



Australian Government

**Department of Health,
Disability and Ageing**

Carly Kind, Privacy Commissioner
Office of the Australian Information Commissioner

By email: copc@oaic.gov.au

Dear Commissioner Kind,

Exposure Draft of the Children's Online Privacy Code
Our ref: LEX 57053

Thank you for the opportunity to comment on the exposure draft of the Children's Online Privacy Code (**Code**). We understand the Code is to be made under section 26GC of the *Privacy Act 1988* (**Privacy Act**) and must be registered under section 26H of the Privacy Act by 10 December 2026.

The Department of Health, Disability and Ageing (**the department**) welcomes the opportunity to review the exposure draft of the Children's Online Privacy Code. Our comments are below for your consideration.

The department is generally supportive of elevated privacy obligations applying to the delivery of online services that are likely to be accessed by children, or are primarily concerned with the activities of children.

Guidance Material

The department appreciates the detailed consultation material provided by the Office of the Australian Information Commissioner (OAIC) to accompany the exposure draft.

The OAIC's child-specific consultation material and exposure draft material, which contains colourful pictures, cartoons and concise language, provides a helpful example of the standard expected in ensuring meaningful engagement with children. The department respectfully requests that the OAIC consider providing further

guidance material and frequently asked questions for APP entities to assist with interpreting and adhering to the Code, similar to the resources provided in connection with the United Kingdom's Age-Appropriate Design Code.

Transition Period

The department respectfully submits that a transition period of 12 months be given to APP entities to implement the new requirements in the Code, like the transition period for compliance with the social media minimum age reform laws. This time will assist to ensure that the Code is implemented in a considered and effective way.

The department recognises that some Government agencies will be subject to the Code, and it will take a reasonable time to understand the extent to which policies, procedures, and practices will need to be updated. By way of example, the department administers a wide range of Commonwealth funded programs and grants across the health, disability, and ageing portfolio, which are targeted at better health and wellbeing for all Australians. The department supports high-quality, best practice service delivery and expects adherence to relevant Commonwealth laws, including in relation to the treatment of personal, health and sensitive information by grantees. It is important that providers of Commonwealth-funded grants and programs are given a reasonable time to become compliant with the Code.

Detailed Comments

The following comments are provided below in reference to individual sections of the Code. These comments focus on matters of interpretation, operation and implementation of the Code.

Section 5 - Additional entities bound by the Code

The department encourages the Information Commissioner to make written guidelines to assist entities in determining the service-based test in section 5 read with subsection 26GC(5) of the Privacy Act. Read together, we consider that these provisions mean that the Code applies to entities if:

- a) the entity is a provider of a social media service, relevant electronic service or designated internet service (all within the meaning of the *Online Safety Act 2021*),

- b) the service is likely to be accessed by children or is primarily concerned with the activities of children, and
- c) the entity is not providing a health service.

The department notes that subsection 26GC(11) of the Privacy Act states that the Commissioner may make written guidelines to determine if *“a service is likely to be accessed by children for the purposes of subparagraph (5)(a)(ii) of the Act”*. The department would also welcome guidance, including examples, for the provisions at (b)-(c) above.

The department would also welcome guidance on the definition of *“designated internet service”* in the *Online Safety Act 2021* for the purposes of the Code. For example, the department notes that the consultation material for children states that the Code is to apply to *“information service websites”*. The department would welcome guidance, for example, on whether this includes information service websites that don’t involve any end-user communication by email or other means, except for allowing an end-user to opt-in to a mailing list and/or submit an enquiry form on a website.

Section 7 - Activities to which the Code applies

Recognising the breadth of government spending programs and activities involving children in the health, ageing and disability portfolio, the department does not consider it would be feasible to identify, and update its administration of, programs and activities that are subject to the enhanced regulatory obligations of the Code by 10 December 2026.

As noted above, the department respectfully submits that a 12-month transition period to provide appropriate time to effectively update policies, procedures and practices, and ensure meaningful engagement by children with the new policies and privacy notices.

Section 23 - APP privacy policy–requirements

Section 23 of the Code states that APP entities must have a privacy policy that is directed specifically at children. The Explanatory Memorandum states that *“an entity may also meet this obligation by only providing a singular privacy policy that is written in clear, simple and accessible language so it can be understood by both*

children and adults". The department would welcome further guidance on this requirement, including an understanding of the desirable readability checker scores/levels for a child focused privacy policy and templates for an appropriate child directed privacy policy.

Dealing with requests for access to, or correction of, information about the handling of personal information, and requests to destroy personal information

Section 28, Division 4 and Division 5 of the Code set out timeframes of 30 days (and 60 days for complex requests), to respond to requests for:

- a) access to information about the handling of personal information,
- b) correction of personal information about children, and
- c) destruction of personal information about children.

As you will be aware, the department is subject to the requirements of the *Archives Act 1983* (Archives Act) in relation to its recordkeeping practices including disposal authorities. If the department were dealing with a document which were not a Commonwealth record for the purposes of the Archives Act, it would be helpful to have additional time to:

- consult, for example, regarding the factors listed in subsection 32(3) of the Code, and
- request an extension from the OAIC in extenuating circumstances.

The department may also find it necessary to consult the National Archives of Australia on some requests under these provisions.

Please contact me via [REDACTED] if you wish to discuss the department's comments on the exposure draft of the Code.

Yours sincerely

[REDACTED]

General Counsel
Commercial and Information Law

12 June 2026