Submission to the Privacy Act Review Report 2022 consultation

Acknowledgment of Country

Youth Law Australia acknowledges the Traditional Owners and Elders of the Bedegal People of the Eora Nation as the custodians of the land on which we work. We pay our respects to their Elders past, present and emerging, and commit ourselves to the ongoing journey of Reconciliation.

Dr Georgina Dimopoulos, Senior Lecturer in Law, Faculty of Business, Law and Arts and Research Associate, Centre for Children and Young People, Southern Cross University acknowledges and pays respect to the people of the Yugambeh Language Group on whose Land the Gold Coast campus is located, and recognises the significant role the past and future Elders play in the life of the University and the region.

About us

1. **Youth Law Australia (YLA)** is an accredited national community legal service that is dedicated to helping young people understand their legal rights, and find solutions to their legal problems. Any child or young person (or an adult representing them) can ask us about any legal problem at any time, and receive free and confidential legal advice and help. Youth Law Australia seeks to be as accessible as possible to children and young people, in particular through facilitating help-seeking through online means. We are dedicated to addressing human rights abuses of children and young people in Australia, and we monitor and advocate for their rights and best interests.

2. **Dr Georgina Dimopoulos** is a socio-legal researcher and lawyer with expertise across the areas of privacy, children's rights, family law and family violence. She is a Senior Lecturer in Law and a Research Associate, Centre for Children and Young People at Southern Cross University. Dr Dimopoulos is also a member of the Policy Working Group of the Australian Child Rights

Taskforce. Dr Dimopoulos' book, *Decisional Privacy and the Rights of the Child* (Routledge, 2022), presents a new conceptual model for enabling and listening to children's voices in decision-making processes.

3. **yourtown**, is a not-for-profit organisation that delivers services to children and young people. We responded to the Attorney-General's Department review of the *Privacy Act 1988* (Cth) ('*Privacy Act*'). We are pleased to see that the *Privacy Act Review Report 2022* ('Review Report') has reflected our submissions regarding the best interests of the child in the collection, use or disclosure of information; ensuring children and young people can access online counselling service such as Kids Helpline when they need it most; and consulting directly with children and young people when they are impacted by policy or legislative change. These points also align with Youth Law Australia's work on capacity, evolving capacity, and impact on online service providers. **yourtown** endorses the positions of Youth Law Australia and Dr Georgina Dimopoulos in this submission to the Review Report consultation.

Introduction

4. We welcome the focus on children and young people in the Review Report, including the proposals to introduce 'child-specific' privacy protections into the *Privacy Act*. Importantly, the Review Report appropriately acknowledges that children's right to privacy is but one of a suite of rights provided by the *United Nations Convention on the Rights of the Child 1989* ('*UNCRC*').

5. We also acknowledge the submission made by the **Australian Child Rights Taskforce**, of which Youth Law Australia is a member and of which Dr Dimopoulos is a member of the Policy Working Group, and the submission of **yourtown** to the *Privacy Act Review* as important contributions to the work of the Attorney-General's Department.

6. This submission does not seek to repeat the matters addressed in these submissions. Rather, it focuses on three issues of concern that arise from Chapter 16 of the Review Report:

    a. Presumptions about children and young people's capacity to consent;

    b. The potential impact of the proposed reforms on children and young people's evolving capacities for decision-making (Article 5) and their other rights under the *UNCRC*, including participation (Article 12) and freedom of expression (Article 13);

c. The potential unintended consequences of the reforms on the ability of children and young people to access essential services provided not for commercial profit by certain organisations, particularly where that help is provided online.

7. For the reasons set out in this submission, we recommend that:

   a. If a minimum age is required below which children and young people will be assumed not to have capacity to consent to the collection, use or disclosure of their information, that minimum age should be lower than 15. We consider 13 would be appropriate and in accordance with child rights principles.

   b. There should be a clear exception to the laws around consent and capacity for certain organisations that provide essential services to children and young people. This exception should enable them to provide those services to children even if the child is presumed not to have capacity, or where capacity is in doubt or cannot be established, where it is in the child's best interests or otherwise in the public interest to do so. This exception should only apply to government, government-funded or not-for-profit organisations which are based in Australia, and which can demonstrate compliance with the National Child Safety Principles.

   c. Guidelines should promote the participation of children and young people in decision-making about the collection, use and disclosure of their personal information in cases where they lack capacity to consent. This framework should apply both in cases where an exception applies, and where consent from a parent or guardian is obtained.

Presumptions about children and young people's capacity to consent

8. Proposal 16.2 of the Review Report provides that: "Existing OAIC guidance on children and young people and capacity should continue to be relied upon by APP entities."

9. The *Australian Privacy Principles Guidelines* (July 2019) ('APP Guidelines') relevantly provide:

   Children and young people

B.59 The Privacy Act does not specify an age after which individuals can make their own privacy decisions. An APP entity will need to determine on a case-by-case basis whether an individual under the age of 18 has the capacity to consent.

B.60 As a general principle, an individual under the age of 18 has capacity to consent when they have sufficient understanding and maturity to understand what is being proposed. In some circumstances, it may be appropriate for a parent or guardian to consent on behalf of a young person, for example, if the child is young or lacks the maturity or understanding to do so themselves.

B.61 If it is not practicable or reasonable for an APP entity to assess the capacity of individuals under the age of 18 on a case-by-case basis, the entity may presume that an individual aged 15 or over has capacity to consent, unless there is something to suggest otherwise. An individual aged under 15 is presumed not to have capacity to consent.

10. We note that the wording of proposal 16.2 of the Review Report, while referring to these Guidelines, differs in that it does not refer to a presumption that a young person who is under 15 does *not* have capacity.

11. We are concerned with the proposal that, where it is not practical for an APP entity to assess a child or young person's capacity to consent, then age-based presumptions apply: a presumption of capacity for children and young people over the age of 15, and a presumption of *in*capacity for children and young people under the age of 15. The reasons for our concerns are set out in the following paragraphs.

12. First, proposal 16.2 reflects "capacity scepticism".[1] It reinforces the persistent difficulties that children and young people experience in being recognised as having – and in exercising – their privacy rights. These difficulties stem from the dominant conception of children in society as vulnerable, dependent on adults and incapable of rational decision-making.[2]

13. Our view is supported by a contextual observation: Chapter 16 of the Review Report makes repeated reference to children's particular 'vulnerability' to online privacy harms. The reports

[1] Colin Macleod, 'Are Children's Rights Important?' in Elizabeth Brake and Lucinda Ferguson (eds), *Philosophical Foundations of Children's and Family Law* (Oxford University Press, 2018) 191, 200-1.
[2] Georgina Dimopoulos, *Decisional Privacy and the Rights of the Child* (Routledge, 2022) 4.

which have been cited to justify the age of 15 years as a threshold for presuming capacity are underpinned by a protective narrative of 'harm' and 'risk'.[3] Understanding children as 'vulnerable' in this context appreciates that children may be exposed to actual or potential violations of their privacy when online; and that they may be unable to protect themselves from such harms.[4]

14. However, it is important not to define children in this context exclusively by their vulnerabilities. Such emphasis is liable to produce "overly protectionist agendas"[5] that reinforce assumptions about children's lack of capacity to protect their own interests, and which overlook children's evolving capacities and agency.[6]

15. Secondly, we are concerned that proposal 16.2 may unjustifiably deprive children and young people under the age of 15 years of their right to privacy, by assuming that they lack the capacity to consent to the collection, use or disclosure of their personal information, on the basis of age alone. This essentially means that where a case-by-case approach to assessing capacity is not practical, young people under 15 years will not be able to access a relevant service, or engage in a relevant activity, without the consent of a parent or guardian. The UN Special Rapporteur on the Right to Privacy has articulated similar problems with an "age-appropriate mechanism" for regulating online content, which forges a direct link between a child's chronological age and their access to services.[7]

16. We are also concerned that, in practice, where a young person is under the age at which they are presumed to have capacity, organisations may default to obtaining parental or guardian approval.

17. Finally, restricting children's privacy rights through an age-based presumption of capacity may also be discriminatory, because children's development of their various capacities is "dynamic

[3] See Normann Witzleb et al, *Privacy Risks and Harms for Children and Other Vulnerable Groups in the Online Environment* (Research Paper commissioned by the OAIC, Monash University and elevenM Consulting, 18 December 2020); Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice* (Report No 108, May 2008) Part I.
[4] John Tobin, 'Understanding Children's Rights: A Vision beyond Vulnerability' (2015) 84 *Nordic Journal of International Law* 155, 167.
[5] Ibid 167, 169. See also UN Special Rapporteur on the Right to Privacy, *Artificial Intelligence and Privacy, and Children's Privacy*, UN Doc A/HRC/46/37 (25 January 2021) [118].
[6] See Dimopoulos (n 2).
[7] UN Special Rapporteur on the Right to Privacy (n 5) [111].

and interactional"[8] and takes "an evolving, albeit not necessarily linear" course as children age.[9] Put simply, "age appropriateness poses inequities for children of differing capacity and is a crude measure of their evolving capacities".[10]

18. If an age-based presumption is considered necessary, we draw attention, for illustrative purposes, to Australian legislation which presumes capacity below 15 years of age:

    a. the *Children and Young Persons (Care and Protection) Act 1998* (NSW), which sets out rebuttable presumptions of incapacity and capacity to instruct a legal representative in out-of-home care and child protection proceedings, specifying an age of **12** years (ss 99B, 99C); and

    b. the age of criminal responsibility in most Australian jurisdictions, being **10** years.

19. In our view, a presumption of capacity, if maintained, should apply at a younger age, for example **13 years old**. This would, in a more nuanced way, respect children's rights under the *UNCRC*, including their evolving capacities for decision-making and their rights to participation and freedom of expression. It would also be in line with similar legislation in overseas jurisdictions, which seeks to protect the rights of children and young people in the increasingly complex online and digital environment.[11]

The need for a broad exception to enable all children and young people to access essential services

20. We recommend that there should be a broad exception to the requirement for parent or guardian consent (in addition to the exception outlined in the Review Report) where a child's capacity to consent cannot be assessed or is in doubt. This exception should specify that the requirement to ensure a child or young person has capacity to consent does *not* apply where:

[8] Patrick Parkinson and Judy Cashmore, *The Voice of a Child in Family Law Disputes* (Oxford University Press, 2008) 4.
[9] John Tobin and Sheila Varadan, 'Article 5: The Right to Parental Direction and Guidance and Consistent with a Child's Evolving Capacities' in John Tobin (ed), T*he UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019) 159, 172.
[10] UN Special Rapporteur on the Right to Privacy (n 5) [112(b)].
[11] See *Children's Online Privacy Protection Act* 15 USC §§ 6501–6506 (applies to the online collection of personal information about children under 13 years of age); Article 8 of the European Union's *General Data Protection Regulation* provides that the age threshold for parental consent can be between 13 and 16 years, determined by each EU Member State.

a. a child is under the age at which the presumption of capacity applies or their capacity to consent is in doubt (including where an individualised assessment of the child or young person's capacity to consent is not reasonably practicable); and

b. it is likely to be in the child's best interests to receive professional information, support or advice without parent or guardian involvement; and

c. the professional information, support or advice is provided by a government, government-funded or not-for-profit organisation which is based in Australia, and which can demonstrate compliance with the National Child Safety Principles.

21. Importantly, this exception would focus on the **nature of the service** to be provided to the child or young person and on the child or young person's **best interests**, as opposed to the risk of harm to the individual child of parent or guardian involvement. The best interests assessment would be undertaken by the service provider, and to the greatest extent possible, from the child's *own perspective* of their well-being.[12]

22. The objective of this best interests exception for certain service providers that do not operate for commercial return, is to enable children and young people to access essential services, such as counselling and legal assistance, with minimal barriers and administrative burdens. We explain the reasons for this proposal in more detail in the following paragraphs.

A. The need for an exception

23. We welcome the recognition in the Review Report that requiring a child or young person to obtain consent from a parent or guardian may not be realistic or protective, and may even be unsafe, in certain circumstances.

24. Proposal 16.2 outlines an exception to the need for parental or guardian involvement in "*circumstances where parent or guardian involvement could be harmful to the child or otherwise contrary their interests*".

[12] John Eekelaar and John Tobin, 'Article 3: The Best Interests of the Child' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019) 73, 92-3, 106.

25. This proposal appropriately recognises that the rights and interests of children do not necessarily align with those of their parents or guardians; and that parents themselves may pose a threat to their children or their best interests.[13] It is also consistent with:

    a. Recital 38 of the European Union's *General Data Protection Regulation* ('GDPR'), which provides that "[t]he consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child"; and

    b. The CRC Committee view that "[p]roviders of preventive or counselling services to children in the digital environment should be exempt from any requirement for a child user to obtain parental consent in order to access such services".[14]

26. We note that proposal 16.2 lists circumstances in which this exception would be enlivened as "*including, but not limited to confidential healthcare advice, domestic violence, mental health, drug and alcohol, homelessness or other child support and community services".* We emphasise that any list of legislative exceptions should be non-exhaustive, to ensure that such circumstances are not confined to those set out in the proposal.

27. We also note that a practical consequence of the proposed exception may be to require children and young people to disclose *more* personal information – that is, information to satisfy an APP entity that the exception is enlivened. For this and other reasons set out below, we consider this exception is important but not sufficient to ensure that other child rights are appropriately balanced with the right to privacy.

B. Potential impact of the proposals on children and young people's evolving capacities and other rights under the *UNCRC*

28. We are concerned that the Review Report proposals have the potential to adversely impact the *non-privacy rights* of children and young people.

[13] See Dimopoulos (n 2) 9-10, 58. See also UN Special Rapporteur on the Right to Privacy (n 5) [120].
[14] UN Committee on the Rights of the Child ('CRC Committee'), *General Comment No 25 (2021) on Children's Rights in relation to the Digital Environment*, UN Doc CRC/C/GC/25 (2 March 2021) [78]. See also CRC Committee, *General Comment No 20 (2016) on the Implementation of the Rights of the Child During Adolescence*, UN Doc CRC/C/GC/20 (6 December 2016) [39], [60].

29. Article 16 of the *UNCRC* establishes children's right to privacy. It provides that:

> *(1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*
>
> *(2) The child has the right to the protection of the law against such interference or attacks.*

30. A sound legal and regulatory framework for children's privacy, including in relation to consent, must clearly articulate the interconnectedness and interdependence of children's rights.[15] Protecting children's right to privacy in the online and digital environment cannot come at the expense of other rights under the *UNCRC*.

31. While the Preamble to the *UNCRC* recognises that childhood is a period of "special vulnerability during which children are in need of special protection",[16] the substantive text requires that children are respected as "active participant[s] in the promotion, protection and monitoring" of their privacy rights.[17] A children's rights-based approach to privacy reforms must be informed by the following rights under the *UNCRC*:

    a. Article 5, which gives children the right to receive appropriate parental direction and guidance in the exercise of their rights, in a manner consistent with the child's **evolving capacities**;
    b. Article 12(1), which gives children who are capable of forming a view the right to freely **express their views** in all matters affecting them, with those views being given due weight in accordance with the child's age and maturity;
    c. Article 13(1), which provides for the child's right to **freedom of expression**, including "freedom to seek, receive and impart information and ideas of all kinds", through any media of the child's choice, subject to the restrictions in Article 13(2);[18]

[15] See John Tobin, 'Seeking to Persuade: A Constructive Approach to Human Rights Treaty Interpretation' (2010) 23(1) *Harvard Human Rights Journal* 1, 37-9.
[16] See further Kirsten Sandberg, 'The Convention on the Rights of the Child and the Vulnerability of Children' (2015) 84(2) *Nordic Journal of International Law* 221.
[17] CRC Committee, *General Comment No 7: Implementing Child Rights in Early Childhood*, UN Doc CRC/C/GC/7/Rev.1 (20 September 2006) [14].
[18] Article 13(2) of the CRC provides that these restrictions shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; or (b) for the protection of national security or of public order, or of public health or morals.

d. Article 17, which provides for the child's **right to access "information** and material from a diversity of national and international sources".

32. The CRC Committee has identified the child's rights under Articles 13 and 17 of the *UNCRC* as the two "crucial prerequisites for the effective exercise of the right to be heard" under Article 12.[19]

33. We are concerned that an overemphasis in Chapter 16 of the Review Report on 'protecting' children in the online and digital environment may undermine these other rights under the *UNCRC*, by impairing children's ability to exercise their rights to participation, freedom of expression and access to information, consistently with their evolving capacities and with appropriate guidance and direction. As the UN Special Rapporteur on the Right to Privacy observed recently: "Adults' interpretations of children's privacy needs can impede the healthy development of autonomy and independence, and restrict children's privacy in the name of protection."[20]

C. Potential barriers to the provision of essential services to children and young people

34. We are particularly concerned that the proposals for the introduction of 'child-specific' measures into the *Privacy Act* may inadvertently impose barriers on children and young people's ability to access services that are integral to the rights listed above, and other rights under the *UNCRC.*

35. The recently released Australian Child Maltreatment Study points to the critical importance of free and accessible services for children and young people across the spectrum of prevention, early intervention, crisis and post-crisis response. For example, the study found that 1 in 12 (or 8.7% of) young Australians aged 16-24 had experienced forced sex (rape) in childhood.[21] The study concluded that: "Child maltreatment is widespread in Australia and associated with early and persistent harm."[22]

---

[19] CRC Committee, *General Comment No 12 (2009): The Right of the Child to be Heard*, UN Doc CRC/C/GC/12 (20 July 2009) [80].
[20] UN Special Rapporteur on the Right to Privacy (n 5) [80].
[21] Australian Child Maltreatment Study (2023), *Prevalence – Full Sample*, available at: Complete-ACMS_Infographics_launch_set_FIN.pdf (accessed 5 April 2023).
[22] Australian Child Maltreatment Study (2023): The Australian Child Maltreatment Study (ACMS) (accessed 5 April 2023).

36. Given the importance of these services, both governments and relevant service providers should try to avoid imposing any measures that may impose a barrier to access. Barriers can not only directly prevent children and young people from being able to access services; they can also cause children and young people to disengage before receiving help from a service (for example, if too many steps are placed in front of access).

37. It is important to recognise also that privacy laws themselves can be complex and difficult to navigate. Such complexity and difficulty can create concerns for not-for-profit service providers about compliance – which in turn may act as an unnecessary barrier to helping children and young people exercise their rights. This was recognised by the Royal Commission into Institutional Responses to Child Sexual Abuse, which heard evidence that it can be difficult for institutions to navigate the privacy environment, and that this can inhibit the sharing of information relating to the safety and wellbeing of children.[23] The Royal Commission also recognised the principle that children's rights to safety and wellbeing, and specifically to protection from sexual abuse, should be prioritised over other rights and concerns, including in some cases privacy.[24]

38. At Youth Law Australia, we have designed our services to make them as accessible as possible to children and young people, including those who may not have a protective parent or guardian, or who may require confidential legal support in order to understand and exercise their rights. This includes 24/7 access to an online webform, and telephone and live chat options at specific times. In many cases, our services are provided to children and young people entirely online. This has many benefits, including allowing children and young people anywhere in Australia to access our services online at any time.

39. Appreciating the context of Youth Law Australia's service delivery, not only would an individualised assessment of a child's capacity to consent not be practical in many cases (thereby enlivening the presumption of capacity/incapacity), it would also provide an insurmountable barrier to children and young people accessing our services.

40. In this context, it is important to recognise that: (1) under existing Australian law, children's rights to privacy are different from those of adults; (2) essential services provided to children

[23] See Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 8 Recordkeeping and Information Sharing* (2017) 158-160.
[24] Ibid 139.

and young people by not-for-profit organisations already operate in a heavily regulated environment; (3) there is no evidence in the Review Report that the potential harms and risks it is targeting are caused by these organisations. We expand on these points in the following paragraphs.

41. First, we note that Australian law already recognises numerous exceptions to children's rights to privacy and in this sense, children's privacy is a right often observed in the breach. For example, all States and Territories have a form of mandatory reporting laws and laws that enable the sharing of information related to the safety and wellbeing of children and young people.[25] These and other laws allow the sharing of a child or young person's personal information without their consent (and sometimes without consultation).[26] In addition, parents and guardians can share the personal information of their children without consent or consultation, even when it may not be in the child's best interests and even when children may be *Gillick* competent. For example, the personal information of children and young people is routinely submitted into evidence in family law proceedings, without their consent.

42. Second, we note that services for children and young people provided by not-for-profit organisations and Commonwealth, State, Territory and local governments operate, on the whole, in an environment that is already heavily regulated. In addition to privacy and data protection laws, the regulatory framework includes the National Principles for Child Safe Organisations, and professional ethical frameworks. For example, legal services are highly regulated, and lawyers owe their clients a duty of confidentiality. Similarly, the Family Court of Australia has recognised that 'the Court should be very wary about issuing subpoenas to an organisation which relies upon its confidentiality for its very existence. The benefit of the services provided by Kids Helpline to the children and young people who use that service is significant'.[27] The National Child Safe Principles provide a framework for certain organisations that provide services to children to balance all children's rights and interests, with the best interests of the child being the paramount consideration.

43. Third, we note that privacy concerns outlined in Chapter 16 of the Review Report include that children and young people are becoming increasingly "datafied", that extensive and unnecessary data points are being collected from children, and that these can be used in ways

[25] See, eg, *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27 and ch 16A.
[26] For a detailed analysis of information sharing laws relating to children and young people, see Royal Commission (n 26).
[27] *Goldy v Goldy [No 2]* [2011] FamCA 418, [2].

that are not consistent with their best interests (such as in harmful and targeted advertising). These concerns are overwhelmingly connected with the behaviour of commercial enterprises, including social media platforms. In our view, they do not apply to the conduct of not-for-profit organisations that provide free and beneficial services to children and young people – including legal services and counselling services.

44. For all these reasons, we submit that a clear and broad exception is needed to ensure that certain organisations that provide free and beneficial services to children and young people can continue to do so, even if a presumption of incapacity applies or there are doubts about a child or young person's capacity to consent to the collection, use and disclosure of their personal information. This exception should only apply to Australian governments, and Australian-based not-for-profit or government-funded entities that can demonstrate compliance with the National Child Safe Principles. To be clear, the exception should not apply to entities that operate for commercial return.

45. We also submit that this exception should be accompanied by clear guidelines that ensure the ability of children and young people – whatever their age – to participate in decisions around their right to privacy is maximised.

Maximising the participation of children and young people in privacy decisions

46. We note that the section on children and young people in the current APP guidelines by the Office of the Information Commissioner focuses on assessing the capacity of individuals under the age of 18. We encourage the Attorney-General's Department to recognise that, even where a child may not have capacity to consent to the collection, use and disclosure of their personal information, best practice is to ensure that their participation in these decisions is maximised.

47. This is already recognised in the Guidelines for people who have impaired decision-making capacity (B55). It should be made clear that where capacity is at issue, organisations should involve children and young people as far as practicable in any decision-making process, and consider supports that enable them to do so. It should be recognised that this is best practice even if an exception applies, or where consent from a parent or guardian is obtained.

48. Requiring child appropriate privacy policies and collection notices (Proposal 16.3) is one step in this regard. Another option could be to enable a child or young person to self-nominate a 'trusted adult' who is aged 18 years or older and may be a sibling, teacher, counsellor, case worker or close friend, and who can provide support to facilitate their participation. Support might also include the provision of accessible information; presenting children with choices about how they might be involved; and transparency about how the information children share may be used.[28] A focus on "scaffolding" and context, not age alone, would better respect children's distinct needs, lived experiences and evolving capacities for decision-making.

Conclusion

49. We appreciate the opportunity to provide feedback to the Review Report. While we are pleased to see a focus on children and young people's right to privacy, it is very important that the Government ensures that this does not negatively impact other child rights. In particular, we are concerned that an emphasis on capacity and consent may impose barriers on the ability of children and young people to access critical services, particularly where those services are provided or accessed online.

50. We recommend that the Attorney-General's Department consider an additional exception, along the lines of our proposal in this submission, to ensure that privacy law does not stand in the way of the provision of free and beneficial services to children and young people. At the same time, we encourage recognition that maximising the ability of a child or young person to be involved in decision-making around their personal information represents best practice.

51. Finally, we note that the UN Special Rapporteur's reference to "adults' interpretations of children's privacy needs" implicitly recognises the importance of listening to and learning from children and young people themselves. It also highlights the need to be mindful of the risk of adult interpretation and "filtering" of children and young people's views, voices and experiences. As Dr Dimopoulos has observed, "[o]ften absent – and starkly so – from public discourse and debate are the voices of children themselves".[29]

[28] Dimopoulos, *Decisional Privacy* (n 2) 65-6; Parkinson and Cashmore (n 8) 63-4.
[29] Dimopoulos (n 2) 2.

52. We note the apparent absence of **direct consultation with children and young people** in the development of the Review Report proposals. Recognising that children and young people are experts by experience, reforms to the *Privacy Act* must actively seek out, and engage meaningfully and directly with their views and experiences of privacy in the digital and online environment.[30]

6 April 2023

[30] See UN Special Rapporteur on the Right to Privacy (n 5) [116].