is a more considered and comprehensive commitment to child rights than is often found in policy development in Australia today. We hope that the example of the Code and its development will be shared and followed in policy development impacting on children and their families and communities more broadly in Australia and beyond. It stands in contrast to the rushed approach to the introduction of a social media ban which failed to give due consideration to the views and rights of children and young people.

Children and young people participated in the development of the draft Code

Children have the right to participate in decision-making processes that affect them, as assured by Article 12 of the *Convention on the Rights of the Child*.³ Too often in policy-making processes, including in digital and platform policy, this right is not realised; policies are often made with limited or no meaningful engagement with children and young people. The effort to ensure meaningful engagement of children is avoided or ignored. The level of care and active engagement of children and their views (and of those who work with them) that the OAIC has sought and supported has been a landmark development in public policy. We welcome this.

We believe this helps realise children's right to participation in itself and will enhance the quality and efficacy of the Code. We hope this approach provides a model for future policy development, including in digital and platform regulation.

¹ United Nations General Assembly 1989 *Convention on the Rights of the Child*
<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

² Paragraph 67, Committee on the Rights of the Child 2021 *General comment No. 25 (2021) on children's rights in relation to the digital environment*
<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021>

³ United Nations General Assembly 1989 *Convention on the Rights of the Child*
<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

The Code should advance children's rights online

We welcome a number of requirements specified within the Code, that should help advance children's rights in practice. These include:

- Confirming that entities can only collect data about children by default when it is strictly necessary (Section 9). This should begin to address and limit the previously unconstrained collection of children's data that is often associated with social media platforms,⁴ ed-tech⁵ platforms, and 'kid-tech'.⁶
- Introducing requirements that collection, use and disclosure of children's information can only occur where it is in the best interest of the child (Sections 10 & 11). We note that the key intent of this approach is to curtail the use of children's data that is unsafe – such as the unnecessary collection or broadcasting of children's location data – or commercially and socially exploitative, such as personalised advertising.⁷
- Clarifying that consent collection mechanisms must be meaningful and appropriate (Sections 14-21). Currently, too many consent mechanisms are not fit for purpose, including bundled consent, information that requires unreasonably sophisticated levels of literacy (for adults as well as children), and formats that are obfuscating.⁸
- Introducing the right to request data deletion and destruction (Section 32). This is a right that Australian children and young people have requested, and should offer opportunities for children to exercise greater control over their digital footprints.⁹

The Code needs additional clarity around exemptions for 'essential services'

We note that the intention of the Code was not to diminish existing standards around the requirement of 'data consent'. The guidance outlines that *in general* children under the age of 15 require parental consent.¹⁰ The draft Code notes that it applies to providers of a social media service, a relevant electronic service or a designated internet service that either offers services (or activities) that are likely to be accessed by children and/or are primarily concerned with the activities of children. There is an exclusion for health providers. However essential services, especially legal and social care services, are not offered an exemption. Essential services that provide an online website or other digital service, such as a support group, may be covered by the Code as a designated internet service or relevant electronic service that is likely to be accessed by children. Further, as online service provision expands, essential services may increasingly fall under the Code's remit.

⁴ See for example, recent ICO Investigations *ICO 2025 Investigations announced into how social media and video sharing platforms use UK children's personal information* <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2025/02/investigations-announced-into-how-social-media-and-video-sharing-platforms-use-uk-children-s-personal-information/>

⁵ Human Rights Watch 2022 *How Dare they Peep into my Private Life?* <https://www.hrw.org/report/2022/05/25/how-dare-they-peep-my-private-life/childrens-rights-violations-governments>

⁶ GPN 2025 *Global Privacy Sweep Report* <https://www.oaic.gov.au/news/media-centre/2025-global-privacy-sweep-puts-websites-and-apps-used-by-children-under-the-microscope>

⁷ See for example, ICO 2024 *Priorities to protect children's privacy online* <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2024/04/ico-sets-out-priorities-to-protect-childrens-privacy-online/>

⁸ See for example, Reset. Tech 2021 *Did we really consent to this?* <https://apo.org.au/node/330983>

⁹ See for example, Reset. Tech 2025 *Consultation around the right to delete data: specific requirements, deliberately cut against the grain of an industry that has embedded and normalised extractive and unfair data-handling* <https://apo.org.au/node/332248>

¹⁰ Para 61 of the APP Key Concepts states that 'If it is not practicable or reasonable for an APP entity to assess the capacity of individuals under the age of 18 on a case-by-case basis, the entity may presume that an individual aged 15 or over has capacity to consent, unless there is something to suggest otherwise. An individual aged under 15 is presumed not to have capacity to consent' See OAIC nd Chapter B: Key concepts <https://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-guidelines/chapter-b-key-concepts>

For these services, seeking parental consent for under-15-year-olds may be inappropriate (e.g., in contexts of family violence or in the case of confidential health or legal services). We note concerns around interactions in protections requiring parental involvement, including for children and young people living in kinship or out-of-home care or independently. To avoid the Code limiting the provision of online essential services to under-15-year-olds in situations where it would be inappropriate to gather parental consent, changes will be necessary.

This may require allowing an exemption not from the operation of the Code but of a requirement to seek parental consent for children under 15 years of age in circumstances where the essential online service provider (including legal services) already has appropriate protections for the privacy and personal information of the child or other children involved in the delivery of the service. This includes and is often achieved by an obligation of confidentiality to the child as a client that prevents the sharing of any relevant information with any other person (including a parent) unless the child permits it (or some other legal authority directs it).

The policies, procedures and protections of such service providers are also shaped by the skills of those responding to the approach by the child for assistance. The service provider does not approach the child. It makes an assessment of the child's approach as a request for information or support. It applies the professional guidelines of the provider and with the skills and understanding of how to communicate appropriately with children.

This review should also consider the relatively common circumstances where a child seeks assistance from a service provider on behalf of another child (including a sibling or peer).

We encourage consideration around the scope of coverage of requirements for consent in the Code. There is also the opportunity to build awareness in the wider community sector about privacy obligations and protections where assistance may be provided by smaller organisations or individuals currently unaware of their responsibilities to protect the privacy of children (and others) both online and in 'the real world'.

Exemption for health services

The definition of health providers is not straightforward, and the OAIC notes that *'The Privacy Act does not specify which bodies are 'competent health or medical bodies''*.¹¹ However, guidance from the OIAC outlines the types of services that should be considered health service providers, noting that they undertake activities such as:¹²

1. Diagnosing or treating illness or disability
2. Assessing, maintaining or improving an individual's physical or psychological health
3. Managing an individual's health
4. Recording an individual's health to assess, maintain, improve or manage it
5. A pharmacist dispensing prescription drugs or medication.

¹¹ OAIC nd *Introduction and Key Concepts – Health Service Providers*

<https://www.oaic.gov.au/privacy/privacy-guidance-for-organisations-and-government-agencies/health-service-providers/guide-to-health-privacy/introduction-and-key-concepts>

¹² OIAC nd *What is a health service provider* <https://www.oaic.gov.au/privacy/your-privacy-rights/health-information/what-is-a-health-service-provider>

Next steps & effective implementation

Guidance, review and improvement

There may be challenges in understanding and implementing the Code's provisions and protections that emerge over time, and we encourage a commitment to developing guidance, ongoing review and improvement.

The need for clarity and guidance about how 'best interests' will be applied

While the inclusion of the 'best interest' principle is welcome in integrating child rights, effective implementation will require clear guidance for industry. We recommend that the OAIC consult and publish formal guidance as soon as possible.

The best interests principle (or *best interests of the child*) is a foundational pillar of international human rights law. Established under Article 3 of the UN Convention on the Rights of the Child¹³ (UNCRC), it mandates that the welfare of children must be a primary consideration in all actions, legislation, and judicial decisions affecting them.¹⁴ However, it is not always clear how children's best interests should be interpreted in legal or regulatory situations.¹⁵

There are different facets of the principle to be considered and made clear in formal guidance:

- As a primary consideration: It requires decision-makers to systematically evaluate how a child's rights and development (physical, psychological, and moral) will be affected. Determining children's best interests 'should not be confused with the task of balancing children's interests against the desires of parents or the commercial interests of companies. In each of those balancing considerations best interests will be a primary consideration'.¹⁶
- As a concept: It operates as a substantive right, an interpretive legal principle, and a procedural rule to ensure children's rights are protected.
- As an ongoing guide: Assessments and processes must allow for changing circumstances, evolving capacity and the difference in individual circumstances for each child.¹⁷

¹³ United Nations General Assembly 1989 *Convention on the Rights of the Child*
<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹⁴ See for example, Lila Garayová 2025 'The Best Interests of the Child Principle' *Central European Academy Law Review*, 2(1)

<https://doi.org/10.62733/2024-1.9-28>, and Save the Children UNCRC Article 3: *Safeguarding the best interests of the child*

<https://www.savethechildren.org.au/about-us/save-the-childrens-charity-work/uncrc-article-3-best-interests-of-the-child>, and Dina Imam Supaa 2014

'Establishing The Best Interests Of The Child Rule As An International Custom' *International Journal of Business, Economics and Law*, 5(4)

<https://ijbel.com/wp-content/uploads/2014/12/LAW-48-Establishing-The-Best-Interests-Of-The-Child-Rule-As-An-International-Customs.pdf>, and

Attorney-General's Department nd *Rights of Parents and Children*

<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/rights-parents-and-children>

¹⁵ For example, the need for clarity and guidance around the principle was explored in 2010 in the *Seen and Heard* Review. Australian Law Reform Commission 2010 *Seen and Heard*

<https://www.alrc.gov.au/publication/seen-and-heard-priority-for-children-in-the-legal-process-alrc-report-84/16-childrens-involvement-in-family-law-proceedings/the-best-interests-principle/>

¹⁶ Sonia Livingstone, Nigel Cantwell, Didem Özkul, Gazal Shekhawat, Beeban Kidron *The Best Interests of Children in the Digital Environment*

https://researchonline.lse.ac.uk/id/eprint/122492/3/Best_Interests_of_the_Child_FINAL.pdf

¹⁷ See for example Francesca Ippolito 2022 'The best interests of the child: Another string to the environmental and climate protection bow?' *Questions of International Law*, Zoom-out 89

<https://www.qil-qdi.org/the-best-interests-of-the-child-another-string-to-the-environmental-and-climate-protection-bow/>, and Julian März 2022 'What does the best interests principle of the convention on the rights of the child mean for paediatric healthcare?' *European Journal of Pediatrics* 181(11)

<https://link.springer.com/article/10.1007/s00431-022-04609-2> Federica Versea 2023 'The best interest of the child as put into practice worldwide'

Humanium <https://www.humanium.org/en/the-best-interest-of-the-child-as-put-into-practice-worldwide/>, and Attorney-General's Department nd *Rights of Parents and Children*

<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/rights-parents-and-children>

We note that the UN Human Rights Council has developed formal guidelines for determining children's best interests,¹⁸ which may serve as a useful starting point for developing guidance.

The UK Information Commissioner's Guidance on implementing their *Age Appropriate Design Code* includes concrete recommendations and steps that may be helpful.¹⁹ UNICEF has undertaken an analysis of the principle in the context of the digital world, including recommendations for designs of systems that might support this.²⁰

The need for effective implementation

The intent of the Code, and many of its specific requirements, deliberately cut against the grain of an industry that has embedded and normalised extractive and unfair data handling practices, especially when it comes to children's data. Effectively challenging these practices will require a strong and proactive focus on enforcement.

There are requirements laid out in the Code that are already reflected in the APP and the *Privacy Act*. Too often, these have been ignored, such as existing guidance around seeking parental consent to process data for under-15-year-olds, including on social media platforms.²¹

At the same time, there are requirements that are new, such as the requirement to limit data use to where it is in children's best interest, and they may be actively resisted by industry.²² The effective implementation of the Code will not happen by chance.

Ongoing investigation, monitoring and research are going to be necessary to ensure that the Code is adopted and effectively implemented by industry. This will require dedicated resourcing for the OIAC to ensure that the Code delivers meaningful change for children's rights.

We recognise the collaborative approach adopted by the OAIC throughout the Code development process, and hope that this continues throughout the Code's implementation and review phases. We would welcome guidance from the OAIC about what support civil society could best provide when it comes to researching and investigating compliance with the Code.

¹⁸ UNHRC 2026 UNHCR *Guidelines on Formal Determination of the Best Interests of the Child*
<https://www.unhcr.org/sites/default/files/legacy-pdf/4ba09bb59.pdf>

¹⁹ ICO 2023 *Best Interests of the child self assessment*

<https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/best-interests-self-assessment/>

²⁰ UNICEF 2024 *Children's Best Interests in Digital Policy and Practice*

<https://www.unicef.org/innocenti/media/12841/file/UNICEF-Innocenti-Children's-Best-Interests-Digital-Policy-Practice-report-2026.pdf>

²¹ Noting that the *Social Media Minimum Age Act* restrictions may not address this. The definition of Social Media Services under the *Online Safety Act* does not necessarily align exactly with the definition of age restricted social media platforms, in particular with recent changes that limit restrictions to platforms that deploy 'high risk' features only. See for example will require dedicated resourcing for the OIAC Minister Wells 2026 *Social media minimum age update targets harmful tools*

<https://minister.infrastructure.gov.au/wells/media-release/social-media-minimum-age-update-targets-harmful-tools>

²² For example, we note that in the EU where requirements around not using children's data to deliver advertising to them based on profiling — emerging from overlapping requirements in both the Irish Data Protection Committee's *Fundamentals for a Child Oriented Approach to Data Collection* and the *Digital Services Act* — has resulted in only two main VLOPs turning off the delivery of ads in children's feeds (Facebook and Instagram). Other VLOPs, such as TikTok and YouTube, continue to serve ads to children based on their country of location and broad age status (under or over 18). We would argue that platforms have a track record of selective and malicious compliance with regulation, which should not be underestimated.