

SUBMISSION BY
FREE TV AUSTRALIA

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Privacy (Children's Online Privacy) Code 2026

Submission to the Office of the
Australian Information
Commissioner

free tv

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1. Executive Summary

- Free TV Australia (**Free TV**) supports the goal of strengthening children’s privacy online.
- We recognise the importance of addressing genuine harms arising from the data practices of large digital platforms and acknowledge that the Draft Children’s Online Privacy Code (the **Code**) is intended to address these harms.
- Free TV’s members operate general-audience, advertising-funded online services – including broadcasting video on demand (**BVOD**) services (7plus, 9Now and 10 Streaming) and standalone news websites – that are not aimed at, marketed to, or designed for children.
- The OAIC should confirm in explanatory material that the on-demand program service exemption that applies to BVOD services applies to the services as a whole, not on a program-by-program or stream-by-stream basis.
- Clear guidance is also needed to clarify whether tracking data collected from non-logged-in users of websites like free news websites constitutes personal information.
- For services to which the Code applies, the ‘likely to be accessed by children’ threshold is too low and therefore the potential scope of the Code is too broad. If applied to general-audience services that are not otherwise exempt, the Code risks imposing significant new compliance requirements, the cost of implementing which is not proportionate to the risks to children.
- The threshold should be amended so that the Code applies only to services primarily directed at or designed for children, or that are significantly likely to be accessed by children.
- Where the Code does apply, Free TV supports a risk-based approach to age assurance and strongly advocates for a transition period of at least 12 to 18 months from registration to commencement to allow meaningful compliance.

Recommendations

- Confirmation should be provided in explanatory material to the Code that the ‘on-demand program services’ exemption applies to BVOD services as a whole, not on a program-by-program or stream-by-stream basis within those services.
- Clear guidance should be published on whether tracking technologies used on websites accessed without login give rise to obligations under the Code.
- The ‘likely to be accessed by children’ test should be amended so that the Code applies to services ‘primarily directed at or designed for children or significantly likely to be accessed by children’.
- The OAIC should issue guidance about the application of this revised test.
- For services for which age assurance is required, a risk-based approach should be applied to steps that are ‘reasonable in the circumstances’ to ascertain the age of end-users.
- There should be a transition period of at least 12 to 18 months from registration to commencement.

2. Introduction

Free TV welcomes the opportunity to submit to the Office of the Australian Information Commissioner (**OAIC**) in relation to its development of the Code. Free TV is the peak industry body for Australia's commercial television broadcasters. Information about Free TV and its members is at **Attachment A**.

When it comes to protecting children's privacy on screen, Free TV's members are already subject to robust privacy obligations relating to news and current affairs programs. The Commercial Television Industry Code of Practice, which governs commercial broadcasters' programming, includes specific provisions about material relating to a child's personal or private affairs.¹

However, we note that the Code has a different focus which is the collection of data about children online. As noted in the OAIC's draft explanatory material, the Code arose from the Attorney-General's Department's Privacy Act Review (the **Review**), in which Free TV was an active participant.²

The Review found that children are increasingly reliant on online platforms, social media, mobile applications and internet-connected devices, and that these online services routinely collect and use large volumes of personal information about children. The Review recommended the development of the Code applying to online services likely to be accessed by children.³

Free TV supports the goal of strengthening children's privacy online and recognises the importance of the Code in addressing genuine harms arising from the data practices of large digital platforms. However, as set out below, the Code must be focused on those platforms that were the subject of the Government's concerns, being services which children are significantly likely to use and services on which children are truly reliant, to ensure that it is appropriately targeted and proportionate to the risk of harm.

Free TV's members operate a range of online services, including BVOD services 7plus, 9Now and 10 Streaming, as well as standalone news sites.⁴ These services – which, in the case of BVOD services, provide a combination of news, entertainment and sport – are provided free and are funded by advertising. None of these services are aimed at, marketed to, or designed for children. Children are very unlikely to be the account holder for a BVOD service.

If applied too broadly, the Code could have unintended consequences – for example, impacting services that deliver important public policy benefits, such as high quality, accountable news, where targeted advertising and content recommendations can no longer be provided as they currently can be. This may arise where age assurance is impracticable to obtain, or likely to drive users away from services where they are reluctant to share identity information merely to access a free site.

Reduced advertising revenue would consequently undermine Free TV members' ability to deliver public goods currently enjoyed by all Australians, such as news.⁵ Meanwhile, global tech platforms that have implemented age assurance for other purposes (such as social media minimum age compliance) would gain competitive advantage, including in relation to advertising revenue.

¹ The Commercial Television Industry Code of Practice is registered and enforced by the Australian Communications and Media Authority under the *Broadcasting Services Act 1992*. It includes specific protections for children in news and current affairs programs, including consent and special care requirements. See clause 3.5 at <https://www.freetv.com.au/resources/code-of-practice/>.

² See Free TV's submission at <https://www.freetv.com.au/wp-content/uploads/2021/09/FINAL-Free-TV-Submission-7-Dec-2020-Privacy-Act-Review.pdf>.

³ OAIC, Exposure Draft Explanatory Statement, Privacy (Children's Online Privacy) Code 2026 (**Draft ES**), page 1.

⁴ Such as <https://7news.com.au/> and <https://www.9news.com.au/>.

⁵ Free television, whether provided terrestrially or online, is a public good in both the economic and social sense. It is non-excludable (available free of charge to every Australian) and non-rivalrous (everyone can access it simultaneously without diminishing anyone else's access).

This submission is structured as follows:

- **Section 3** addresses the scope of the Code, including the exemption applying to BVOD services.
- **Section 4** addresses age assurance.
- **Section 5** deals with commencement and transition.
- **Attachment B** sets out a summary of Free TV’s position on key proposals including direct marketing and targeted advertising, privacy impact assessments and commencement and transition arrangements.

3. Scope of the Code

Recommendations

- Confirmation should be provided in explanatory material to the Code that the ‘on-demand program services’ exemption applies to BVOD services as a whole, not on a program-by-program or stream-by-stream basis within those services.
- Clear guidance should be published on whether tracking technologies used on websites accessed without login give rise to obligations under the Code.
- The ‘likely to be accessed by children’ test should be amended so that the Code applies to services ‘primarily directed at or designed for children or significantly likely to be accessed by children’.
- The OAIC should issue guidance about the application of this revised test.

3.1 BVOD services and the on-demand program service exemption

The definition of designated internet service (**DIS**) in section 14 of the *Online Safety Act 2021 (OSA)* excludes ‘on-demand program services’ (**ODPS**) – services that provide material identical to programs that have been, or are being, transmitted on a commercial television broadcasting service under a broadcasting licence.⁶ This exemption applies to Free TV members’ BVOD services and we acknowledge that the OAIC has confirmed publicly that BVOD services are therefore not captured by the Code.

However, to avoid ambiguity about the scope of the ODPS exemption, Free TV recommends confirmation from the OAIC in explanatory material that the exemption applies to the BVOD service as a whole, not on a program-by-program or stream-by-stream basis.

3.2 Personal information collected from non-logged-in users

A significant and unresolved question for Free TV members is whether the Code could apply to websites that users access without logging in, such as news websites, where no name, email address or other directly identifying information is provided by the user.

⁶ See definition of ‘on-demand program service’ at section 18.

The OAIC’s own guidance notes that it may not always be clear whether data collected through tracking technologies on such sites like these constitutes ‘personal information’ for the purposes of privacy compliance.⁷ The guidance notes that an individual may be ‘reasonably identifiable’ – one element of the definition of ‘personal information’ – where data such as an IP address, URL information or activity data can be linked or matched with information held by a third-party platform. It would therefore appear that tracking data would not be personal information if no such linking occurs.

However, some uncertainty remains about whether tracking data routinely collected by news websites – for measurement, analytics and advertising – constitutes ‘personal information’. Without clarity on this question, websites could be brought within scope of the Code even where users are entirely anonymous. Free TV submits that this unintended consequence should be avoided and that clear guidance on this issue is essential before the Code commences.

3.3 The ‘likely to be accessed by children’ threshold

Notwithstanding Free TV’s position that the Code should not apply to its members’ services – because they are either exempt BVOD services or do not collect personal information – the following submissions are provided to assist the OAIC in its broader considerations about the application of the Code.

Among other services, the Code applies to providers of a DIS that is ‘likely to be accessed by children’ or ‘primarily concerned with the activities of children’.⁸ In the case of the first limb this threshold is very low and the potential application of the Code extremely broad.

The OAIC has acknowledged during its valuable public and industry consultations that it does not intend the Code to capture just any site a child may visit from time to time, nor sites which children may access at a point in time or for a short period but not on a sustained basis. Nonetheless, as currently drafted, the Code could apply to any general-audience consumer website, including news websites operated by Free TV members, if they were considered to collect personal information.

The OAIC has appropriately recognised during its consultations that the Code should apply to online environments where children experience the highest privacy risk. This should be reflected in the drafting of the Code.

Free TV submits that the threshold should be limited to services *primarily directed at or designed for children* or that are *significantly likely to be accessed by children* – as well as services primarily concerned with the activities of children, which we understand to be services such as those used to administer childcare and other educational facilities, but not accessed by children themselves.

It is acknowledged that the term ‘likely to be accessed’ is also used in the UK Age Appropriate Design Code (**UK Code**),⁹ and that the Australian Government has indicated that to the extent possible, the scope of the Code should align with international approaches, including the UK Code.¹⁰

However, as it has done in other instances (for example, in relation to the assent proposal in the Code), it is open to the OAIC to diverge from the UK position, and adjust its position based on the UK experience of implementation. In particular, as set out below, adding a ‘significantly likely’ qualification to the test

⁷ OAIC, ‘Tracking pixels and privacy obligations’ – available at <https://www.oaic.gov.au/privacy/privacy-guidance-for-organisations-and-government-agencies/organisations/tracking-pixels-and-privacy-obligations>.

⁸ Code, clause 7.

⁹ Available at <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/age-appropriate-design-a-code-of-practice-for-online-services/>.

¹⁰ Australian Government response to the Privacy Act Review Report, 2023, page 13 – available at <https://www.ag.gov.au/rights-and-protections/publications/government-response-privacy-act-review-report>.

would be consistent with guidance given by the UK Information Commissioner’s Office (ICO) after the UK Code was implemented.

Lessons from the UK experience

Lexology has reported that:¹¹

- Following the implementation of the UK Code in 2021 the breadth of the ‘likely to be accessed by children’ test created widespread uncertainty about who was actually in scope.
- This promoted the ICO to conduct a 2023 consultation on supplementary guidance specifically to clarify the scope.

The need for this additional guidance itself acknowledged the ambiguity in the original formulation. As a result, the ICO subsequently published guidance which included an important qualification, and a list of factors and case studies to assist businesses to understand the application of the test.¹² Relevantly, it noted that:

- The UK Code applies to services that are intended for use by children, and to services that are not aimed at children, but are accessed by a ‘*significant number of children*’.
- ‘Significant number of children’ means that the number of children accessing or likely to access the service is material.

A non-exhaustive list of factors was provided to help decide if the UK Code applied. These included assessment of the number of child users of a service (absolute and as a proportion of total users or total addressable children), as well as factors like whether content on the services is likely to appeal to children, and whether children are known to like and access similar services.

The OAIC has invited submissions on the type of guidance that would be most useful. The ICO’s guidance is a strong starting point, and a check list and case studies would be valuable. This could cover guidance about factors including:

- The number or proportion of active child users (if known by the online service operator and subject to clarity on the meaning of ‘active user’) and how often providers would be expected to conduct such an assessment.
- Design elements that make a service more attractive to children.
- Content on a service that makes it more attractive to children.
- Relevant research that may be drawn upon to inform the assessment – such as, in the case of access to news, the ACMA’s research which, for example, shows that an increasing number of younger people nominate social media as their main source of news.¹³

¹¹ Kelly Hagedorn, Adele Harrison and Colette Deamer, ‘Does the UK’s Age-Appropriate Design Code Apply to Your Business?’, 19 May 2023 – available at <https://www.lexology.com/library/detail.aspx?g=911e0a96-09cc-439e-bdfb-094f803e92fa>.

¹² Information Commissioner’s Office, ‘Likely to be accessed’ by children – FAQs, list of factors and case studies’ – available at <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/likely-to-be-accessed-by-children/>.

¹³ For example, see the ACMA’s *News media in Australia: 2025 report* – available at <https://www.acma.gov.au/publications/2025-03/report/news-media-australia-2025-report>.

4. Age Assurance

Recommendation

- For services for which age assurance is required, a risk-based approach should be taken to take determining steps that are ‘reasonable in the circumstances’ to ascertain the age of end-users.

Section 8 of the draft Code requires entities to take steps ‘reasonable in the circumstances’ to ascertain the age of end-users before collecting personal information, or alternatively to apply the Code’s protections to all users. The Explanatory Statement indicates a risk-based approach is appropriate where lower-risk services – in terms of collection, use and disclosure of information – may accept a higher degree of uncertainty as to age, while higher-risk services require greater certainty.¹⁴

Free TV supports this risk-based approach, while noting that guidance would be required in relation to how to determine the risks/harm, and what would be lower and what would be higher risk.

5. Commencement and Transition

Recommendation

- There should be a transition period of at least 12 to 18 months from registration to commencement.

The Code is required to be registered by 10 December 2026. Free TV strongly advocates for a transition period of at least 12 to 18 months from registration to commencement.

As a general statement it is noted that for services to which the Code applies, implementing the full suite of obligations – including age assurance, privacy-by-default for existing accounts, age-appropriate privacy policy redesign, data deletion capability, and staff training – would require significant investment in systems, processes and product design that can be complicated, restricted by the operations and services available of third parties who provide technical services and support, and cannot be completed within months.

The regulatory impact assessment for the Code should take account of the resources and time required for implementation, which should also be considered in finalising the scope of the application of the Code.

¹⁴ Draft ES, page 6.

6. Conclusion

Free TV and its members are committed to the responsible handling of personal information, including the personal information of children. We support the objective of the Code and stand ready to engage constructively with the OAIC to ensure that the final Code is workable, proportionate and effective for the services to which it applies.

The issues raised in this submission – in particular, relating to the BVOD exemption, the treatment of non-logged-in users, and the scope of the ‘likely to be accessed’ threshold – are capable of resolution through targeted amendments to the Code, inclusions in the explanatory material or through OAIC guidance.

8. Attachment A

About Free TV

Free TV Australia is the peak industry body for Australia's commercial television broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial free television makes to Australia's culture and economy. We proudly represent all of Australia's commercial free television broadcasters in metropolitan, regional and remote licence areas.



Free TV brings Australians together, supporting Australian culture and democracy. The commercial television industry creates these benefits by delivering content across a wide range of genres, including news and current affairs, sport, entertainment, lifestyle and Australian drama. At no cost to the public, our members provide a wide array of channels across a range of genres, as well as rich online and mobile offerings.

Commercial television networks:

- Reach 19.3 million Australians every week, including 11.4 million who watch trusted news every week, and 9.5 million who watch live and free sport each week
- Provide 25,285 hours of Australian content a year
- Spend more than \$1.625 billion on Australian content every year, dedicating over 88% of their content expenditure to local programming
- Spend more than \$400 million a year on trusted news, including on 390 local news bulletins every week across the country (plus updates and community service announcements)

A report released in September 2022 by Deloitte Access Economics, *Everybody Gets It: Revaluating the economic and social benefits of commercial television in Australia*, highlighted that in 2021, the commercial TV industry supported over 16,000 full-time equivalent jobs and contributed a total of \$2.5 billion into the local economy. Further, advertising on commercial TV contributed \$161 billion in brand value.

The commercial television industry creates these benefits by delivering content across a wide range of genres, including news and current affairs, sport, entertainment, lifestyle and Australian drama. At no cost to the public, our members provide a wide array of channels across a range of genres, as well as rich online and mobile offerings.

A strong commercial broadcasting industry delivers important public policy outcomes for all Australians and is key to a healthy local production ecosystem. This in turn sustains Australian storytelling and local voices and is critical to maintaining and developing our national identity.

Attachment B

Free TV positions on key proposals

Element / Proposal	Summary of Draft Code requirement	Free TV position
Scope – ‘likely to be accessed by children’ threshold	The Code applies to providers of designated internet services (DIS), and other specified services, likely to be accessed by children. DIS is drawn from the <i>Online Safety Act 2021 (OSA)</i> and can capture any consumer-facing website or app.	Free TV recommends a narrower threshold, limited to services ‘primarily directed at or designed for children or significantly likely to be accessed by children’.
BVOD / on-demand program service exemption	DIS excludes ‘on-demand program services’ (ODPS) – services providing material identical to programs transmitted on a licensed commercial broadcasting service.	Free TV recommends OAIC guidance confirming the exemption applies to the BVOD service as a whole.
Personal information and non-logged-in users	It is unclear whether tracking data (such as cookies, pixels, IP addresses) collected from users who have not logged in and provided identifying information constitutes personal information under the Code.	Free TV seeks clear OAIC guidance on whether tracking technologies used on websites accessed without login, or otherwise knowing the identity of the user, could give rise to Code obligations.
Age assurance	Entities must take reasonable steps to ascertain end-user age before collecting personal information. Alternatively, entities may apply Code protections to all users.	Free TV supports a risk-based approach, for example self-declaration at registration could be considered sufficient for lower risk services.
Strictly necessary test	Entities must implement technical and organisational measures that, by default, ensure that the entity only collects, uses or discloses personal information about a child that is strictly necessary to provide the entity’s service.	Clear guidance should be provided should on the meaning of ‘strictly necessary’ compared with other terms such as ‘reasonably necessary’.
Best interests test and direct marketing / targeted advertising (ss.10–11)	All collection, use and disclosure of children’s personal information must be consistent with the best interests of the child. Direct marketing requires consent and satisfaction of the best interests test.	Guidance should be provided on the test relating to the best interests of a child. It should not be for each organisation to be required to make complex and uncertain assessments of the best interests of children. Free TV seeks clarification of how the test interacts with APP 7.2 (relating to direct marketing) and requests guidance confirming



Element / Proposal	Summary of Draft Code requirement	Free TV position
		<p>that contextual advertising not involving profiling can satisfy the test.</p> <p>Free TV also requests that the impact on advertising-funded public-interest journalism be assessed as part of the regulatory impact assessment process if the Code is applied too broadly.</p>
Privacy impact assessments	Privacy impact assessments (PIAs) mandatory before any new service or activity likely to be accessed by children, or before significant changes to personal information handling. A register of PIAs must be published online.	Free TV supports PIAs but seeks clear guidance on the ‘significant impact’ threshold. Free TV submits that entities should publish only a register of PIAs (date and subject) – not the PIAs themselves – consistent with established practice at Australian public broadcasters.
Commencement and transition	Code to be registered by 10 December 2026. No commencement date specified. Privacy-by-default applies to existing accounts on commencement.	Free TV strongly advocates for a transition period of at least 12–18 months from registration to commencement. A phased approach prioritising highest-risk obligations is preferred.