

30 September 2020

Professor Joseph Cannataci
Special Rapporteur on the Right to Privacy

By email only: srprivacy@ohchr.org

Dear Professor Cannataci

Submission: Privacy and Children

The Office of the Victorian Information Commissioner (**OVIC**) is pleased to contribute to your examination into the privacy rights of children, to inform your upcoming report to the Human Rights Council on how privacy affects the evolving capacity of the child and the growth of autonomy.

OVIC is the primary regulator for freedom of information, information security, and information privacy in the state of Victoria, Australia, administering the *Freedom of Information Act 1982 (Vic)* and the *Privacy and Data Protection Act 2014 (PDP Act)*. The PDP Act contains 10 Information Privacy Principles (**IPPs**) that regulate the Victorian public sector's (**VPS**) collection, handling, use and disclosure of personal information.¹ While Victoria does not have a law specific to the privacy rights of children, the PDP Act applies to personal information (including sensitive information) held by a VPS organisation, regardless of the age of that individual.

OVIC's Youth Advisory Group

OVIC coordinates a Youth Advisory Group (**YAG**), which advises the Information Commissioner on privacy issues affecting young people, assists OVIC in its engagement with children and young people in Victoria, and provides input into the development and delivery of privacy materials targeted towards this cohort. First established in 2015, the YAG is made up of 12 young people aged between 15 and 20 years.

Over the last few years, the group has participated in several projects and events, which have helped raise awareness of privacy amongst young people in Victoria, and highlighted young people as an important stakeholder group that engages with and values privacy in different ways to other groups.²

In preparing this submission, OVIC worked with members of the YAG to seek their views on what privacy means to them, their expectations around privacy, and how they believe it affects their autonomy. OVIC would like to thank Yu Xuan Peh, Letisha Osagiede and Muzna Dakakni for their contributions, which have been collated and summarised below.

¹ For more information about the PDP Act, Information Privacy Principles, and definition of personal information, refer to OVIC's *Guidelines to the Information Privacy Principles*, available at <https://ovic.vic.gov.au/privacy/guidelines-to-the-information-privacy-principles/>.

² For example, short animations targeted at young people and how they can protect each other's privacy, available at <https://ovic.vic.gov.au/privacy/for-the-public/privacy-for-young-people/youth-advisory-group/>, and a postcard with privacy tips designed to encourage conversations about privacy. The postcard was distributed to over 400 high schools across Victoria.

Perspectives on privacy

When asked to consider what privacy means to them, OVIC's YAG members largely focused on information privacy and their ability to control what personal information they share about themselves,³ including the choice of whether to give up personal information at all. One member noted that to them, privacy was about "the ability to control how you are perceived and viewed by other people". Members also raised certain elements of privacy that were important to them, such as the security of personal information, and "assurance that your information is not subject and open for others to modify or use for business or personal use".

The role of technology and its impact on children and their privacy was also highlighted. One member noted that developing good privacy habits as children is increasingly needed in today's digital age, in light of the growth of technologies and apps that target children and young people (e.g. TikTok), who are unable to recognise the risks and repercussions of posting videos and personal information online, and how doing so can negatively impact on their privacy. Education – about privacy risks, how personal information can be misused, and how to protect it – was identified as an important tool to enable children to gain control of their privacy, and make appropriate decisions online that they would not regret in the future. However, another member acknowledged that despite being educated about the impacts of sharing personal information online or appropriate online behaviour, it still takes time for children to develop and fully understand the consequences of their actions.

Another member mentioned online safety as a greater priority than privacy given children's vulnerability to online risks such as scams, cyberbullying, and grooming. Referring to the ability to exercise autonomy in the online context in particular, the member noted that while children deserve the right to privacy, their activities also need to be monitored by parents or guardians to ensure their safety.

Privacy and children's development

YAG members gave their views on how privacy is essential for children's development, in particular the development of their identity. One member expressed:

Having control over one's privacy and feeling as though you have the right to keep your information private provides a child with freedom to explore their identity and develop themselves as an individual person.

Members noted how privacy and having private spaces away from judgement and monitoring allows children to explore ideas and creative expression, and develop opinions that do not conform to social expectations, or to one idea of what is considered socially acceptable. Relatedly, a member noted how a company's set characterisation of a child based on the information it holds about them "prevents the child from developing their own opinions and discourages them from exploring their own personality". An example of this is microtargeting, where suggestions for content (or products, services etc.) are defined by existing preferences.

Exercising privacy

One member raised friendships and social groups as a key factor influencing children's ability to exercise privacy. For example, the member noted that certain social media apps are implied requirements to participate in a social setting, where consent and personal information must be given to use the app, or otherwise risk being excluded from social interactions and forming relationships.

In an online context, a lack of education about privacy risks and how personal information is used by companies was raised as another factor affecting children's ability to exercise privacy – without such education, children are unable to develop good privacy habits and lack the knowledge to protect their

³ In comparison to, for example, other types of privacy such as bodily privacy or territorial privacy.

privacy online. One member noted that while parents and guardians have a responsibility to educate their children about privacy matters, often they themselves lacked sufficient knowledge about privacy risks to be able to do so. Government and schools were also identified as having an important role to play in educating children about privacy, as well as protecting the privacy rights of children.

On the issue of schools and privacy, OVIC recently conducted an examination into the use of apps and web-based learning tools in Victorian government primary schools, which are required to comply with the IPPs. One of the goals of the examination was to gain a better understanding about the use of apps and web-based learning tools in the classroom. A key finding of this examination is that when selecting apps and web-based learning tools, all participating schools focused on curriculum and financial considerations over privacy considerations, often resulting in the use of free or 'lite' versions of apps and web-based learning tools, which can offer lower privacy protections than the paid versions. By focusing largely on the financial aspects of an app or web-based learning tool, OVIC noted that it is possible for schools to overlook important privacy related issues such as how students' personal information is collected, stored and shared by app and web-based learning tool providers.⁴

Expectations around privacy

YAG members had many varying expectations around privacy, for example:

- an expectation that you are told information is being collected in physical and online settings and who is accessing that information;
- that consent should be sought before personal information is collected, knowing this can sometimes be arbitrary and pointless;
- that there should be transparency and accountability regarding government surveillance on citizens, while being aware that "some privacy must be traded off to monitor and ensure the safety of the wider community";
- an expectation that privacy differs between public and private spaces – the member noted that they would expect a greater level of privacy at home, compared to public settings such as schools and shopping centres where there is an understanding that you may be recorded;
- that everyone has a responsibility to protect privacy – governments, companies, and communities need to work together to ensure privacy is upheld;
- that children should have more rights and greater privacy protections afforded to them as they are more vulnerable to privacy risks, and easier to take advantage of;
- that schools and governments have a responsibility to educate children about the dangers of social media and online platforms; and
- companies have a responsibility to inform customers about what they are signing up to (in terms of their privacy and personal information), and customers have a right to know this. Additionally, many people do not read terms and conditions as they are too lengthy, detailed, or difficult to understand – companies should therefore inform individuals by highlighting sections in privacy policies or terms and conditions, or "presenting simplified statements that are easy to understand and accessible for everyone".

⁴ OVIC's *Examination into the use of apps and web-based learning tools in Victorian government primary schools* report can be accessed at <https://ovic.vic.gov.au/about-us/regulatory-action/investigations-audits-examinations/>.

Thank you for the opportunity to provide input into your upcoming report to the United Nations Human Rights Council. I have no objection to this submission being published without further reference to me. I also propose to publish a copy of this submission on the OVIC website, but would be happy to adjust the timing of this to allow you to collate and publish submissions proactively.

If you would like to discuss this submission, please do not hesitate to contact me directly or my colleague Tricia Asibal, Senior Policy Officer at tricia.asibal@ovic.vic.gov.au.

Yours sincerely

Sven Bluemmel
Information Commissioner