Working with Women Alliance

Children's Online Privacy Code (Exposure Draft)

Submission by the Working with Women Alliance (WwWA)

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Acknowledgment of Country

The Working with Women Alliance acknowledges the Traditional Custodians of the land on which we work and live.

We pay our respects to Aboriginal and Torres Strait Islander Elders past and present, and we value the enduring connection Aboriginal and Torres Strait Islander people have to this land.

We value Aboriginal and Torres Strait Islander histories, cultures, and knowledge.

About WwWA

The Working with Women Alliance (WwWA) represents two key portfolios: National Women's Safety (NWS) and National Women's Equality (NWE).

The WwWA connects the critical areas of gender-based violence prevention and the advancement of women's economic equality and leadership, bridging these important policy fields for greater impact.

We work with members and stakeholders, including the Australian Government, to provide expertise and advice on gender equality and women's safety.

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Executive Summary

The Working with Women Alliance (WwWA) welcomes the opportunity to provide feedback to the Office of the Australian Information Commissioner (OAIC) on the Exposure Draft of the *Children's Online Privacy Code* (the Code) and the accompanying Explanatory Statement. We emphasise that children's online privacy is fundamentally a safety issue which is deeply linked to risks of digital abuse, grooming, and coercive control, particularly for girls who are disproportionately affected. WwWA supports the introduction of the Code and welcomes it as an important step toward strengthening protections for children in digital environments.

WwWA would like to acknowledge how the Code seeks to empower children as active participants and allows them to meaningfully engage and exercise choice in relation to how their personal information is used. These features respond to direct consultation with children and young people, who expressed a desire for greater involvement and control over their personal information. In this respect, the draft

Code makes an important contribution to privacy protection and to children's literacy and agency online.

The collection, use and disclosure of children's personal information can contribute to real-world harms, including violence, coercive control, technology-facilitated abuse, surveillance, grooming and exploitation. For this reason, WwWA supports the overall direction of the draft Code, but considers that the draft could be strengthened in several areas as outlined below.

Recommendations

1. Further codify the "best interests of the child" principle and expressly recognise gender-based violence, family violence and technology-facilitated abuse as relevant considerations.
2. Require entities to disclose the use of AI systems and allow users to opt-in for AI systems. Clarify that the use of children's data to train AI systems must be subject to strict limitations.
3. Strengthen section 33 to recognise that monitoring and control mechanisms may intersect with family violence and child safety risks, and ensure children are told what monitoring is occurring, who can access the information, how long it will continue, and what support or complaint pathways are available.
4. Develop OAIC guidance on child-centred risk assessments under section 38, in consultation with child safety, family violence and online safety experts.
5. Require staff training under section 40 to cover child safety harms and safeguarding risks.
6. Require entities to publish periodic transparency reporting on children's privacy requests and complaints, including volumes, response times, extensions and high-level reasons for delay.
7. Use the OAIC-eSafety MoU to establish clear child-specific coordination pathways, including role clarity, referrals, information-sharing and joint regulatory activity in cases of serious or widespread harm.
8. Commit to periodic review of the operation and effectiveness of the Code itself so it remains fit for purpose as digital environments and risks evolve.

Best interests of the child

WwWA welcomes how the principle of best interest is embedded in the Code and the clarifications provided in the draft explanatory statement. We encourage the OAIC to include these clarifications in the final materials, such as considering whether key concepts should be reflected more expressly in the operative text of the Code, within the definitions section or in dedicated OAIC guidance.

WwWA notes that the explanatory statement provides a comprehensive definition of best interests but recommends that the final Code or accompanying guidance make more specific reference to violence-related harms, including family violence, coercive control and technology-facilitated abuse (outside of just child exploitation) as relevant considerations in applying this principle. There may also be value in drawing from existing Australian legal interpretations of the "best interests of the child", including in family law, as one possible reference point. While the contexts differ, these frameworks provide an established body of guidance on assessing children's safety, wellbeing and developmental needs in the context of violence, and could assist in ensuring that the standard is applied in a meaningful way in the privacy context. For example:

- *the need to protect the child from physical or psychological harm caused, or that may be caused, by being subjected or exposed to abuse, ill-treatment, violence or other behaviour or by being directly or indirectly exposed to abuse, ill-treatment, violence or other behaviour that is directed towards, or may affect, another person*
- *any family violence involving the child or a member of the child's family*
- *any family violence order that applies to the child or a member of the child's family*[i]

Notification of monitoring

WwWA supports the inclusion of Division 6 that children be notified when a service includes mechanisms that enable monitoring or control of their service use or geolocation. This is an important safeguard and reflects the reality that children should not be unknowingly subjected to surveillance through digital products and services. This provision is especially important considering the risks identified in WwWA's earlier submission regarding unsafe family contexts and technology-facilitated abuse, where children can be monitored, stalked or controlled through devices, accounts and parental access tools.

Division 6 could be strengthened by providing more guidance about how notification should operate in practice, particularly where monitoring may create or exacerbate safety risks. In some circumstances, simply notifying a child that they are being monitored may not be sufficient if the child is not also told what kind of monitoring is occurring and what choices or supports are available to them. The Code would therefore benefit from clearer guidance that notifications under section 33 should, where appropriate, explain the nature of the monitoring and any steps the child can take to seek more information or access support. WwWA notes that monitoring and control mechanisms may be protective in some cases, but harmful in others. This would align with WwWA's broader position that children's privacy must be understood as a safety issue at its core.

Consent and transparency

WwWA welcomes the Code and explanatory statement's emphasis on meaningful understanding, anti-manipulation safeguards, and clear explanations of higher-risk handling. WwWA recommends retaining and strengthening this approach, including through clearer upfront explanations of profiling, AI-related uses, automated decision-making and overseas disclosures.

AI and automated decision-making

WwWA acknowledges that the draft captures some AI-related practices indirectly through provisions on profiling, automated decision-making, transparency, strict necessity and privacy impact assessments. However, the Code does not yet expressly address AI systems or clearly set out how children's personal information may be used in AI-enabled features such as using children's information for AI model training. WwWA therefore recommends that the code requires entities disclose to children/parents where AI systems are used and require users to opt-in for AI systems. The Code should also clarify that the use of children's data to train AI systems must be subject to strict limitations.

Destruction of information

WwWA strongly supports the inclusion of Division 5 and the introduction of an express mechanism for children to request destruction of their personal information. This is a significant and welcome development in the draft Code, and an important step toward recognising a child-specific right to erasure. WwWA continues to support broader privacy reform to establish a standalone right to erasure for children across the Australian privacy framework, beyond the scope of this Code alone.

Privacy impact assessments and risk assessments

WwWA strongly supports section 38 and the requirement for entities to conduct privacy impact statements, including to assess the risk of harm to children, and considers it one of the most important operational safeguards in the draft Code.

WwWA considers that further guidance will be needed on what a meaningful child-centred risk assessment should involve in practice. In many organisational settings, "risk assessment" is commonly understood as an assessment of legal, operational or reputational risk to the entity itself. This is distinct from assessing risks of harm to children. Identifying and assessing harms such as family violence, grooming, coercive control, technology-facilitated abuse, surveillance, exploitation and cumulative developmental impacts requires a more specialised understanding of risk factors and child safety dynamics. WwWA therefore encourages OAIC to develop guidance on

children's privacy risk assessments in consultation with the child safety, family violence and online safety sectors, so that entities are better equipped to assess risks to children in a way that is informed, consistent and grounded in safeguarding practice

Education and training

WwWA also supports section 40, which requires education and training for staff who have regular or frequent access to children's personal information. Requiring training to cover obligations under the Code, including obligations relating to the best interests of the child, is an important measure to ensure that compliance is embedded within organisational practice rather than treated as a one-off legal exercise. Consistent with WwWA's broader submission, training should not be limited to technical privacy compliance alone. It should also build understanding of the ways children's personal information can be linked to online safety risk.

Timeliness and transparency of responses

WwWA notes that the draft Code requires entities to respond to several requests and processes within 30 days, with limited capacity to extend to 60 days where this is reasonably necessary due to complexity or request volume. Given the importance of these rights in practice, WwWA considers there is merit in strengthening transparency around how these timeframes operate. Entities should be required to publish periodic transparency reporting on children's privacy requests and complaints, including volumes, response times, the proportion resolved within 30 days, the proportion extended to 60 days, and high-level reasons for extension. This would inform both regulatory activity of the OAIC and provide transparency to parents and children.

Regulatory coordination

WwWA notes that the OAIC and the eSafety Commissioner recently established a Memorandum of Understanding (MoU) recognising that privacy and online safety must be addressed side by side. WwWA considers that the effective operation of this arrangement will depend on there being clear, child-specific pathways for coordination in practice. In particular, the OAIC and eSafety should ensure that the implementation of the MoU expressly addresses children's privacy and safety harms, including family violence, coercive control, technology-facilitated abuse, surveillance and harmful data practices. WwWA encourages both regulators to use the MoU to support clear delineation of roles and responsibilities, timely referral and information-sharing pathways, and, where appropriate, joint regulatory action in matters involving serious or widespread harm to children where risks are acute, compliance willingness is low, or the impact of harmful practices extends across multiple platforms or large

numbers of children. This would help reduce the risk of children falling through regulatory gaps where privacy and online safety issues overlap.

Continuous improvement

We support the embedding of continuous improvement in the Code through requiring entities to review and update its privacy practices, procedures and systems at least annually. We recommend that in support of this principle, there be a mechanism for review of the Code itself. The online environment in which children engage is changing rapidly, including through developments in age assurance, automated decision-making, emerging technologies and platform design, and the operation of the Code should be assessed against those changes over time. The Explanatory Statement recognises that the Code is intended to strengthen children's privacy protections in response to evolving digital practices and emerging risks. WwWA therefore encourages the OAIC to commit to periodic review of the effectiveness and operation of the Code, including whether its protections remain fit for purpose, how key provisions are working in practice, and whether further amendments or guidance are needed in response to emerging risks and evidence of harm. Such a review process would support continuous improvement and help ensure that the Code remains responsive to the realities of children's online experiences. As a legislative instrument, the Code can be updated more readily than primary legislation and should therefore be supported by a formal commitment to periodic review.

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[i] Australian Law Reform Commission, Seen and Heard: Priority for Children in the Legal Process (Report No 84, 1997) ch 16, 'The Best Interests Principle' <https://www.alrc.gov.au/publication/seen-and-heard-priority-for-children-in-the-legal-process-alrc-report-84/16-childrens-involvement-in-family-law-proceedings/the-best-interests-principle/>