

18 September 2026

Attorney-General's Department
PrivacyReform@ag.gov.au
Submitted via online portal

SUBMISSION ON EXPOSURE DRAFT *PRIVACY AMENDMENT* (*PERSONAL DATA PROTECTION*) BILL 2026

Thank you for the opportunity to provide a submission on Tranche 2 of the Government's proposed privacy reforms.

Who we are

Children and Media Australia (CMA) is the national peak not-for profit body representing the interests of children as media consumers. Its mission is to support families, industry and decision makers in building and maintaining an enjoyable media environment that fosters the health, safety and wellbeing of Australian children. Its membership includes major national and state education, welfare and parent organisations and individuals.

CMA's core business is to collect and review research and information related to children and the media; to provide information and advice on the impact on children of print, electronic and screen-based media; to provide reviews of current movies and apps from a child development perspective; to advocate for the needs and interests of children in relation to the media; and to conduct and act as a catalyst for relevant research.

Further information about this submission can be obtained from CMA's President, Professor Elizabeth Handsley, at [president\[at\]childrenandmedia.org.au](mailto:president[at]childrenandmedia.org.au).

General support

This organisation has been a strong supporter of the privacy reforms introduced up until now, and would like also to express our general support for the current proposals.

In addition to the specific points below, it is encouraging that the Consultation Paper makes the following statements:

Children and Media Australia

 PO Box 1240, Glenelg South SA 5045

 61 8 83762111  61 8 83762122

 info@childrenandmedia.org.au

 www.childrenandmedia.org.au

The Bill is also intended to include measures to enhance the regulatory powers and efficiency of the OAIC as privacy regulator. (page 37)¹

The OAIC's obligation to assist privacy complainants would be aligned with its obligations under the *Freedom of Information Act 1982* (Cth), supporting effective complaint intake while maintaining accessibility for individuals who require assistance. (page 37) and

The *Privacy Act* is intentionally technology neutral and principles based. It is designed to remain relevant as new technologies emerge. (page 40)

Children's rights

CMA is pleased to see the Exposure Draft making explicit reference to the need to treat children's best interests as a primary consideration, in keeping with article 3 of the UN Convention on the Rights of the Child. To further elucidate the concept of the child's 'best interests,' we draw attention to the following provisions of the United Nations Convention on the Rights of the Child (UNCRC).

- Article 13, on the child's right to freedom of expression and information
- Article 16, on the child's right to privacy
- Article 17, on the child's right to access a variety of material via the mass media (subject to protection from injurious content)
- Article 18, on parents' right to assistance in raising their children and protecting their rights

Since the drafting of the UNCRC, a consensus has emerged on the proposition that modern children have a right to access the online world safely.² This right encompasses two key elements: access and safety. It is not enough simply to provide an unsafe internet and expect children to keep away. There are positive obligations to make it safe, of which this legislation forms an important part.

Children in the Draft

CMA notes that the Exposure Draft makes little express mention of children. This is not surprising, considering the parallel development of the Children's Online Privacy Code, which attends to most matters of particular concern to children. Nevertheless we note, and

¹ All page numbers refer to the Consultation Paper.

² See eg Committee on the Rights of the Child, *General Comment No. 25 (2021) on children's rights in relation to the digital environment* (CRC/C/GC/25).

welcome, the use of **the ‘best interests of the child’ principle** (page 15) and the special focus on children’s needs in giving content to **the ‘strictly necessary’ rule** (page 17).

Several other provisions, although not specifically referring to children, are likely to be of significant practical relevance to them. For example, the change of the definition of personal information to that which **‘relates to’** a person (page 4) could improve the protection of children in situations where their parents are the ‘dominant subject’. Similarly, the new provision on **geolocation tracking data** (page 6), while helpful to everybody’s privacy, will address situations where children are particularly vulnerable. Also the **right to erasure** on large digital platforms (page 33) will be all the more appreciated by those who have been able to establish a footprint on those platforms before their critical faculties were fully developed. Finally, the acknowledgment that there is such a thing as too much information, as well as too little, when it comes to **notifications to consumers** (page 18) has particular salience to children.

Regarding the ‘reasonable expectations’ requirement for handling of personal information, we trust that the **‘individual’s circumstances’** would extend to the person’s age, so that children’s lack of experience might be taken into account. More generally, we would hope that the concept of **‘reasonable expectations’** will not be applied in such a way as to encourage the driving-down of expectations by industry practices. That is, we would like to see ‘reasonable expectations’ interpreted in an abstract and normative way – what the individual *should* be able to expect, rather than what users have come to expect based on their experience. We are encouraged in this regard by the statement in the Consultation Paper about power imbalance (page 12), which seems to imply that the test will be guided by principle, not pragmatism.

Balancing of interests

CMA commends the authors of the Bill on their generally practical and balanced approach. The practicality can be seen, for example, in the new approach to **de-identification**, recognising this should not be treated as a static thing; (page 6) and in the consideration of **data minimisation** throughout the information handling lifecycle. (page 11)

There are numerous aspects of the Bill that, in our view, show evidence of deep listening on the part of the Government (for example the **carve-outs from the definition of trade** (page 16)) and a determination to strike a balance between the interests of service users and providers. An example of this is the approach to **transparency** in relation to handling of personal information, where the impracticability of providing information about the purpose and method of handling may be considered in determining what is fair and reasonable.

(page 13) Similarly the exception to access requests where technically **impossible or infeasible** gives considerable latitude to providers, at the expense of users. (page 31). We note the statement that a provider should not ‘deliberately design[] its systems so that access is impossible’ but this is a considerably easier standard to meet than one where there is a positive obligation to ensure that access is possible.

The reforms place quite reasonable expectations on entities, for example in requiring them to look at a situation from another’s point of view when considering the **potential impacts on an individual** (p 14), and the requirement to consider other ways of achieving their aims when **collecting information** (pp 10-11). This latter standard is similar to the thought processes that negligence law imposes on businesses in discharging their duties of care, and therefore should be both familiar and practical to implement.

The **modified opt-out provisions** for direct marketing (page 21) might be seen as tilting the balance a little far in favour of the provider, in that changes to the kind of service provided, depending on whether consent is granted or not, could be seen as a subtle kind of pressure to consent. However, we recognise that this could be seen as a reasonable and pragmatic balance to strike, considering the reality that advertising is, by hypothesis, integral to the provider’s business model. We note further the continuing injunction against changes to the terms on which the advertised products are offered, which will have considerable significance for consumers.

Matters for further clarification

We hope that the factor of the ‘**entity’s functions or activities**’ under the fair and reasonable handling test (page 12) will be interpreted in such a way that it does not extend to simple pursuit of profit. Such an interpretation could seriously undermine the power of the scheme to protect the interests of consumers. Rather the factor should be limited to the entity’s delivery of the goods and/or services from which it derives any profit.

CMA is troubled by the suggestion that a social media post might constitute a ‘**publicly available document**’. (page 17) We trust that this is intended to refer to material posted publicly, and not using any platform settings to limit the audience. If it were to extend to anything posted on social media, that would be in the knowledge of the platform but not necessarily the general public, this would represent a significant dilution of the protections these reforms appear to offer in relation to those platforms.

We are also troubled by the concept of ‘**frivolous or vexatious**’ requests for erasure. (page 34) The concept of ‘frivolous or vexatious’ is a very familiar one in the context of litigation and official complaints – matters where there is a contest of rights and an implicit agreement that there are legitimate and illegitimate motivations for seeking to engage such

processes. We see the 'right to erasure' as something quite different. The key is in the term 'right' – there should be no need to demonstrate pursuit of particular aims in claiming such a right, rather the exercise of the right is an end in itself. On this analysis, there can be no frivolous or vexatious requests. If the 'right' is to be thus circumscribed, this is disappointing, and seriously undermines the protection of children's interests. If a limit of this kind is to be placed on the right, there should at a minimum be a clear statement as to the ends one is entitled to pursue in requesting erasure.

*******END OF SUBMISSION*******