

# Submission to the Privacy and Other Legislation Amendment Bill 2024 Inquiry

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For further information or questions about this submission please contact:

Katie Maskiell

**Head of Policy and Advocacy**

UNICEF Australia

e: [kmaskiell@unicef.org.au](mailto:kmaskiell@unicef.org.au)

m: +61 417 091 806

**Australian Committee for UNICEF Limited**

Suite 4.02 Building B, 33-35 Saunders Street PYRMONT NSW 2009

P: +61 2 9261 2811 F: +61 2 9261 2844 E: [unicef@unicef.org.au](mailto:unicef@unicef.org.au)

PO Box 488, Queen Victoria Building, NSW 1230 | ABN 35 060 581 437

[www.unicef.org.au](http://www.unicef.org.au) | Donation Hotline: 1300 884 233

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## Executive Summary

UNICEF Australia welcomes the opportunity to provide a submission to the Inquiry into the *Privacy and Other Legislation Amendment Bill 2024*.

UNICEF is the world's leading organisation working to protect and improve the lives of every child in over 190 countries. At UNICEF Australia we work to protect and promote children's rights by advocating for the rights of children in Australia and overseas. Given our role as a child-focused organisation, our submission will accordingly focus on the specific provisions of the *Privacy and Other Legislation Amendment Bill* that relate to children.

UNICEF Australia envisions an online world which minimises risks and harms to children's safety and wellbeing, at the same time as providing all the positive benefits that allow children to thrive in an increasingly digital world. In this regard, the introduction of a Children's Online Privacy Code through reforms to the *Privacy Act 1988* is a landmark piece of legislation that will enable Australia to remain responsive to the emerging challenges faced by children and young people in digital environments.

Data is the currency of the online world, and children's data - where it's collected, traded and sold on mass scales - is considered big business. The Children's Online Privacy Code will ensure children's data is only collected and used in a way that serves their best interests and will provide them with the protections they are entitled to. It will hold tech companies accountable, ensuring they are transparent with how they use children's data, and that terms and conditions of apps are clear and straightforward.

The digital world was not originally designed for children, but it undoubtedly plays a significant role in their lives<sup>1</sup>. Being able to connect online provides children valuable opportunities to learn, play and socialise with friends and peers, as well as to access information and support. However, spending time online also comes with risks for children such as being exposed to potentially harmful content or having their personal data compromised or exploited. From civil society to governments and the private sector, UNICEF Australia is eager to work with all involved, to help realise our vision and make Australia the best place in the world for children to go online.

## Summary of Recommendations

### Support for the Children's Online Privacy Code

1. *Develop the Children's Online Privacy Code*
2. *Ensure Code applies to all online services likely to be accessed by children including educational technology providers, games and commercial health apps.*

### Child and Youth participation

3. *Directly consult with children and young people in the development of the Code, as well as in any reviews and in its ongoing operation*

### Best Interests Principle

4. *Apply the best interests principle in the development and implementation of the Code to ensure children's rights are protected in the digital world.*
5. *Use the Committee on the Rights of the Child's General Comments 14 and 25 as guides in determining how the best interests principle should be incorporated into the Code.*

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<sup>1</sup> 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)

## Detailed Recommendations

### Support for the Children's Online Privacy Code

UNICEF Australia welcomes the development of a Children's Online Privacy Code to provide long overdue protections children's data and privacy online.

Globally, it is estimated that one in three internet users is a child under the age of 18,<sup>2</sup> and that 75% of young people around the world use the internet, 10% higher than the rest of the population.<sup>3</sup> In Australia, 84% of children will have a social media presence by the age of two,<sup>4</sup> and by age 12 every single child in Australia will be online.<sup>5</sup> As children engage with digital environments at higher rates compared to other age groups,<sup>6</sup> the changes to those environments stand to have a comparatively greater impact on them. This is important, because just as children are uniquely vulnerable in the offline world, they are also uniquely vulnerable in online worlds.

To create a digital environment that works for children, it is critical we strengthen the laws that govern their data. Data is the currency of the online world; by regulating how it is used in Australia, we can take an upstream approach to regulation which then flows down and sets the rules for how platforms are designed, how they operate, and how we interact with them.

There are significant risks for children online that related to data and privacy including through data monetisation, microtargeted advertising, profiling and automated decision-making.<sup>7</sup> The few numbers available are staggering - it is estimated that by age 13, advertisers will have collected 72 million data points on a child.<sup>8</sup> For young children, concepts like privacy can be difficult to understand, and they may unwittingly divulge information to third parties that places them at risk. The digital ecosystem is so complex and seamless that often neither children or their adult guardians are fully aware of how their data is being captured and used, nor what the potential benefits and risks are.<sup>9</sup> And while an individual's data tends to be treated the same way regardless of who they are, children's data is different<sup>10</sup> - children are less able to understand the long-term implications of consenting to their data being collected.<sup>11</sup>

This is why UNICEF Australia strongly supports the introduction of a Children's Online Privacy Code as an important mechanism to advance children's rights in the digital world. The Children's Online Privacy Code will support us to move beyond simply addressing and remedying harms once they have happened and instead design better systems and a better digital world for children, proactively preventing harm.

To be effective, the Code must apply to *all* online services likely to be accessed by children and align. It is currently unclear whether educational technology providers, most games and commercial health apps (who collect sensitive biometric data) will be covered by the code.

#### Recommendation

1. *Develop the Children's Online Privacy Code*
2. *Ensure Code applies to all online services likely to be accessed by children including educational technology providers, games and commercial health apps.*

<sup>2</sup> UNICEF Office of Research – Innocenti (2019), Global Kids Online Comparative Report, <https://www.unicef-irc.org/publications/pdf/GKO%20Main%20Report.pdf> quoting Livingstone, Sonia, John Carr and Jasmina Byrne, 'One in Three: Internet Governance and Children's Rights', Innocenti Discussion Paper 2016-01, United Nations Children's Fund, Office of Research - Innocenti, Florence, January 2016. Available at: <https://www.unicef-irc.org/publications/795-one-in-three-internet-governance-and-childrens-rights.html>

<sup>3</sup> ITU (2022), Youth Internet Use, <https://www.itu.int/itu-d/reports/statistics/2022/11/24/ff22-youth-internet-use/>

<sup>4</sup> CNN/Mark Milian (2010), Study: 82 percent of kids under 2 have an online presence, <https://edition.cnn.com/2010/TECH/social.media/10/07/baby.pictures/index.html>

<sup>5</sup> Bravehearts (2023), Online risks, child exploitation & grooming, <https://bravehearts.org.au/research-lobbying/stats-facts/online-riskschild-exploitation-grooming/>

<sup>6</sup> UNICEF Office of Research – Innocenti (2019), Global Kids Online Comparative Report, <https://www.unicef-irc.org/publications/pdf/GKO%20Main%20Report.pdf>

<sup>7</sup> UNICEF (2021), The Case for Better Governance of Children's Data: A Manifesto, <https://www.unicef.org/globalinsight/reports/better-governance-childrens-data-manifesto>

<sup>8</sup> Holloway, D. (2019). Surveillance capitalism and children's data: the Internet of toys and things for children. Media International Australia, 170(1), 27-36. <https://doi.org/10.1177/1329878X19828205>

<sup>9</sup> UNICEF (2021), The Case for Better Governance of Children's Data: A Manifesto, <https://www.unicef.org/globalinsight/media/1771/file/UNICEF%20Global%20Insight%20Data%20Governance%20Summary.pdf>

<sup>10</sup> UNICEF (2021), The Case for Better Governance of Children's Data: A Manifesto, <https://www.unicef.org/globalinsight/media/1771/file/UNICEF%20Global%20Insight%20Data%20Governance%20Summary.pdf>

<sup>11</sup> UNICEF (2021), The Case for Better Governance of Children's Data: A Manifesto, <https://www.unicef.org/globalinsight/media/1771/file/UNICEF%20Global%20Insight%20Data%20Governance%20Summary.pdf>

## Child and Youth Participation

UNICEF Australia welcomes the move away from industry-drafting and supports the instruction to the OAIC to develop the Children's Online Privacy Code. Through the drafting process led by the OAIC, the involvement of children and young people is crucial and will be critical to the code's success.

Every child and young person under 18 has the right to participate and have their opinions included in decision-making processes that relate to their lives, according to Article 12 of the CRC.<sup>12</sup> Including the voices of children and young people in the development of policy isn't just the right thing to do, it's the smart thing to do – policies co-designed with children and young people are better placed to respond to their needs and deliver better outcomes.

Children and young people have also displayed a strong interest in how the digital world is designed and treats them. UNICEF Australia's own research has shown that children and young people have a keen understanding of the profound and growing impact of social media on their lives and want support to safely navigate online spaces and strengthened protections to keep them safe.<sup>13</sup>

In keeping with this, UNICEF Australia would like to see requirements for children and young people to be directly consulted in the development of the Children's Online Privacy Code, as well as in any reviews of it and in its ongoing operation. Given the importance of the online world to children and young people and the benefits it brings in terms of learning, socialising, and accessing important information and support, we must create a Code that is responsive to their needs and views and delivers the best possible outcomes for Australian children.

We want to ensure that children and young people are respected as digital citizens. This means ensuring that age-appropriate services don't shut them out or downgrade their service because it's 'too hard' to meet their rights as described in the Code. We also want to ensure that children and young people are provided with clear accessible information on their rights that underpin the Code and the mechanisms that are available through the Code (and ideally elsewhere in consumer rights, health consumer rights, and rights to safety, information and education). This should also include details of restrictions and limitations with rationales, such as gambling, pornography etc, and in appropriate circumstances the opportunity for challenge to those restrictions.

Involving children and young people directly in the development of the Children's Online Privacy Code gives us the best chance to effectively balance and uphold their rights to freedom of expression and access to information alongside privacy and protection from harm. Child and youth participation in the drafting process should be also complemented by involvement of children's advocates, such as the National Children's Commissioner, civil society and experts/academics to support meaningful co-design and ensure the code truly works in the best interests of children.

### Recommendation

*3. Directly consult with children and young people in the development of the Code, as well as in any reviews and in its ongoing operation*

## Applying the Best Interests Principle

Taking a rights-based approach to children's data and privacy online will ensure that protections are proportionate to the potential harms they face in the digital world and do not unduly infringe on their rights to freedom of expression,

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<sup>12</sup> 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)

<sup>13</sup> Convention on the Rights of the Child, opened for signature 20 November 1989, Treaty Series Vol. 1577 (entered into force 2 September 1990) art 12

participation and access to information. Child rights are interdependent, non-hierarchical and indivisible in nature and require a holistic application to ensure the best possible outcomes for children and young people.

The United Nations Convention on the Rights of the Child, Article 3, states that the best interests of the child must be a primary consideration in all actions concerning children.<sup>14</sup> This is often referred to as the ‘best interests principle’ and if implemented correctly, has the capacity to hugely improve children’s online experiences and advance their rights in the digital world. The Committee on the Rights of the Child’s General Comment 25, which addresses children’s rights in relation to the digital environment, stipulates that applying the best interests principle can ensure platforms ‘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’.<sup>15</sup> The Committee on the Rights of the Child’s General Comment 14<sup>16</sup> provides further examination of the best interests principle and how it should be applied in practice.

UNICEF Australia recommends that the best interest principle be applied throughout the development, drafting and implementation of the Code, as well as a requirement of platforms outlined within the Code. Application of the best interests principle will ensure that children’s rights are proactively considered throughout all aspects of the Code development and implementation.

When applied to industry, the best interests principle will ensure that the processing of children’s data only occurs when it has been considered and acted to protect children’s rights. It will ensure data minimisation and restricted data sharing where only strictly necessary data should be processed, and that children’s data is only circulated if it is in their best interest to collect or share (such as in medical emergencies). It should apply to all systems processing children’s data including recommender systems and algorithms, automated decision making and profiling, digital marketing and commercial profiling and testing for ‘persuasive’ design, and platforms should be required to submit comprehensive best interests assessments, risks and mitigation strategies to enforce accountability and transparency over the use of children’s data.

UNICEF Australia recommends that international frameworks, including General Comment 14 and General Comment 25 be consulted and used as guides in determining how the best interests principle should be incorporated into the Code and provide clarity on measures that will ensure the best interests of children are realised.

UNICEF has also co-developed Responsible Data for Children Principles with The Government Lab (GovLab) to guide actors in responsible data handling. These principles are publicly available and can be used to inform the design and development of the Code to ensure children are protected, have their rights upheld and are enabled to fulfill their potential through a safe and supportive online world.

#### **Recommendation**

*4. Apply the best interests principle in the development and implementation of the Code to ensure children’s rights are protected in the digital world.*

*5. Use the Committee on the Rights of the Child’s General Comments 14 and 25 as guides in determining how the best interests principle should be incorporated into the Code.*

<sup>14</sup> Convention on the Rights of the Child, opened for signature 20 November 1989, Treaty Series Vol. 1577 (entered into force 2 September 1990) art 3

<sup>15</sup> 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)

<sup>16</sup> 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)