

Children's Online Privacy Code Exposure Draft

Submission June 2026

This submission is in response to the Office of the Australian Information Commissioner's public consultation on the Exposure Draft of the Privacy (Children's Online Privacy) Code 2026 (the Code).

Background

Food for Health Alliance is a leading policy and advocacy voice working to improve diets and prevent overweight and obesity in Australia. We identify how governments across Australia can change laws and policies to improve our food environment. It is a partnership between Cancer Council Victoria, the Global Centre for Preventive Health and Nutrition at Deakin University; a World Health Organization (WHO) Collaborating Centre for Obesity Prevention, Healthway and VicHealth.

A key focus area for Food for Health Alliance is action to protect children from unhealthy food marketing in Australia – and in our view the Children's Online Privacy Code, together with broader privacy reforms, can make a significant contribution to this.

The Children's Online Privacy Code provides an important opportunity to protect children online and create a safe environment that restricts commercial exploitation of children and enables them to participate as digital citizens, while having their best interests protected. Ensuring that Australian children can go online without being targeted with, or having their information used to facilitate exposure to harmful marketing content that undermines their health and wellbeing, must be addressed by the Code and its supporting documentation.

Australian children are exposed to high amounts of marketing for harmful products, including unhealthy food, when they go online. For example, an Australian study found that Australian teens aged 13-17 years are exposed to almost 100 online promotions for unhealthy food every week.¹ Unhealthy food marketing online can take many forms, including posts by influencers, sponsored ad campaigns in social media feeds, branded content shared directly by brands or through users' social networks, apps and games that feature unhealthy food or associated brands and online gaming with product placement.

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Online environments also provide platforms and advertisers with unprecedented access to children's information, allowing advertisers to collect extensive information about children's online behaviour, demographic characteristics, interests and social networks, and then use it to target them with harmful advertising. This poses a significant risk to children's privacy, health and wellbeing, particularly as it is difficult to monitor and to prevent.

Protecting children from exposure to and from the influence of this marketing is important because we know it is harmful to children's health. Clear evidence shows that exposure to unhealthy food marketing influences the foods that children prefer, want and eat.² At a time when around one in four Australian children is above a healthy weight,³ and the vast majority do not eat a healthy diet,⁴ urgent action is needed. This action has strong backing by the Australian public, with 2 out of 3 adults supporting government action to protect children from unhealthy food marketing.⁵

A recent [feasibility study into policy options to limit unhealthy food marketing to children](#) was commissioned by the Australian Government and examined the exposure of Australian children to unhealthy food marketing, and its impact on them, including in online media. The study highlighted results from the recent WHO systematic review and meta-analyses, finding that children exposed to online food marketing were 26% more likely to choose foods that they had seen marketed, and that food marketing was associated with an increase in food intake in children exposed to this marketing.⁶

Key points

We submit the following comments on the content of the Exposure Draft and opportunities for improvement.

1. We strongly support the application of the Code to services that are likely to be accessed by children, and not only those designed specifically for children. This is of fundamental importance as many children access the same services as adults.
2. We strongly support the provision in the Code that collection, use and disclosure of children's personal information must be consistent with the best interests of the child, and that this cannot be overridden by consent.
3. We support the list of suggested factors for entities to consider listed in the Explanatory Statement, however it could be further strengthened to refer directly to the impact on a child's physical and mental *health* – we note that although there is reference to physical and mental impact and to physical and emotional development, there is no express reference to health, and we recommend this be added.
4. The Code, or its supporting documentation such as OAIC produced guidelines, must specify purposes for the collection, use and disclosure of children's personal information that will never be considered in a child's best interests. This must include:
 - any purposes related to harmful industry marketing, including unhealthy food marketing,
 - any collection, use or disclosure by harmful industries, including unhealthy food and drink companies for the purposes of analysing or influencing children's behaviour or decisions in any circumstances, and

- any tracking, profiling, or monitoring the behaviour of children for commercial purposes, in particular by harmful industries.
5. The requirement for the handling of children's information to be consistent with their best interests as set out in the Exposure Draft, currently applies only to children's personal information, defined in accordance with the Privacy Act. This limits the Code's ability to effectively regulate the use of children's information and protect children online, particularly in the context of marketing, as tracking of children's online activity and targeted marketing to children can be done based on unidentified, deidentified or inferred information without necessarily identifying the individual.

To ensure children's best interests are reflected, the Code should prohibit all targeting, tracking, profiling or monitoring of children online for commercial purposes. This must specifically apply to any purposes related to marketing or other activity by harmful industries, including unhealthy food companies.

It must be clear that as well as prohibiting the delivery of targeted advertising and other content to a child, entities cannot collect, use or disclose a child's information to inform marketing or content delivery models or to inform the development of commercial marketing campaigns. It is also important that the prohibition does not permit entities to collect a child's information and then use it for targeting purposes once the child turns 18.

6. These protections must be accompanied by transparency obligations on entities to publicly disclose the data they collect from and about children and the purposes for which they use it. This will ensure protections can be meaningfully monitored and enforced.

Conclusion

The Children's Online Privacy Code provides an important opportunity to ensure children can participate in the online environment safely, and that their information cannot be used in ways that promote profits above the health and wellbeing of Australian children. To give meaningful effect to the best interests of the child, the final Code and/or supporting documents should clearly provide that the handling of children's personal information for any purposes related to harmful industry marketing, including unhealthy food marketing, is incompatible with children's best interests in all circumstances. It should also expand to commercial practices beyond handling of personal information, and capture tracking, profiling and targeting of children online.

References

- ¹ Kelly B, Bosward R, Freeman B. Australian Children's Exposure to, and Engagement With, Web-Based Marketing of Food and Drink Brands: Cross-sectional Observational Study. *J Med Internet Res*. 2021 Jul 12;23(7):e28144. doi: 10.2196/28144. PMID: 34255675; PMCID: PMC8314155.
- ² Boyland E, McGale L, Maden M, et al. Association of Food and Nonalcoholic Beverage Marketing With Children and Adolescents' Eating Behaviors and Health: A Systematic Review and Meta-analysis. *JAMA Pediatr*. 2022;176(7):e221037. doi:10.1001/jamapediatrics.2022.1037.
- ³ Australian Bureau of Statistics. National Health Survey 2022, 2023; Available from: <https://www.abs.gov.au/statistics/health/health-conditions-and-risks/national-health-survey/2022>
- ⁴ Australian Bureau of Statistics. 4364.0.55.001 - National Health Survey: First Results, 2017-18. 2018. Table 17.3. <http://www.abs.gov.au/AUSSTATS/>.
- ⁵ Ilchenko E, Jinnette R, Morley B. Shape of Australia 2023 Survey: Final report. Melbourne, Australia: Centre for Behavioural Research in Cancer, Cancer Council Victoria, Prepared for: Cancer Council Victoria, Cancer Council Western Australia and Cancer Council South Australia; 2024 Feb.
- ⁶ Australian Department of Health, Disability and Ageing. Feasibility study on options to limit unhealthy food marketing to children, published May 2026. Available at: <https://www.health.gov.au/resources/publications/feasibility-study-on-options-to-limit-unhealthy-food-marketing-to-children?language=en>