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**Submission to the Office of the Australian Information Commissioner (OAIC) on the Privacy
(Children's Online Privacy) Code 2026 Consultation**

Acknowledgement of Country

Youth Law Australia acknowledges the traditional custodians of all the lands on which we work, including the Bidjigal people of the Eora nation and the Muwinina people of the Southeast nation who are the traditional owners of the land on which our offices are based. We pay our respect to the Elders - past, present and emerging - and the children, young people and their families who we work with across Australia. We acknowledge the disproportionate, ongoing and intergenerational harm experienced by First Nations children and young people and commit to walk with Aboriginal and Torres Strait Islander people to seek a better future for children based on justice, truth-telling, equal access to rights and self-determination.

1 About us

- 1.1 Youth Law Australia (YLA) is an accredited national community legal service that is dedicated to helping young people understand their legal rights and find solutions to their legal problems. Any child or young person (or an adult representing them) can ask us about any legal problem at any time, and receive free and confidential legal advice and help. YLA seeks to be as accessible as possible to children and young people, in particular through facilitating help-seeking through online means.
- 1.2 We are dedicated to addressing human rights abuses of children and young people in Australia, and we monitor and advocate for their rights and best interests.

- 1.3 YLA regularly advises children under the age of 15 (as well as older children) across a wide range of situations. In many of these situations, it is imperative as a matter of public policy that children can obtain legal advice and support promptly, without administrative obstacles, and without having to involve a parent, guardian, or other third party. Such situations include, by way of example, where a child: (i) is experiencing homelessness; (ii) has parents affected by addiction, disability, or other difficulties; (iii) is subject to neglect; (iv) is in Government care or custody and has concerns regarding their treatment; (v) is interacting with the legal system or has committed offences and does not wish parents or others to be informed; (vi) has drug-related issues or concerns; (vii) is the victim of bullying, discrimination, abuse, or harassment, whether online or in the real world; (viii) is experiencing tech-based domestic and family violence including cyberstalking, image-based abuse or other kinds of digital abuse; or (ix) is having their image and information published or monetised online by their parents without their consent.

It is important that children can seek such support and advice, and initiate relevant support relationships, online and without impediment.

Many children under 15 who seek such support are capable of giving consent and presently have the legal right to do so on their own behalf. This constitutes a significant human right with real and practical utility.

2 Executive summary

1.4 We welcome the focus on placing children at the centre of privacy protections in Australia, including through the development of the Children's Online Privacy Code (**Final Code**), which proposes new rules requiring organisations to consider the best interests of children before collecting, using or disclosing their personal information. However, we have concerns regarding the potential unintended consequences of the reforms on the ability of children and
2.1 young people to access essential services, particularly those provided on a not-for-profit basis by certain organisations and especially where that help is provided online. This contains our submissions in relation to the exposure draft of the Children's Online Privacy Code (the **Draft Code**).

2.2 The Draft Code in its current form does not contain a sufficiently broad exemption to enable the unimpeded provision of legal, welfare and other support services to children under the age of 15. The Draft Code proposes to address the need for certain essential services to be provided to children by excluding entities providing a "health service" from its scope (section 5(c)). The Explanatory Memorandum to the *Privacy and Other Legislation Amendment Bill 2024* expressly states that this exclusion was intended to ensure "the COP Code is not a barrier to providing essential services to children". While OAIC guidance makes clear that 'health service' providers can cover online health services such as counselling, advice and telehealth, we are concerned as this exclusion does not clearly extend to legal services, advocacy, family violence, homelessness, social housing, protective, welfare or other child support and community services (together, **Essential Legal & Social Services**) which are equally critical to children and young people.

2.3 In our view, this is a significant oversight. The legislative intent, which is reflected throughout the broader privacy reform process, clearly contemplates that the Final Code should not impose barriers to the provision of essential services to children. Yet, in our view, the narrow exceptions included in the Draft Code as drafted do not clearly give effect to that intent in
2.4 respect of Essential Legal & Social Services.

2.5 The consequences are potentially serious. The Draft Code takes significant steps, including requiring consent for children to access certain online services and removing the ability of children under 15 who are capable of consent (and who can therefore consent at common law and under the Privacy Act) to consent on their own behalf in relation to access to online services. Taking such steps in the context of commercial services is quite different from taking them in relation to reputable advice and support services available to children. In the latter case, the effect of these changes could be to deprive children of the ability to access services they require in order to understand their human and legal rights and to navigate important legal issues. It could also deprive them of access to other important forms of support.

2.6 Further, the notion that a child must involve a parent or guardian in the decision to seek legal guidance also clouds issues in relation to legal professional privilege. Moreover, in the context of legal services, circumstances could arise where a parent or guardian requests that an entity providing legal services provides information about the handling of a child's personal information or destroys personal information held about a child who is independently seeking legal guidance from that entity. The provisions of the Draft Code which permit such requests give rise to serious questions in relation to how such requests should be handled in the context of legal professional privilege.

For the reasons set out in this submission, we recommend that:

- (a) section 6 of the Draft Code be amended to expressly exclude entities providing Essential Legal & Social Services to children and young people. This exception should enable Essential Social Service providers to provide those services to children even if the child is presumed not to have capacity, or where capacity is in doubt or cannot be established, where it is in the child's best interests or otherwise in the public interest to do so. This exception should only apply to government, government-funded or not-for-profit organisations which are based in Australia, and which can demonstrate compliance with the National Child Safety Principles; and
- (b) in the alternative, that sections 4, 10, 11, 13, 28 and 32 of the Draft Code be amended to include broader exceptions for the provision of Essential Legal & Social Services than is currently provided. In our view, as explained below, the proposed scope and exclusions provided for in sections 10, 11 and 32 of the Draft Code are problematic in the context of the provision of Essential Legal & Social Services, particularly in respect of the insufficient exception for the existence of "*permitted general situations*" in section 10 and the narrow framing of the exception in subsection 13(4). We recommend that:
 - (i) subsection 13(4) be expanded, including by:
 - (A) including wording which provides a broader exclusion for information relating to essential services (e.g. "*for the purposes of the child seeking legal, welfare or health-related information or support*");
 - (B) removing the phrase "*in connection with a person with parental responsibility for the child*", to ensure the exception appropriately extends to a wider range of support contexts, including those involving siblings, extended family members and other relevant circumstances,
 - (ii) subsection 10(6) be expanded to include a similar broad exception, by including a new subsection which provides that "*This section does not apply if: (x) the collection of the information is for the purposes of the child seeking legal, welfare-related information or support*"; and
 - (iii) subsection 11(2) be expanded to include a similar broad exception, by including additional wording which provides that: "*Subsection (1) does not apply to the use or disclosure of personal information: (a) for the purposes of a child seeking legal or welfare-related information or support; and (b) to which Australian Privacy Principle 6.2(b), (c), (d), (e) 6.3 or 6.7 applies*";
 - (iv) subsection 28(1) be amended to instead read "*If a child, or if the child lacks capacity to make the request – a person with parental responsibility for the child, requests access to personal information about the child...*". This amendment would ensure, particularly in the context of Essential Legal & Social Services, that a person acting in a capacity ordinarily associated with a parental or guardian role may only request information about an entity's handling of a child's personal information where the child lacks capacity to make the request themselves. This would also better preserve the child's rights to privacy and to access information and support from Essential Legal & Social Services;
 - (v) section 32 be similarly amended by removing subsection 32(1)(b) and amending subsection 32(1)(c) to read: "*if the child lacks capacity to make the request — a person with parental responsibility for the child*". This

would ensure, particularly in the context of Essential Legal & Social Services, that a person acting in a capacity ordinarily associated with a parental or guardian role may only request that an entity destroy personal information held about a child where the child lacks capacity to make the request themselves; and

- (vi) as a more general point, the definition of "person with parental responsibility" in section 4 be reconsidered or expanded, in each context in which it is used throughout the Draft Code, so as to account for circumstances in which a person who does not have legal responsibility for the child's day-to-day care, welfare, and development is nonetheless acting in a capacity ordinarily associated with a parental or guardian role (for example, a child protection caseworker or school counsellor).

3 Introduction and background

- 3.1 Children and young people, particularly those experiencing vulnerability, often seek to discreetly obtain information from YLA online on an anonymous or pseudonymous basis. Children as young as eight years of age will regularly contact YLA through our online channels. For many of these children, digital communication has been formative to how they interact with the outside world, and it is the technology with which they are most comfortable. In our experience, younger children are often less comfortable with phone calls, and for children experiencing vulnerability, a phone call may not always be a safe option. It is critical to enable children to freely access information about legal services through these channels, and to support their ability to feel safer when seeking out and obtaining such information. This is particularly the case for children in rural areas, who have limited in-person access to essential legal and social services.
- 3.2 Given the importance of free and accessible Essential Legal & Social Services across the spectrum of prevention, early intervention, crisis and post-crisis response, both governments and relevant service providers should avoid imposing measures that may create a barrier to access. Barriers can not only directly prevent children from accessing services; they can also cause children to disengage before receiving help (for example, if too many steps are placed in front of access). At YLA, we have designed our services to be as accessible as possible to children and young people, including those who may not have a protective parent or guardian, or who require confidential legal support to understand and exercise their rights. This includes 24/7 access to an online webform, and telephone and live chat options at specific times. In many cases, our services are provided entirely online.

4.1 4 The need for a broad exception to enable children to access Essential Legal & Social Services

The "health service" exclusion is not broad enough

- 4.2 As noted above, the Explanatory Memorandum to the *Privacy and Other Legislation Amendment Bill 2024* expressly states that the exclusion of 'health services' from the scope of the Final Code was intended to ensure "the COP Code is not a barrier to providing essential services to children".¹ While OAIC guidance may make it clear that 'health services' covers online counselling, advice and telehealth, the exclusion does not clearly extend to other Essential Legal & Social Services that are equally critical to children.²

This concern is not new. The Final Report on the Review of the Privacy Act (**Report**) released by the Attorney-General's Department following an extensive review and consultation process recognised that "there are many circumstances where a child may wish

¹ Explanatory Memorandum, Privacy and Other Legislation Amendment Bill 2024 (Cth), 41.

² Ibid 42.

to disclose their information without requiring the consent of a parent or guardian, including for access to sexual health, domestic violence, mental health, drug and alcohol dependency, homelessness and other community services.”³ However, the Draft Code provides no such express exceptions for circumstances involving domestic violence issues, homelessness and other Essential Legal & Social Services.

Moreover, the Report recognised that any provision that addresses children’s capacity to consent should contain “legislated exceptions for circumstances where parent or guardian involvement could be harmful to the child or otherwise contrary to their interests, such as where a child is seeking confidential advice, child support services or where it would pose a threat to the health and safety of the child”.⁴ This informed recommendation 16.2 of the Report which finally provided that:

4.3

*“16.2 – Existing OAIC guidance on children and young people and capacity should continue to be relied upon by APP entities. An entity must decide if an individual under the age of 18 has the capacity to consent on a case-by-case basis. If that is not practical, an entity may assume an individual over the age of 15 has capacity, unless there is something to suggest otherwise. ... **Exceptions should be provided for circumstances where parent or guardian involvement could be harmful to the child or otherwise contrary [to] their interests (including, but not limited to confidential healthcare advice, domestic violence, mental health, drug and alcohol, homelessness or other child support and community services).**” [our emphasis added]*⁵

4.4

We submit that the Draft Code should adopt an approach which recognises the full range of Essential Legal & Social Services that children require. The exclusion should be extended to cover entities providing services that are genuinely in the interests of children (including Essential Legal & Social Services).

The proposed exceptions in the Draft Code are insufficient

4.5

In respect of sections 10 and 11, we are concerned that in the context of the provision of Essential Legal & Social Services it will not always be clear what will constitute the collection, use or disclosure of a child’s personal information in a manner that is consistent with the best interests of the child. By way of example, if a child is reporting bullying behaviours involving another child, whether the collection and handling of such data in relation to the other child is in their best interests and balancing the interests of each child creates great uncertainty for Essential Social Service providers from a compliance perspective and will impose barriers on the provision of such services by virtue of imposing complex and difficult to navigate questions of privacy compliance on service providers who are trying to support and advocate for children and young people.

4.6

The Draft Code contains certain exceptions to the “best interests” requirements in sections 10 and 11 which recognises that collections not in a child’s best interests “may still be necessary in limited circumstances”. Relevantly, section 10(6) provides that the best interests requirement for collection does not apply where, among other things, “a permitted general situation exists in relation to the collection of the information by the entity” (section 10(6)(b)). Similarly, section 11(2) provides that the best interests and consent requirements for use or disclosure do not apply to certain uses or disclosures covered by Australian Privacy Principles 6.2(b), (c), (d), (e), 6.3 or 6.7.

4.7

However, the “permitted general situations” in section 16A of the *Privacy Act 1988* (Cth) are narrowly defined and do not adequately cover the routine provision of Essential Legal &

³ Attorney-General’s Department, “Final Report on the Review of the Privacy Act” (2022), 149 (Report).

⁴ Ibid.

⁵ Ibid 150.

Social Services to children and young people. The permitted general situations relevantly include circumstances such as lessening or preventing a serious threat to life, health or safety; taking appropriate action in relation to suspected unlawful activity or serious misconduct; locating a missing person; and establishing, exercising or defending a legal or equitable claim. While some of these situations may arise in the course of providing Essential Legal & Social Services, they do not cover the ordinary, day-to-day provision of legal advice, counselling, advocacy, or welfare support to children and young people. A child seeking legal advice about a bullying issue at school, or contacting a helpline for information about their rights, is unlikely to fall within the scope of a "permitted general situation".

4.8 Furthermore, the exception in section 13(4) of the Draft Code which permits a child under 15 to consent to the collection, use or disclosure of their personal information "*for the purposes of the child seeking legal or health-related information or support in connection with a person with parental responsibility for the child*", is too narrow in two respects. First, it is limited to situations where the child is seeking help "*in connection with*" a person with parental responsibility. There are many contexts in which children require legal or welfare support for reasons entirely unrelated to their parents or guardians, for example, in connection with bullying, discrimination, housing, immigration, or interactions with the criminal justice system. Second, the exception does not extend to welfare services, advocacy, family violence support, homelessness services, or the many other Essential Legal & Social Services that children and young people may need to access.

4.9 Moreover, we are concerned that the proposed framing of section 13 of the Draft Code may unjustifiably deprive children and young people under the age of 15 of their right to make decisions in relation to their privacy. It does so by assuming, on the basis of age alone, that they lack the capacity to consent to the collection, use or disclosure of their personal information. The current OAIC Australian Privacy Principles Guidelines (Combined May 2026) ("**APP Guidelines**") relevantly provide:

"Children and young people

B.59 The Privacy Act does not specify an age after which individuals can make their own privacy decisions. An APP entity will need to determine on a case-by-case basis whether an individual under the age of 18 has the capacity to consent.

B.60 As a general principle, an individual under the age of 18 has capacity to consent when they have sufficient understanding and maturity to understand what is being proposed. In some circumstances, it may be appropriate for a parent or guardian to consent on behalf of a young person, for example, if the child is young or lacks the maturity or understanding to do so themselves.

4.10 *B.61 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."*⁶

4.11 Section 13 of the Draft Code now proposes that a young person under 15 years of age does not have the capacity to independently consent to the collection, use or disclosure of their personal information. In practical terms, this means that young people under 15 will be unable to meaningfully access Essential Legal and Social Services without the consent of a parent or guardian.

In our view, many children under 15 are capable of providing such consent. For illustrative purposes, other Australian legislation presumes capacity below 15 years of age in

⁶ OAIC Australian Privacy Principles Guidelines (Combined May 2026) [B.59] – [B.61].

circumstances that arguably demand a greater degree of maturity and understanding from the child, including:

- (a) the *Minors (Property and Contracts) Act 1970* (NSW), which provides that children aged 14 years or upwards can consent independently to medical and dental treatment (s 49);
- (b) the *Children and Young Persons (Care and Protection) Act 1998* (NSW), which sets out rebuttable presumptions of incapacity and capacity to instruct a legal representative in out-of-home care and child protection proceedings, specifying an age of **12** years (ss 99B, 99C); and
- (c) the age of criminal responsibility in most Australian jurisdictions, being **10** years.

4.12 The Preamble to the Privacy Act provides that the legislation was intended to implement, at least in part, Australia's obligations relating to privacy under the UN *International Convention on Civil and Political Rights (ICCPR)* as well as the Organisation for Economic Co-operation and Development *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (OECD Guidelines)*. We are concerned that the Draft Code proposes a significant incursion into the privacy rights and non-privacy rights of young people under the age of 15, as recognised by the United Nations Convention on the Rights of the Child 1989 ('**UNCRC**'). In our view, such an incursion becomes increasingly difficult to justify where it imposes significant barriers on the ability of children and young people to independently seek information or support from essential legal and social service providers, without first obtaining consent from a person with parental responsibility.

4.13 Article 16 of the UNCRC establishes children's right to privacy. It provides that:

- (i) *No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*
- (ii) *The child has the right to the protection of the law against such interference or attacks.*

4.14

4.15 Protecting children's right to privacy in the online and digital environment cannot come at the expense of other rights under the UNCRC.

4.16 A children's rights-based approach to privacy reforms must also be informed by *UNCRC*: (i) Article 12(1), which gives children who are capable of forming a view the right to freely express their views in all matters affecting them, with those views being given due weight in accordance with the child's age and maturity; (ii) Article 13(1), which provides for the child's right to freedom of expression; and (iii) Article 17, which provides for the child's right to access information and material from a diversity of national and international sources.

We are concerned that an overemphasis on 'protecting' children in the commercial online and digital environment may undermine these other rights under the *UNCRC*, by impairing children's ability to exercise their rights to participation, freedom of expression and access to information. We are particularly concerned that Section 13 of the Draft Code proposes to directly undermine children and young people's existing rights to independently consent to the handling of their personal information for the purposes of accessing Essential Legal and Social Services. This is being proposed notwithstanding the UN Committee on the Rights of the Child, General Comment No 25 (2021) on Children's Rights in relation to the Digital Environment forming the view that:

“[p]roviders of preventive or counselling services to children in the digital environment should be exempt from any requirement for a child user to obtain parental consent in order to access such services”.⁷

The rationale for a broad exception

We expand on the rationale underpinning our recommendation for a broad exception in the following paragraphs:

4.17

- (a) First, in our view, the introduction of a broad exception would be appropriate as the privacy harms targeted by the Draft Code are predominantly connected with the behaviour of commercial enterprises, including social media platforms. The Government Response to the Report identified concerns that children and young people are becoming increasingly "datafied", that extensive and unnecessary data points are being collected from children, and that these can be used in ways that are not consistent with their best interests (such as in a targeted advertising context).⁸ Such concerns do not arise in respect of the conduct of not-for-profit organisations that provide free and beneficial Essential Legal & Social Services to children and young people.
- (b) Second, Essential Legal & Social Services for children and young people provided by not-for-profit organisations and Commonwealth, State, Territory and local governments already operate in a heavily regulated environment. In addition to privacy and data protection laws, the regulatory framework includes the National Principles for Child Safe Organisations, and professional ethical frameworks. For example, legal services are highly regulated, and lawyers owe their clients a duty of confidentiality. The Family Court of Australia has recognised that "the Court should be very wary about issuing subpoenas to an organisation which relies upon its confidentiality for its very existence. The benefit of the services provided by Kids Helpline to the children and young people who use that service is significant".⁹
- (c) Third, there is no evidence in the Report or elsewhere that the potential harms and risks targeted by the Draft Code are caused by not-for-profit organisations that provide Essential Legal & Social Services to children. The regulatory burden imposed by the Draft Code should be proportionate to the risk of harm, and entities providing beneficial services to children should not face the same level of compliance burden as commercial platforms engaged in data-intensive practices.
- (d) Fourth, requiring parental or guardian consent for children under 15 may not be realistic or protective, and, as recognised in the Report, may even be unsafe, in certain circumstances.¹⁰ Additionally, in the context of Essential Legal & Social Services, similar safety concerns arise where the Draft Code enables a parent or guardian to request information about an entity's handling of a child's personal information, or to request that an entity destroy personal information collected about a child under 15. Children's interests do not necessarily align with those of their parents or guardians, and parents themselves may pose a threat to their children's wellbeing. Moreover, children may be reluctant or fearful to disclose important information if their parents are involved. For example, if they have an issue with the parent's friend or partner, or if they fear what their parent may think of them for having committed or witnessed a crime. Such fears may sometimes be irrational, but should still be taken into account. As a matter of public policy, the

⁷ UN Committee on the Rights of the Child ('CRC Committee'), General Comment No 25 (2021) on Children's Rights in relation to the Digital Environment, UN Doc CRC/C/GC/25 (2 March 2021) [78].

⁸ Government Response, Privacy Act Review Report (2023) 13.

⁹ *Goldy v Goldy* [No 2] [2011] FamCA 418, [2].

¹⁰ Report 149.

imperative is to encourage children to communicate freely about any matters of concern with responsible adults. There is a particularly strong imperative to ensure that children who have some interaction with criminal activity can readily access appropriate legal advice. This imperative is recognised in the laws relating to legal professional privilege. Like adults, children should have the protection of legal professional privilege and of confidentiality more broadly in relation to the advice they seek. Without such protection, they may refrain from seeking advice, including guidance on how to manage serious issues and comply with applicable laws. The requirement that a child involve a parent or guardian in the decision to seek legal guidance gives rise to further difficulties. In some circumstances, the involvement of a parent or guardian in a child's access to legal services may create conflicts of interest for the legal services provider and may also affect the application of privilege where information is disclosed to a parent. For example, this may arise where a parent consents on condition of being privy to the services provided, or where parents dispute their child's ability to consent and give instructions to the child's lawyer that differ from those of the child.

- (e) Fifth, the complexity of privacy laws can itself create compliance concerns for not-for-profit service providers, which in turn may act as an unnecessary barrier to helping children and young people exercise their rights. This was recognised by the Royal Commission into Institutional Responses to Child Sexual Abuse, which heard evidence that it can be difficult for institutions to navigate the privacy environment, and that this can inhibit the sharing of information relating to the safety and wellbeing of children.¹¹ The Royal Commission also recognised the principle that children's rights to safety and wellbeing, and specifically to protection from sexual abuse, should be prioritised over other rights and concerns, including in some cases privacy.¹²

5 Proposed amendments

5.1

For these reasons, we submit that section 6 of the Draft Code should be amended to expressly exclude entities providing Essential Legal & Social Services to children and young people. This exception should enable Essential Social Service providers to provide such services to children even if the child is presumed not to have capacity, or where capacity is in doubt or cannot be established, where it is in the child's best interests or otherwise in the public interest to do so. This exception should only apply to government, government-funded or not-for-profit organisations based in Australia that can demonstrate compliance with the National Child Safety Principles. It should not apply to entities that operate for commercial return.

5.2

The objective is to enable children to access Essential Legal & Social Services with minimal barriers. It is not intended to diminish children's privacy rights, but to ensure those rights do not come at the expense of access to services critical to their safety, welfare and development. Moreover, such an approach will better support children's ability to independently and autonomously seek necessary information and support from Essential Social Service providers. As the UN Special Rapporteur on the Right to Privacy observed recently: "Adults' interpretations of children's privacy needs can impede the healthy development of autonomy and independence and restrict children's privacy in the name of protection."¹³

¹¹ See Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report: Volume 8 Recordkeeping and Information Sharing (2017) 158-160.

¹² Ibid 139.

¹³ UN Special Rapporteur on the Right to Privacy, Artificial Intelligence and Privacy, and Children's Privacy, UN Doc A/HRC/46/37 (25 January 2021) [80].

In our view, any list of Essential Legal & Social Services should be non-exhaustive. We also note that requiring entities to demonstrate an exception applies may itself require children to disclose more personal information. The exception should therefore be drafted broadly, with clear guidance to minimise the information children must provide to access these services.

5.3 In the alternative, if the Draft Code is not amended to exclude Essential Social Service providers entirely, we submit the scope of sections 4, 10, 11, 13, 28 and 32 should be amended, particularly to include broader exceptions, as outlined at paragraph 2.4(b) above.

5.4 Subsection 13(4) currently permits a child under 15 to consent only "for the purposes of the child seeking legal or health-related information or support in connection with a person with parental responsibility for the child". We recommend that this subsection be expanded to:

- 5.5
- (a) include broader wording covering Essential Legal & Social Services (e.g. "for the purposes of the child seeking legal, welfare or health-related information or support");
 - (b) include wording broader than "a person with parental responsibility for the child", so as to account for circumstances in which another person, who may not have legal responsibility for the child's day-to-day care, welfare, and development, is nonetheless acting in a capacity ordinarily associated with a parental or guardian role (for example, a child protection caseworker or school counsellor); and
 - (c) remove the phrase "in connection with a person with parental responsibility for the child", so that the exception extends to a wider range of support contexts.

5.6 We further recommend that subsection 10(6) be expanded to provide that section 10 does not apply where information is collected for the purposes of the child seeking legal or welfare-related information or support. This would prevent the "best interests" requirement from inadvertently blocking Essential Social Service providers from collecting information necessary to support a child. It may be useful to consider the approach to this in other legislative contexts.

5.7 Similarly, subsection 11(2) should be expanded to provide that the consent and best interests requirements do not apply to use or disclosure of personal information for the purposes of a child seeking legal or welfare-related information or support.

5.8

5.9 We further submit that subsection 28(1) be amended to instead read "If a child, or if the child lacks capacity to make the request – a person with parental responsibility for the child, requests access to personal information about the child...". This amendment would ensure, particularly in the context of Essential Legal & Social Services, that a parent or guardian may only request information about an entity's handling of a child's personal information where the child lacks capacity to make the request themselves. We understand that these provisions were originally drafted with a view to minimising harms arising from the commercialisation of data collected from children, by enabling parents to request access to information or the destruction of a child's personal data. However, we submit that this approach is not appropriate in the context of Essential Legal & Social Services, and that the amendments we propose would better preserve the child's rights to privacy and to access information and support from such services.

For the same reasons, we submit that section 32 be amended by removing subsection 32(1)(b) and amending subsection 32(1)(c) to read: "*if the child lacks capacity to make the request — a person with parental responsibility for the child*". This would ensure that a parent or guardian may only request the destruction of a child's personal information where the child lacks capacity to make the request themselves, again preserving the child's right to independently access Essential Legal & Social Services.

In these circumstances, we would also recommend that express regulatory guidance be released clarifying that, for the purposes of Section 8 of the Draft Code, it is reasonable for an Essential Legal & Social Services provider not to take steps to ascertain the age of an end-user, on the basis that there is minimal risk of harm arising from the collection, use, or disclosure of personal information in the ordinary course of providing that entity's services.

- 5.10 Finally, as a more general point, we submit that the definition of "person with parental responsibility" in section 4 be reconsidered or expanded, in each context in which it is used throughout the Draft Code, so as to account for circumstances in which a person who does not have legal responsibility for the child's day-to-day care, welfare, and development is nonetheless acting in a capacity ordinarily associated with a parental or guardian role (for example, a child protection caseworker or school counsellor).
- 5.11

6 Conclusion

- We appreciate the opportunity to provide feedback on the Draft Code. While we are pleased to see a focus on children and young people's right to privacy, it is very important that the Final Code does not impose barriers on the ability of children and young people to access critical services, particularly where those services are provided or accessed online.
- 6.1

- We recommend that the OAIC consider an additional exception, along the lines of our proposal in this submission, to ensure that privacy law does not stand in the way of the provision of free and beneficial services to children and young people.
- 6.2