

Submission to the Exposure Draft of the Children's Online Privacy Code

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Executive Summary

Guided by the United Nations Convention on the Rights of the Child (CRC) and informed by our work in over 190 countries improving the lives of children including in digital environments, UNICEF Australia welcomes the opportunity to provide a submission to the consultation on the exposure draft of the Children's Online Privacy Code.

The current generation of children are the first true digital natives. They will never know a world without smartphones. Constant connectivity is their norm. They will have an online presence almost immediately after birth, and they already disproportionately occupy online spaces more than any other group, meaning the design of those spaces will have a greater impact on them and for longer than any other generation before them.

When it comes to privacy, we know that the data of children and young people is big business - collected, traded and sold at unprecedented rates. Yet for young children, concepts like privacy can be difficult to understand, and they may unwittingly divulge information that places them at risk. UNICEF Australia's own research shows that young people in Australia are both highly aware of privacy as an issue, and uncomfortable with the current state of affairs:

- 72% of Australian teens are uncomfortable with their personal data being collected by apps and websites, and
- 66% of Australia teens are uncomfortable with companies predicting their behaviours and preferences based on personal data.ⁱ

Thankfully, the draft Children's Online Privacy Code represents a bold and impactful step forward in addressing these concerns, which should provide the data and privacy protections that Australian young people deserve. Several measures in the draft Code will align Australia with international best-practice and are very welcome, including data minimisation and privacy-by-default, the requirement for child-friendly privacy policies, the right to erasure, and the firm incorporation of a key child rights principle – the best interests of the child – into Australian privacy law. The draft Code also treads new ground with novel approaches to child and parental consent, representing a welcome effort to codify technical solutions to complex child rights issues.

From this strong position, UNICEF Australia offers a handful of recommendations in this submission to further bolster the protections included in the draft Code, as well as the structures that will be necessary to ensure its successful implementation. These range from providing helpful guidance on applying the best interests of the child principle in practice, to lifting privacy awareness amongst children and parents, embedding youth participation in our ongoing privacy frameworks, and calling for a well-resourced privacy regulator to help see these reforms succeed.

Finally, UNICEF Australia wants to acknowledge the genuine nature with which the Office of the Australian Information Commissioner (OAIC) has approached the consultation on the Code, particularly their engagement with children and young people. Their efforts represent world-leading child and youth participation for a government-funded reform. UNICEF Australia looks forward to supporting the OAIC, providing a bridge between government, the tech sector, and civil society, to help ensure these landmark reforms deliver on their promise to place children at the centre of privacy protections in Australia.

Summary of Recommendations

1. Applying the best interests of the child in the digital world

- *Require that entities utilise digital child rights impact assessments to meet their obligations with regard to the collection, use and sharing of children's data only when in their best interests.*

2. Lifting privacy awareness in Australia

- *The Australian Government should invest in widespread privacy literacy and public awareness raising, to ensure that children and parents receive the benefits of new protections provided in the Children's Online Privacy Code.*

3. Embedding youth participation in our privacy frameworks

- *The Australian Government should establish an ongoing youth engagement framework to ensure the implementation, monitoring and enforcement of the Children's Online Privacy Code is informed by the views of children and young people.*

4. Appropriately resourcing our privacy regulator

- *The Australian Government should ensure adequate resourcing for the Office of the Australian Information Commissioner, commensurate to their expanded role in implementing, monitoring and enforcing the Children's Online Privacy Code.*

Detailed Recommendations

1. Applying the best interests of the child in the digital world

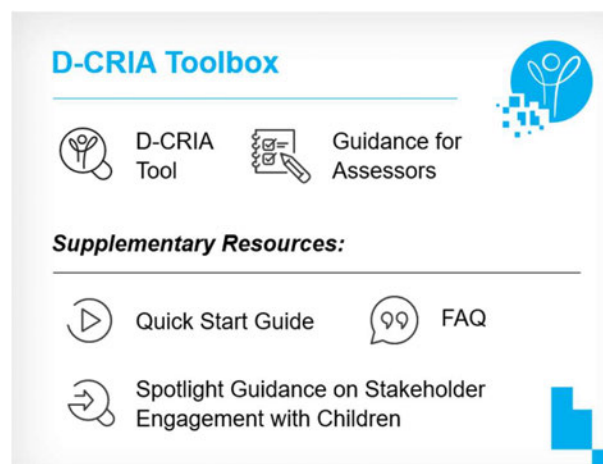
The draft Children's Online Privacy Code incorporates a key child rights principle – the best interests of the child – into Australian privacy law. This very welcome addition reflects a trend we are seeing in digital reform both in Australia and internationally, compelling digital platforms to consider how the design and deployment of their services affect individual children, and children broadly as a cohort in all their diversity.

The best interests of the child is both a substantive child right and a dynamic principle, which always requires an assessment appropriate to the specific context of a child or children.ⁱⁱ In considering the best interests of children we should 'have regard for all children's rights, including their rights to seek, receive and impart information, to be protected from harm and to have their views given due weight, and ensure transparency in the assessment of the best interests of the child and the criteria that have been applied', according to the Committee on the Rights of the Child's General Comment 25.ⁱⁱⁱ

That same Committee's General Comment 14^{iv} provides an even more detailed examination of the best interests principle and how it should be applied in practice. For the tech industry, in practice this may mean making decisions in relation to children which seemingly clash with the interests of companies, such as not capturing and processing children's data in ways that are detrimental to them, for example, in persuasive design, behavioural advertising, and biometrics collection.^v As an example, Meta has developed a [best interests of the child framework](#) to help apply the principle to their products and experiences.^{vi}

The balancing of children's rights can be a tricky undertaking, but thankfully UNICEF has developed extensive guidance for industry on how to operationalise this endeavour in the digital world. Child rights impact assessments (CRIAs) are a helpful tool to help businesses evaluate the impact of their products and services on children's rights.^{vii} UNICEF has specifically developed a Digital-CRIA (D-CRIA) to apply this framework in online environments. The D-CRIA is a toolbox that steps companies through the process of determining how their platform affects children's rights.

The D-CRIA Tool is designed to be used by companies operating in the digital environment, or by third-party experts and consultants (assessors) working with companies to understand their impacts on child rights.^{viii} The Excel-based tool guides companies through the identification and assessment of their actual and potential adverse impacts on child rights.^{ix} Assessors can answer questions in the tool, assess the severity of impacts or risks identified, generate a prioritized list of risks and impacts, and begin to determine appropriate actions.^x Through this process, companies can demonstrate that they have thoroughly applied a child rights lens for their risk assessment and risk mitigation, and used the established assessment criteria of scale, scope and remediability to help identify the company's role in preventing and mitigating risks.^{xi}



The draft Children’s Online Privacy Code proposes in Section 38 that entities conduct privacy impact assessments, including to assess and record whether the handling of children’s data is consistent with their best interests. Through either an amendment to this section, a clarificatory note, or in subsequent OAIC guidance, entities should be directed to D-CRIAs to aid them in these assessments, and help ensure they’re meeting their obligations to only collect and use children’s data when in their best interests, with due consideration given to the breadth of children’s rights.

Recommendation #1

Require that entities utilise digital child rights impact assessments to meet their obligations with regard to the collection, use and sharing of children’s data only when in their best interests.

2. Lifting privacy awareness in Australia

The eventual implementation of the Children’s Online Privacy Code is going to both prompt and necessitate an uplift in privacy literacy and awareness across Australia, particularly amongst children and parents. The child to parent assent/consent model in the Code is an example of this, a feature which will naturally compel parents and their children to engage in conversations about privacy.

This uplift is welcome and broadly reflects the needs and wants of young people when it comes to privacy and parental supervision. Through UNICEF’s global research project with children and young people about their best interests in the digital world, it was found that children understand the benefits of something like parental supervision, but want it to come from a place of dialogue and mutual respect.^{xii} As one young person said, “I think [a parental supervision tool] should have to have, like, consent from both people” (USA, Atlanta, aged 14–17).^{xiii}

For the landmark reforms within the Children’s Online Privacy Code to achieve their desired effect, Australia will need to invest in boosting privacy literacy and awareness across the population. This may include everything from privacy education in schools, to guidance and resources for parents provided by trusted sources like the OAIC, and high impact public campaigns that lift awareness of the importance of privacy and empower children and parents to capitalise on the new protections the Children’s Online Privacy Code provides them.

Recommendation #2

The Australian Government should invest in widespread privacy literacy and public awareness raising, to ensure that children and parents receive the benefits of new protections provided in the Children’s Online Privacy Code.

3. Embedding youth participation in our privacy frameworks

The genuine nature with which the OAIC has engaged children and young people in the development of the Children’s Online Privacy Code is borne out in the welcome protections it provides. And while many of the protections bring Australia into line with international best practice, there are also novel approaches which will be trialled for the first time anywhere in the world.

No law is perfect, and following its implementation, the Children’s Online Privacy Code can and should be evaluated, iterated on, and improved. Throughout this process, it will be essential that children and young people are involved. Given their innate sense for the online world, if we want the solutions we design there to actually work, then we should speak with those who understand that environment best.

To this end, an ongoing youth engagement framework should be established to aid in the implementation, monitoring and enforcement of the Children’s Online Privacy Code. Parallel examples exist elsewhere in Australian digital policy, including the eSafety Commission’s Youth Advisory Council. Ultimately though, the method and form should be best suited to meet the unique circumstances of the Children’s Online Privacy Code.

Recommendation #3

The Australian Government should establish an ongoing youth engagement framework to ensure the implementation, monitoring and enforcement of the Children's Online Privacy Code is informed by the views of children and young people.

4. Appropriately resourcing our privacy regulator

The OAIC should be commended for the approach they have taken in their consultation on the Children's Online Privacy Code, particularly their engagement with children and young people. Should the Code realise the ambitions that young people hope it will, it will represent a step-change in how children's data is governed in Australia.

Accordingly, this step-change (coupled with broader reforms to the Privacy Act) is likely to see an expansion of the responsibilities of the OAIC, whether that be in monitoring, compliance and enforcement, raising public awareness of our new data framework for children, or continuing to consult with a variety of stakeholders to ensure the Code is indeed achieving its intended aims.

In response to this, the OAIC should be properly resourced and expanded if necessary to perform this revamped role. A dedicated Children's Privacy Unit or similar may need to be established, functioning as a centre of expertise with the skills and knowledge to properly monitor and enforce Australia's new privacy framework, and collaborate with other government agencies and regulators including the eSafety Commission. Our ambition in reform must be matched with ambition in resourcing, if we hope to see the benefits of the Children's Online Privacy Code passed on to Australia's children.

Recommendation

The Australian Government should ensure adequate resourcing for the Office of the Australian Information Commissioner, commensurate to their expanded role in implementing, monitoring and enforcing the Children's Online Privacy Code.

ⁱ UNICEF Australia (2025), A Generation Online: Ensuring children and young people thrive in a digital world, unicef.org.au/publications/a-generation-online

ⁱⁱ Committee on the Rights of the Child, *General comment No. 25 (2021) on children's rights in relation to the digital environment*, 86th sess, CRC/C/GC/25 (2 March 2021).

ⁱⁱⁱ Committee on the Rights of the Child, *General comment No. 25 (2021) on children's rights in relation to the digital environment*, 86th sess, CRC/C/GC/25 (2 March 2021).

^{iv} Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 62nd sess, CRC/C/GC/14 (29 May 2013).

^v UNICEF (2021), *The Case for Better Governance of Children's Data: A Manifesto*, <https://www.unicef.org/globalinsight/reports/better-governance-childrens-data-manifesto>

^{vi} Elaine Montgomery and Elaina Koros (2022), *Meta's Best Interests of the Child Framework*, <https://www.ttclabs.net/news/metas-best-interests-of-the-child-framework>

^{vii} UNICEF (2026), *Assessing child rights impacts in relation to the digital environment | UNICEF Child Rights and Business*

^{viii} UNICEF (2026), *Guidance for Assessors | UNICEF Child Rights and Business*

^{ix} UNICEF (2026), *Guidance for Assessors | UNICEF Child Rights and Business*

^x UNICEF (2026), *Guidance for Assessors | UNICEF Child Rights and Business*

^{xi} UNICEF (2026), *Guidance for Assessors | UNICEF Child Rights and Business*

^{xii} Baghdasaryan, B., and Vosloo, S., *Children's Best Interests in Digital Policy and Practice: From the voices of children, youth and experts around the world*, UNICEF Innocenti, Florence, April 2026. <https://www.unicef.org/innocenti/media/12841/file/UNICEF-Innocenti-Children's-Best-Interests-Digital-Policy-Practice-report-2026.pdf>

^{xiii} Baghdasaryan, B., and Vosloo, S., *Children's Best Interests in Digital Policy and Practice: From the voices of children, youth and experts around the world*, UNICEF Innocenti, Florence, April 2026. <https://www.unicef.org/innocenti/media/12841/file/UNICEF-Innocenti-Children's-Best-Interests-Digital-Policy-Practice-report-2026.pdf>