



Submission on Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021 (Cth)

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Introduction

As South Australia's Commissioner for Children and Young People, my mandate under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* is to advocate for the rights, interests and wellbeing of all children and young people in South Australia. It is also my role to ensure that the State, at all levels of government, satisfies its international obligations under the United Nations Convention on the Rights of the Child (the UNCRC).

I welcome the opportunity to comment on the Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021. Article 16 of the UNCRC ensures the right to privacy, it outlines how the law should protect the child's private, family and home life, including protecting children from unlawful attacks that harm their reputation.

Since 2017, I have spoken with thousands of children and young people across South Australia about what is important to them. They have consistently told me that the online world is just another place where they live their lives, where they learn, play, connect with others and with services, make and create, relax, and share and receive information. There are important privacy implications related to the fact that children and young people see their online and offline lives as inextricably linked. However, adult decision, policy makers and the media often treat the digital and offline worlds as separate. This is often evident in discussions about a child's right to privacy, which are often primarily confined to online environments.

In my direct engagement with children and young people, they have consistently told me that they want the tools to feel empowered to navigate the digital world confidently and creatively without their privacy being unknowingly breached. Furthermore, they identify trust as fundamental to strong communities as well as their own wellbeing, safety and privacy. One of children and young people's biggest concerns online is 'feeling that they can trust the sites they visit to not try to take advantage of them'. They want to be able to trust adults, institutions and technology companies, service providers and websites to not take advantage of them and their personal information.

The challenge is how to best apply the values outlined above to the Online Privacy Code in a way that will make them concrete, whilst at the same time ensuring our youngest citizens can enjoy the benefits of established and emerging online products and services and rights, including children's right to privacy, but also their rights to access information (Article 13 of the UNCRC), to freedom of expression and participation (Article 12) and access to education (Articles 28 and 29) and healthcare (Article 24).

This submission makes the following recommendations to ensure that Australia's privacy legislation embed children's rights in a more consistent way:

- 1. That s26KC of the Bill is amended so that an OP Code must make specific provisions for child users to provide 'truly informed' consent.**
- 2. That an OP Code promotes upfront and child-focused transparency by design and default.**

3. That an OP Code requires organisations to have a mechanism in place to provide accessible and immediate support to users, particularly young users.

If you have any queries or would like to discuss anything further, please do not hesitate to contact my office.

Yours sincerely,



Helen Connolly

Commissioner for Children and Young People
Adelaide, South Australia

1. That s26KC of the Bill is amended so that an OP Code must make specific provisions for child users to provide truly informed consent.

Most children and young people feel the same urgency to click through the lengthy, legalistic terms and conditions to give their consent to those term of services. This is done because they need the product or service in the same way that adults do. It is concerning that this ‘click to complete’ paradigm essentially proffers implied consent.

Indeed, recent research poll released by Reset Australia raises significant concern about the extent to which terms and conditions allow children to provide informed and meaningful consent when they sign up for or use a service. A poll of 400 young people in May 2021 found that:

- 45% of 16- and 17-year-olds in Australia ‘never’ read terms and conditions and only 4% read them ‘all the time’; and
- Only 7% of young people reported being confident they understood what they were consenting to.ⁱ

A time-poor student who needs to access online video software to complete a video project for an assignment is highly unlikely to read fully, and truly comprehend a document that can run up to dozens of pages of obtuse and technical text.

Further, when the variety of ages, stages and abilities of young people using social media or other online services are considered, the OP Code would be significantly strengthened if it further defined informed consent and established a mechanism for truly informed consent to the collection, use and disclosure of personal information.

OP organisations should be required to not only consider the content but also the way information is delivered, including the timing, the language used, and the amount of information provided. Accessible and credible terms of service documents are key to informed consent and should outline the privacy implication of how a person’s data is to be treated and be authored in a way that users of all ages, particularly a service’s youngest users, can understand.

A best practice guide developed by the Behavioural Insights Team may be useful to this end. The Guide highlights that the following design features can significantly increase understanding of terms of service among users of all ages:

- Displaying key terms as frequently asked questions;
- Using icons to illustrate key terms;
- Showing terms in a scrollable text box instead of requiring uses to click to view them;
- Providing information in short chunks at the right time; and
- Using illustrations and comics.ⁱⁱ

2. That an OP Code promotes upfront and child-focused transparency by design and default.

Child-focused transparency is key to ensuring informed consent. Better transparency would be practically realised by putting privacy tools and controls in a prominent place in

the user interface, rather than something that is hidden behind complex setting menus or that disappears from the user experience once ‘accepted’.

Greater emphasis on privacy controls upfront and by default would assist young users to know what is happening to their data and what steps they can take if they wish to opt out of the service. For example, visual guides like simple flow charts that show aspects such as:

- If I leave this service this is what happens to my data...
- I have agreed that you can do this with my data...
- I only want to give you the minimal amount of my information to use this service...

Strengthening transparency in this way would go a long way to enhancing online privacy for children and young people, giving them more control over their online privacy, protecting and promoting their rights and providing opportunities to more fully participate as young citizens.

3. That an OP Code requires organisations to have a mechanism in place to provide accessible and immediate support to users, particularly young users.

Young users would also benefit from a live chat function available 24 hours, that is linked to a human customer service representative, rather than a bot, to talk them through the process to make a truly informed decision concerning the terms and conditions. This would be possible for the organisations covered in the code that operate at scale and have over 2,500,000 users. A requirement in the OP Code to have such a mechanism will help enable young users to trust that adults, institutions and technology companies, service providers and websites to not take advantage of them and their personal information.

ⁱ Reset Australia, July 2021. ‘Did we really consent to this?’ Terms & Conditions and young people’s data. Available at https://au.reset.tech/uploads/I01_resettechaustralia_policymemo_tc_report_final-july.pdf.

ⁱⁱ Behavioural Insights Team, 2019. Improving consumer understanding of contractual terms and privacy policies: evidence-based actions for businesses. Best Practice Guide. Available at <https://www.bi.team/publications/improving-consumer-understanding-of-contractual-terms-and-privacy-policies-evidence-based-actions-for-businesses/>.