CHILDREN & MEDIA AUSTRALIA

Thriving in a digital world

4 June 2026

Office of the Australian Information Commissioner

By email to: copc@oaic.gov.au

SUBMISSION ON EXPOSURE DRAFT CHILDREN'S ONLINE PRIVACY CODE

Thank you for the opportunity to provide a further submission on the development of this timely and important Code (or COPC).

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@childrenandmedia.org.au.

General

CMA agrees with the overall approach of the Exposure Draft, and in particular:

- putting the onus on entities to protect children's interests; and
- having children's best interests always front and centre.

CMA also congratulates the team on the carefully thought-through and planned consultation process for the Exposure Draft.

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

We believe that the Code as drafted has the potential to uplift privacy practices generally, and not just in relation to children.

We acknowledge that the Code is not a silver bullet, but we are also of the view that nobody should expect any legal instrument to be such. Rather its success should be measured over years, and gradual shifts in consciousness and practices. Still, we have identified an ongoing need, after the Code comes into force, to keep up support for parents in managing children's online lives, and all the more so where they are given an important responsibility under such an instrument (here, the granting of consent). The dedication of resources to the provision of such support is a matter of basic reasonableness and good government, but it would also contribute to Australia's fulfilment of its international obligations under article 18 of the UN Convention on the Rights of the Child (the UNCRC).

Support

Specific aspects of the COPC that CMA supports include:

- reliance on the 'likely to be accessed' test;
- the right to request the destruction of data;
- the 'assent' provisions, which take seriously the need to attend to children's developing capacities in accordance with the UNCRC; and
- covering edtech providers, through the 'primarily concerned with the activities of children' category (as we understand it).

We also support the way the entities' obligations are structured around words like the 'risk of harm' (s 8(2)) and 'the seriousness of any consequences' (s 14(2)(b)), as these have strong echoes in the legal duties they already have in other fields of law (for example negligence).

Comment on specific provisions

We understand that the consultation is interested in feedback on the meaning of the word 'primarily' in s 5. In our view the wording of s 5 is lacking in clarity, and it may be helpful to reword it so that it echoes s 7(a), by referring to the likelihood that a service will be used in a certain way – specifically, likelihood that an entity will gain access to children's data when the service is used in the normal way. This would remove any need to be concerned about the interpretation of the word 'primarily'.

However, for completeness, CMA would comment that we have seen the word used in other contexts to lead to perverse consequences, against children's interests. It is unlikely

that children will ever be seen as the 'primary' audience (etc) if adults, even theoretically, also make up part of that group.

We also understand there has been discussion of narrowing the health exemption in s 5(c) to counselling and preventative services only; if such a change is on the table, we would support it.

Reservations

CMA questions the definition of 'age appropriate', particularly paragraph (b) which draws on the idea of appropriateness for a child aged between 10 and 12 years. The way this is phrased could lead to confusion, not least because children develop considerably during that period: what is appropriate for a 12 year old may well be inappropriate for a 10 year old. CMA predicts that entities will make their statements, information etc appropriate for 12 year olds, which would comply with the letter of the relevant provisions, but not with their spirit. CMA submits that it would be more appropriate, and more effective in protecting children's interests, to set a minimum age and stick with that. That is, the paragraph should refer simply to the information being 'appropriate for a child of 10'.

CMA also has some reservations about paragraph (a) with the reference to an age range at which the service is 'targeted', and note that this wording is not included in s 7's definition of services to which the Code applies. If 'likely to be accessed' can be used in that context, it should also be used in the definition of 'age appropriate'. Therefore, paragraph (a) should read: 'if the entity's service is likely to be accessed by children – the information is appropriate for a child of the youngest age likely to access the service'.

CMA generally opposes regulations that rely on a judgment about 'targeting' to children, because these focus on the intent of the person or people sending the content out, whereas an approach that puts children's interests front and centre will focus on where the content lands.

CMA submits that it should not be permissible to target children with direct marketing – at least to younger children, and especially for unhealthy products, such as gambling, alcohol and diet drugs. As an aside, we note that direct marketing is not defined in the Code, and we understand it to mean the kind of situation where children receive marketing communications without having, for example, signed up for a newsletter. We would expect that the latter kind of situation could be separately managed, precisely because the signing-up creates a transaction that can (and perhaps should) be directly regulated.

Finally, in relation to s 11(3) on use or disclosure of information, and the incorporation by reference of APP 7.2, we note that it is rather artificial to talk about what a child would

'reasonably expect'. Therefore we would suggest some further reflection on this, though we acknowledge that what might be needed is an adjustment to the APP itself.

Suggestions

We have a general suggestion about the way the Code is laid out: because there is a good deal of cross-referencing to the Act and the APPs, we suggest creating an online version with links where necessary to make the Code easier to follow and use. There may also be a case for incorporating wording from one of the other documents into the Code. In this connection we note once again the important responsibility that the Code places on parents all around the country. Any steps to make it more comprehensible to a broad range of people will only make it more effective in protecting children's rights.

CMA submits that the definition of 'person with parental responsibility' should specifically exclude teachers and schools. We are aware of situations overseas where schools have given consent to edtech companies to collect and use their students' data (see generally www.edtech.law) – situations that should be avoided in Australia.

We note a need for more guidance on what is meant by 'the child' for 'best interests' purposes – is it a generic child, or the specific child with whom the entity is dealing? The relevant provisions could be read either way, and the nature of the obligation would vary quite significantly, depending which reading is adopted. We see that the Explanatory Memorandum addresses this, but we submit that the matter should be clarified in the terms of the Code itself.

We have registered above our support for the assent provisions, but we do think they could be better explained for the average user. The difference between 'assent' and 'consent' is not obvious.

We would like to see more details in provisions such as s 13(3)(d) and (g) and s 15(3)(d) and (g) to make it clear that statements of the nature of 'We may share your data with our partners' are insufficiently specific. There should be a requirement to provide information on who the partners are.

CMA submits that s 17, the withdrawal of consent provision, should require entities effectively to communicate to users that it is never too late to do so. Without such communication this is unlikely to be clear to the average user, or parent.

In s 21, CMA submits that a provision should be included against manipulation or coercion of a parent, which is surely possible, even if the threshold would be higher.

We submit that s 23 should use the term ‘designed specifically for children’ or even ‘age appropriate’ in preference to ‘directed at children’. Similar to references to ‘targeting’, the latter phrase still focusses on the intent of the author rather than how the policy is received in practice.

CMA sees no reason why the notification requirements in 24 should not extend to all entities covered by the Code, and not just those whose services are likely to be accessed by children.

We foresee that s 35 could lead to quite a proliferation of statements, which would need to be read and understood individually, potentially leading to notice fatigue. There is an opportunity for the OAIC to draw up a statement for every type of entity, and then these will become familiar and more effective in protecting children’s needs.

Finally, we suggest enabling child-oriented NGOs to engage in the complaints process under s 36, in addition to users and parents. This would give rise to a better chance of addressing issues at a systemic level, thereby potentially improving practices across the board and providing a better incentive on entities to comply.

Further consideration

There is a potential for conflicts of interest between parents and children in relation to online privacy, be it tensions over whether consent will be granted under the Code, or the risk of disagreements over the use of parental control apps, or ‘sharenting’, which many children and young people object to. It may not be possible to address all of these under the APPs, but it is worth exploring these matters for possible future regulation. This is particularly the case if part of the aim with this regime is to change attitudes; such attitudes are held by people living in a world where these issues are fundamentally connected. Therefore addressing them in a holistic way is likely to fulfil the aim more effectively.

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