



BEST INTERESTS & TARGETING:
*Implementing the
Privacy Act Review to
advance children's rights*

Policy briefing | January 2024

In all actions concerning **children**, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration.**

Article 3

UN General Assembly 1989 Convention
on the Rights of the Child

EXECUTIVE SUMMARY

There are currently several proposals to introduce the 'best interests' principle into Australia's privacy framework, including a proposal to prohibit targeting to children unless it is in their best interests. This proposal – 'agreed-in-principle' by the Government – is subject to further discussions and debate to determine how it could be implemented in a way that 'proportionately balances privacy safeguards with potential other consequences and additional regulatory burden'.¹

This paper aims to contribute to this emerging discussion by unpacking what a children's best interests assessment might look like and how it could be used to determine the appropriateness of 'targeting' specifically. 'Targeting' can act as a useful case study to frame discussions about what children's best interests in the digital world may look like.

The paper explores targeting from a child rights framework, identifying some of the more common ways targeting – as defined in the *Privacy Act Review* – interacts with children's rights, identifying six common clusters of children's rights. Targeting can positively or negatively interact with children's rights, including:

- 1. Privacy:** Targeting, including the collection and processing of data to enable it, inherently affects children's rights to privacy.
- 2. Access to information, including from diverse media:** The right to seek, receive and impart information, including the ability to access diverse media, is connected to targeting.
- 3. Protection from harm:** This includes the right to safety, such as online safety protections, and the right to be protected from privacy harms, both of which consistently feature as risks and opportunities from targeting in Table 1.
- 4. Play & leisure:** Several aspects of targeting emerged as potentially advancing children's right to play and engage in leisure pursuits.

- 5. Freedoms:** Children's freedom of thought, as it relates to rabbit holes and filter bubbles, freedom of association, as it relates to their ability to form online communities, and freedom from discrimination also emerged as potential issues when it came to online targeting.
- 6. Meaningful participation:** To be heard in developments around privacy regulations and best interests assessments.

These clusters of rights inform a prototype 'best interests assessment' developed here not as a final product but as the start of a conversation to demonstrate the usefulness of this sort of simple tool in supporting compliance and reducing regulatory burden for online services.

Prohibiting targeting to children except where it is in their best interests is a potentially significant and powerful policy reform and has the capacity to help create a child-centred approach to tech regulation and guidance and reshape the digital world. In this sense, it is both pro-innovation – by helping and inspiring online services to build better products – and pro-regulation – by enabling regulators to make better decisions about best interests criteria in privacy law. We recommend that this proposal be adopted into the *Privacy Act* and that best interests impact assessments be provided as part of the guidance to online services to ensure compliance.

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Reset.Tech Australia is an independent, non-partisan policy research lab committed to driving public policy advocacy, research and civic engagement to strengthen our democracy within the context of technology.

We are the Australian affiliate of Reset, a global initiative working to counter digital threats to democracy.

The Australian Child Rights Taskforce is a coalition of over a hundred organisations, networks and individuals committed to the protection of the rights of children and young people in Australia.

ChildFund Australia is an independent international development organisation that works to reduce poverty for children in developing communities. We are a member of the ChildFund Alliance – a global network of 11 organisations which assists almost 36 million children and their families in 70 countries.

The Alannah & Madeline Foundation is a national not-for-profit organisation dedicated to keeping children and young people free from violence and trauma wherever they live, learn and play.

Cover Artwork: ‘*Sorting it out*’ – Artwork created using Midjourney in response to the prompt “*imagine/a retro-future portrait of animated emoji sphere characters in a crane game with ambient night glow.*”

INTRODUCTION

Australia's privacy and data protection frameworks are outdated, leaving children and young people exposed to various rights violations, from intrusive data collection violating their privacy to using personal data to deliver harmful content through algorithms. The data-driven digital world can violate children's rights and expose them to risks of abuse and exploitation. However, it can also advance their rights, including access to information and leisure, participation in online political spaces and maintaining family connections. Striking the right balance in our *Privacy Act* is crucial for children's rights.

The *Privacy Act Review*,² released in March 2023, was a welcome announcement that Australia's privacy framework was in need of improvement. Importantly, it suggests integrating children's rights into our privacy regulations through mechanisms allowing consideration of children's best interests. These provisions were either agreed upon or 'agreed-in-principle' by the Government, encompassing proposals for:

- › Including consideration of children's best interests in the 'fair and reasonable' test determining data processing lawfulness (Proposal 16.4), agreed-in-principle by the Government;
- › Introducing the best interests principle in developing an Online Privacy Code for children (Proposal 16.5), agreed by the Government;
- › Using children's best interests considerations to assess whether targeting is permissible (Proposal 20.6), agreed-in-principle by the Government.

An 'agreed-in-principle' means that the Attorney-General's Department will lead another phase of engagement and discussions on how these proposals could be implemented 'so as to proportionately balance privacy safeguards with potential other consequences and additional regulatory burden'.³

This paper explores the proposal of prohibiting targeting towards children *unless it is in their best interests* (20.6). It aims to contribute to the emerging discussion about how it could be implemented by unpacking what a children's best interests assessment might look like when determining the appropriateness of 'targeting' specifically. 'Targeting' can act as a useful case study to frame discussions about what children's best interests in the digital world may look like. It also encourages reflection about the role of targeting, best interests, privacy and digital regulation more broadly as part of a reform agenda necessary to advance children's rights in Australia. This includes meeting our obligations under the *Convention on the Rights of the Child*⁴ and the overlapping frameworks and implementation measures in Australia, especially the *Commonwealth Child Safety Framework*⁵ and the *National Principles for Child Safe Organisations*.⁶

The paper explores this approach, noting how requirements prohibiting the targeting of children unless their best interests are advanced create a child-centred approach to digital product development. This supports opportunities to advance innovation and the protection of children's rights. It proposes an initial 'best interests assessment' tool that could be used to develop guidance for regulators to support online services to achieve compliance.

This paper has been developed by Reset.Tech Australia, the Australian Child Rights Task Force, and ChildFund Australia and builds on the expertise of 17 experts who participated in a policy roundtable event in September 2023.⁷ It was further enhanced through polling of 1,008 young people aged 15–17 in December 2023 (see *Appendix B*).

TARGETING & CHILDREN'S RIGHTS IN THE *PRIVACY ACT REVIEW*

Proposal 20.6 of the Privacy Act Review advocates for the prohibition of targeting a child, with an exception for targeting that is in the child's best interests.

Proposal 20.1 defines targeting as:

Targeting – capture the collection, use or disclosure of information which relates to an individual including personal information, de identified information, and unidentified information (internet history/tracking etc.) for tailoring services, content, information, advertisements or offers provided to or withheld from an individual (either on their own, or as a member of some group or class)

According to this definition, targeting covers a range of common digital experiences that shape children and young people's experience of the digital world.

Examples include:

- › Receiving targeted advertising.
- › Content recommender systems, such as:
 - Social media feeds in both 'follower' mode and 'discovery' mode, as both feeds are algorithmically curated.
 - Recommendation systems on streaming platforms like Netflix and Spotify that suggest content users might find appealing.
- › Search engine responses, such as Google responses that algorithmically consider personal information like location and internet history when generating responses.
- › Voice assistant services like Alexa or Siri, which tailor their responses to voice commands based on personalised preferences and information.
- › Consumer loyalty schemes (applicable here when under 18-year-olds are permitted to join) often targeting rewards based on personal information. This might include receiving birthday discounts or 'free cinema tickets' or offers related to their favourite smoothie purchase.

- › Generative AI programs like ChatGPT and DALLe that produce text or images based on various personalised inputs.
- › Automated Decision-Making (ADM) programmes that generate targeted decisions or responses for individuals based on personal information.

Table one outlines these common targeting practices and details how they intersect with children's rights.⁸ Note that this is not intended to be an exhaustive list of considerations.

As this list suggests, targeting is already widespread in children's digital lives, so prohibiting it needs to be done carefully, and consideration of where targeting is in children's best interests needs careful examination. Targeting can advance children's rights, for example, by improving young people's access to information from search engines or facilitating their right to play using content recommender systems. However, targeting can also violate children's rights, for instance, when recommender systems promote connections that harm children.⁹

TARGETING & CHILDREN'S BEST INTERESTS

The Convention on the Rights of the Child obligates national governments, including Australia's, to consistently prioritise actions in children's best interests. It states:

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*¹⁰

The best interests principle is fundamental for interpreting and implementing all other rights.¹¹ It is 'aimed at ensuring both the full and effective enjoyment' of all rights and the holistic development of children.¹² It is a dynamic and evolving concept.¹³ The Committee on the Rights of the Child defines it as involving:

1. A substantive right: Children's best interests should be the primary consideration in decision-making, including developing laws and policies, and can be invoked through legal challenges.
2. An interpretive legal principle: When legal decisions are open to interpretation, the one favouring children's best interests should be chosen.
3. A procedural rule: In decisions affecting children, their best interests should be a primary consideration in the process.¹⁴

More recently, this principle has been applied to children's experiences in the digital world. The Committee on the Rights of the Child emphasised this in its general comment on children's rights in a digital environment:

The best interests of the child is a dynamic concept that requires an assessment appropriate to the specific context. The digital environment was not originally designed for children, yet it plays a significant role in children's lives.

*States parties should ensure that, in all actions regarding the provision, regulation, design, management and use of the digital environment, the best interests of every child is a primary consideration.*¹⁵

Australia is not alone in proposing the introduction of this principle into digital platform regulations. Many other countries and regions have already implemented it as a substantive right, including:

- › The UK's *Age Appropriate Design Code*,¹⁶ outlining how the UK's data protection legislation applies to children and has statutory backing.
- › Ireland's *Fundamentals for a Child Oriented Approach to Data Protection*,¹⁷ outlining how the EU's General Data Protection Regime applies to children in Ireland (and, due to the EU's approach to data regulation, is applicable to most platforms in the EU).
- › Sweden's *The Rights of Children and Young People On Digital Platforms*,¹⁸ serving as guidance on how Sweden's data protection regulator understands data protection requirements as they apply to children.
- › The Netherlands' *Code for Children's Rights*,¹⁹ which also functions as regulator guidance.
- › The European Commission's *BIK+ Strategy*.²⁰
- › The best interests principle is also widely anticipated to underpin the European Data Protection Board's forthcoming guidelines on children's data.²¹

The Committee on the Rights of the Child notes that the full application of the best interests principle ‘requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity’.²² They outline that, regarding the digital world specifically:

*In considering the best interests of the child, (State parties) should 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.*²³

This encourages dynamic assessment of best interests and implies a set of general evaluative criteria suitable for digital concerns. Combining this with the analysis from *Table 1*, which explores common targeting practices and how they interact with children’s rights, it is possible to construct a set of six rights-based considerations to evaluate if targeting might be in children’s best interest. These considerations include:

1. **Privacy:** Targeting, including the collection and processing of data to enable it, inherently affects children’s rights to privacy.
2. **Access to information, including from diverse media:** The right to seek, receive and impart information, along with access to diverse and appropriately regulated mass media, requires State parties to equip media providers with guidelines to protect children from harmful content.

3. **Protection from harm:** Covering safety, including online safety measures, and protection from privacy harms, consistently appeared as risks and opportunities from targeting in table one. This also includes considerations of economic exploitation.
4. **Play & leisure:** Various aspects of targeting were identified as potentially supporting children’s right to play and engage in leisure activities.
5. **Freedoms:** Children’s freedom of thought, as it relates to rabbit holes and filter bubbles, freedom of association in forming online communities and freedom from discrimination emerged as potential concerns regarding online targeting.
6. **Meaningful participation in assessments** and being heard in developments around best interests assessments.

These considerations could form the basis of a simple assessment to determine if targeting aligns with children’s best interests. A sample assessment is included in *Appendix A*. These assessments could occur during the digital product’s life cycle, during development, review phases and at regular intervals.

This set of criteria and assessments is not intended as a final product but is offered as guidance or food for thought to demonstrate the feasibility of developing industry guidelines and assessments. To ensure meaningful implementation of prohibiting targeting except when in children’s best interests and to implement it in child-centred ways, providing guidance like draft assessment tools to online services will be crucial. Importantly, this showcases the potential to ascertain which targeting may or may not serve children’s best interests. Such tools may aid online services in building better products and enable regulators to make decisions about best interests criteria integrated into laws.

Table 1: Examples of targeting that could affect children's rights

Practice	Rights this practice can <i>advance</i>	Rights this practice can <i>violate</i>
<i>Targeting practises common within existing systems</i>		
Targeted advertising	<p>None.</p> <p>GC25 states '<i>Parties should prohibit by law the profiling or targeting of children of any age for commercial purposes on the basis of a digital record of their actual or inferred characteristics, including group or collective data, targeting by association or affinity profiling</i>'.²⁴</p>	<p>Children's right to privacy is violated by the practice of targeted advertising. The CRC states that '<i>no child shall be subjected to arbitrary or unlawful interference with his or her privacy</i>' and that '<i>the child has the right to the protection of the law against such interference or attacks</i>'.²⁵ Targeted advertising inherently involves the sweeping and arbitrary collection of children's personal data.²⁶ In common processes like the use of Real-Time Bidding services, which place ads on platforms like Instagram and YouTube, this data is broadcasted to a non-selective group of advertising buyers.²⁷</p> <p>This advertising-driven business model positions young people as 'data labourers',²⁸ thus interfering with their right 'to be protected from economic exploitation', as enshrined in Article 32 of the CRC.²⁹</p>
Content recommender systems	<p>Recommender systems can advance children's right to:</p> <ul style="list-style-type: none"> › Seek and receive information: The CRC ensures children '<i>the right to freedom of expression; ... seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice</i>'.³⁰ Recommender systems can play a key role in enhancing children's access to diverse and rich information. › Access diverse mass media: The CRC outlines that states must '<i>ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health</i>'.³¹ Recommender systems can play a key role in ensuring young people access diverse media. › The right to leisure and play: The CRC ensures '<i>the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts</i>'.³² Social media platforms, highlighted as a key part of leisure activities for Australian children,³³ especially benefit those in regional and remote communities. 	<p>Content recommender systems can violate children's rights, including:</p> <ul style="list-style-type: none"> › The right to protection from harm: The CRC requires measures to '<i>protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse</i>'.³⁴ Content recommender systems often push content that risks mental or physical injury, such as age-inappropriate violent or extremist content³⁵ and material related to eating disorders.³⁶ They may also promote connections between children and adults' accounts, facilitating grooming and the risk of sexual abuse.³⁷ The damage can be significant. Last year, a UK coroner ruled that online content – promoted through content recommender systems – played a role in the suicide of a 14-year-old girl. The coroner concluded that she 'died from an act of self-harm while suffering from depression and the negative effects of online content'.³⁸

Table 1: Examples of targeting that could affect children's rights

Practice	Rights this practice can <i>advance</i>	Rights this practice can <i>violate</i>
Content recommender systems	<ul style="list-style-type: none"> › The right to 'freedom of association' and 'peaceful assembly':³⁹ Content recommender systems recommending connections or accounts can create virtual communities or assemblies where young people engage in democratic conversations and participate in political groups, such as climate change movements or local community networks. <p>CG25 makes it clear that recommender systems, when functioning in children's best interests, are a desirable feature of the digital world. It obliges states to <i>'ensure that all children are informed about, and can easily find, diverse and good quality information online, including content independent of commercial or sectarian political interests. They should ensure that automated search and information filtering, including recommendation systems, do not prioritise paid content with a commercial or political motivation over children's choices or at the cost of children's right to information'</i>.⁴⁰</p>	<ul style="list-style-type: none"> › Freedom from discrimination: The CRC requires <i>'that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members'</i>.⁴¹ Content recommender systems often promote content perpetuating negative ethnic or gender stereotypes to Australian young people.⁴² Additionally, their mechanics may encourage pile-ons or bullying based on protected characteristics.⁴³ They can also result in discriminatory effects, disproportionately harming young women.⁴⁴ For instance, internal research on Meta revealed that vulnerable Black users are exposed to a higher concentration of violent and sexual content compared to vulnerable white users.⁴⁵ › The right to 'freedom of thought, consciousness and religion':⁴⁶ Content recommender systems frequently push children into filter bubbles (or rabbit holes)⁴⁷ that can shape and distort children's <i>forum internum</i>.⁴⁸ This can affect perspectives and world views and violate freedom of thought.⁴⁹ › Access to mass media that is properly regulated: Article 17 of the CRC ensures children's right to access diverse mass media but obliges states to <i>'encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being'</i>.⁵⁰ Current Australian guidelines around content on social media, promoted by recommender systems, are lacking. Guidelines concerning misinformation and disinformation, for instance, are industry-written and not widely adopted or enforced.⁵¹
Search engines	<p>Search engines, like recommender systems, can be part of realising children's rights to:</p> <ul style="list-style-type: none"> › Seek and receive information (Article 13 of the CRC): Search engines are often the primary tool children use to find and access the information they are seeking across the expanse of the World Wide Web. › Access diverse mass media (Article 17 of the CRC): Search engines can serve as the gateway for children to access a wide range of global, national and local media sources. <p>Likewise, CG25 guidelines advise state parties, including Australia, to ensure that children can easily find information in the digital world, including through high-quality automated search tools⁵² like search engines.</p>	<p>In addition to many risks shared with content recommender systems, search engines can violate children's rights to:</p> <ul style="list-style-type: none"> › The right to protection from harm: When search results recommend risky or harmful content, they can guide children into unsafe and risky parts of the digital ecosystem. For instance, search engines might recommend dangerous challenges⁵³ or facilitate access to extremist content online. › Freedom from discrimination: Search engines can operate in biased ways, leading to discriminatory findings, such as discriminating against Black teenagers, for example.⁵⁴

Table 1: Examples of targeting that could affect children's rights

Practice	Rights this practice can <i>advance</i>	Rights this practice can <i>violate</i>
<p>Voice assistant services</p>	<p>Voice assistants, such as those in smart speakers, are some of the most frequently used technologies by younger children.⁵⁵ Research suggests that younger children in particular use these products to enjoy their rights to:</p> <ul style="list-style-type: none"> › Leisure and play: Studies indicate that voice assistance services often function as a digital toy for children and provide access to playful content like music or jokes.⁵⁶ › Seek and receive information: Research shows that younger children frequently seek information using smart speakers. They inquire about the time, weather or other trivia or information that holds significance to them, such as why the sky appears blue. 	<p>Children's right to privacy is routinely violated by voice assistants that collect biometric data (such as voice data) and other personal information like location data. For example, Amazon's Alexa has faced charges in the US for privacy violations associated with excessive retention of children's voices and location data despite deletion requests, as well as inappropriately gathering this data without adequate parental consent.⁵⁷</p> <p>Voice assistant services often vocalise search engine findings, thus potentially perpetuating search engine violations. For instance, there have been reports of voice assistants recommending dangerous challenges to 10-year-olds,⁵⁸ violating their right to protection from harm or repeating anti-Semitic comments,⁵⁹ violating people's, including children's, right to freedom from discrimination.</p>
<p>Consumer loyalty schemes</p>	<p>While the CRC does not set out specific protections for children as consumers, they are implied through the range of rights that children share with adults to participate and engage in civil, social and cultural life, as well as through their particular rights to education, development and protections from abuse and exploitation. The Global Compact's Child Rights and Business Principles, however, clearly outline how children's rights apply to them in 'the marketplace', where they are positioned as consumers, community members, family of employees, young workers and as future employees and business leaders.⁶⁰</p> <p>Australian common law regulates children's ability to participate in the economy as consumers. Specifically, children under 18 are allowed to enter into commercial contracts (including making purchases), but these contracts are not binding on children in most instances, and the contract cannot be enforced against the child (other than for contracts for 'necessaries'; even then, only a fair price is usually payable).⁶¹ In some ways, this respects children's evolving capacities, as noted within the CRC,⁶² within Australia's domestic economy.</p> <p>Allowing young people to access consumer rewards can function in their best interests, where they receive greater benefit as a consumer than the 'trade-off' they paid with their privacy for these.</p>	<p>Children's right to privacy may be violated by rewards programmes when they arbitrarily collect and disclose personal information as part of their operations.</p> <p>For example, many rewards programmes share or trade members' data or fail to disclose how they collect or use it,⁶³ thereby creating privacy violations.</p> <p>CG25 states that <i>'where consent is sought to process a child's data, States parties should ensure that consent is informed and freely given by the child or, depending on the child's age and evolving capacity, by the parent or caregiver, and obtained prior to processing those data'</i>.⁶⁴</p>

Table 1: Examples of targeting that could affect children’s rights

Practice	Rights this practice can <i>advance</i>	Rights this practice can <i>violate</i>
<i>Systems with inherent targeting</i>		
<p>Generative AI programmes</p>	<p>Children’s rights can be advanced depending on the particular circumstances of the use provided by generative AI. For example, generative AI can be used to advance healthcare through the provision of information or to enhance access to education by developing curriculum materials. The system itself presents opportunities:</p> <ul style="list-style-type: none"> › Access diverse mass media: Generative AI systems have the capacity to interpret, create and localise mass media content into formats that are more accessible to children. This capacity hinges on its ability to target responses to young people’s personal input and contexts. › Seek and receive information: Generative AI has the ability to transform how children seek and receive information within a digital context. This includes everything from the use of chatbots within support services to the ability to summarise and translate academic reports into digestible formats for children. 	<p>Children’s rights can be violated depending on the particular circumstances of the provided use. The system itself also poses inherent risks. Children’s right to privacy can be violated by generative AI programmes that deliver targeted content. Generative AI (including LLM & MfMs)⁶⁵ often inappropriately trains on children’s data without appropriate consent or adequate data rights. Generative AI can infringe upon children’s right to access mass media. For example, when synthetic media is delivered to children in a targeted way without appropriate content controls, the information architecture can be fundamentally flawed. It can also affect children’s right to protection from harm. Existing models are already being used to generate synthetic CSAM,⁶⁶ and the training sets used to develop models contain CSAM.⁶⁷</p>
<p>Automated Decision-Making AI programmes</p>	<p>Targeting forms the basis of all ADM and presents opportunities to support the enjoyment of children’s rights, case by case and inherently, advancing:</p> <ul style="list-style-type: none"> › Freedom from discrimination: In principle, ADM can eliminate human bias from administrative and legal decision-making processes if the training data is not inherently flawed. Note, this has not been the experience so far. 	<p>These programmes present some inherent and case-by-case risks to:</p> <p>Freedom from discrimination: Targeting children in ADM can result in unfair discrimination. Examples include:</p> <ul style="list-style-type: none"> › The UK’s 2020 ‘mutant algorithm’ predicted final exam scores during the pandemic, systematically downgrading children from poor neighbourhoods.⁶⁸ › The Netherlands used data about children’s ethnicity to automatically ‘red-flag’ child support payments, leading to erroneous payment stops, harming incomes and causing over 1,000 children to be taken into care.⁶⁹ › Australia’s use of income data in the Robodebt scandal where algorithms inappropriately calculated benefit debts, affecting young people and families with children with disastrous consequences.⁷⁰ › Privacy violations: Targeting enabled by ADM can violate privacy in various ways. For instance, it can impact a child’s ability to be ‘forgotten,’⁷¹ influencing their future. A child’s extensive data footprint could affect future events unimaginably, like denying access to medical insurance in their 60s due to data about a heart murmur detected in a baby wearable or a mental health crisis at 13. Additionally, children’s data can be collated and processed in ADM models without due regard for their consent or appropriate data rights.

CONCLUSION & RECOMMENDATIONS

Introducing a best interests requirement to frame targeting towards children, within the broad definition proposed, signifies a potentially **significant and powerful policy reform**. Both prohibiting targeting *unless it serves children's best interests* and adopting the broad definition of targeting should be integrated into the *Privacy Act*. Restricting targeting to 'best interests' has the potential to *create a child-centric approach to tech regulation*, reshaping the digital landscape to prioritise children's rights.

The presumption that targeting should be prohibited unless it can demonstrate that it is in children and young people's best interests is also a **powerful realisation of a precautionary principle** in digital regulation. The precautionary principle has a long history of underpinning scientific and technological regulations worldwide. For instance, it is referenced in AI declarations from the G7, OECD and G20. Additionally, it is established in Australian common law, particularly concerning environmental principles.⁷²

It is also **pro-innovation**. Introducing this requirement will drive pro-child developments and reforms across the digital world. Just as requirements to adequately and proportionately determine the age of users online have created a marketplace of privacy-preserving age estimation tools, requiring targeting to demonstrate that it is in children's best interests, and ongoing evaluation and improvements around this, will drive child-centric technical innovations. Australia has a long history of encouraging pro-child innovations, informed heavily by the work of the Office of the eSafety Commissioner and Australian civil society. It would be fitting for Australia to further spur on pro-child innovations through the introduction of best interests requirements.

Harmonising Australian regulation with global developments would further support innovation by ensuring that Australian-made products can be exported with less friction and greater confidence. Emerging regulations around the world also refer to ensuring that children's best interests are realised within data processing practices in the UK, Ireland, Sweden, the Netherlands and the EU.

Given that Australia would be in this 'leading pack' of countries pushing forward on best interests innovation, Australian developers could be spurred through the *Privacy Act* to become global leaders in child-centric technological developments. There is the **opportunity and appetite to work with Australian civil society to grow and develop these competitive commercial skills**.

Realising these opportunities requires not only the introduction of the broad definition of targeting and the prohibition unless it is in children's best interests requirements but also strong guidance, enforcement and oversight about what this means in practice. The Office of the Australian Information Commissioner and partnering regulatory agencies **will need to be adequately resourced and supported** to realise this and **must consult widely with children and experts** in this process.

To ensure that online service providers are able to meaningfully implement the best interests principle and assess their targeting practices against this, a **'best interests assessment' would be a necessary tool**. Appendix A presents a prototype tool that could be developed.

We hope that this discussion paper and our proposal for a 'best interests in targeting' assessment tool support this process.

Appendix A:

AN EXAMPLE ‘BEST INTERESTS IN TARGETING’ ASSESSMENT⁷³

Process-based considerations

ACCOUNTABILITY

Risk statement: A lack of management focus or accountability for targeting adversely affecting a child’s privacy when decisions in the design, development and ongoing use of the service are made.

Risk assessment:	Mitigation strategies	Risk rating (initial)	Residual risk rating (following mitigation)	Risk appetite (what is the ideal rating)

Practical steps that can be taken:

- › Assign a senior owner or senior process owner to drive accountability for understanding and addressing the privacy risks associated with the development and provision of targeting directed at children.
 - › Assign responsibility for implementing compliance to relevant staff in their job descriptions.
 - › Ensure targeting is discussed at appropriate and regular meetings, and where relevant, ensure any Boards, Committees or Steering Groups are assigned the task of oversight for data protection compliance, issues and risk.
 - › Try to create and embed a culture of data protection and privacy across the organisation. For example, by running awareness campaigns, including data protection elements in company values or mission statements or using visual aids and prompts within office environments.
 - › Put in place operational procedures, guidance or manuals to provide direction to operational staff on the application of targeting protections.
 - › Ensure there are communication links with technical specialist roles to facilitate discussion about targeting issues and risks on an ongoing basis.
 - › Ensure any changes to the service are signed off by the person with data protection oversight or responsibility.
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TRAINING

Risk statement: Child rights by design not built into the targeting due to a lack of awareness or training.

Risk assessment:	Mitigation strategies	Risk rating (initial)	Residual risk rating (following mitigation)	Risk appetite (what is the ideal rating)

Practical steps that can be taken:

- › Plan what training will need to be provided to staff working directly with the design and implementation of the service on child rights and fair processing. This might include consideration of the National Principles for Child Safe Organisations and Commonwealth Child Safety Frameworks.
- › Ensure that all staff receive basic training.
- › Ensure that staff involved with making decisions regarding targeting receive a higher level of training on relevant areas of data protection than the basic staff training.
- › Put plans in place to ensure that training is provided regularly and not just as a one-off.

PARTICIPATION

Risk statement: Children's perspectives and direct participation are not considered when developing and evaluating targeting practices.

Risk assessment:	Mitigation strategies	Risk rating (initial)	Residual risk rating (following mitigation)	Risk appetite (what is the ideal rating)

Practical steps that can be taken:

- › Appoint a 'youth participation' champion onto the product team to take the lead on ensuring genuine participation at meaningful points across the life cycle of the product.
- › Ensure plans are made to consult with children in undertaking this best interests assessment and ensure all updates and reviews to follow.
- › Consider the diverse experiences and demographics of young people in your consultation plans, including disability, gender and ethnicity.
- › Build in a 'consultation phase' into project planning timelines to ensure ongoing consultation as products are developed and refined.
- › Report back to children on how their inputs were taken into consideration and/or informed decision making.
- › Ensure that staff involved in the consultation are adequately trained, resourced and vetted.
- › Ensure compliance with the National Principles for Child Safe Organisations and Commonwealth Child Safety Frameworks.

Substantive considerations

PRIVACY

Risk statement: The commercial interests of an organisation outweigh a child’s right to privacy in targeting practices and processes.

Risk assessment:	Mitigation strategies	Risk rating (initial)	Residual risk rating (following mitigation)	Risk appetite (what is the ideal rating)

Practical steps that can be taken:

- › Ensure that the best interests and safety of children are a primary consideration in the development and deployment of targeting.
- › Ensure the implications for vulnerable groups of children, including children from marginalised communities and children with a disability, are reviewed in service development and updates.
- › Carry out a documented consideration of how to protect and support child users of your service where they are targeted.
- › Account for the best interests of the child as a primary consideration where any conflict arises.
- › Restrict the use of non-essential cookies used to further commercial interests (where prior consent is not obtained or where the interests of the child are affected).

ACCESS TO INFORMATION

Risk statement: Targeting practices and processes prevent a child from being able to seek and receive information and accessing age-appropriate diverse media.

Risk assessment:	Mitigation strategies	Risk rating (initial)	Residual risk rating (following mitigation)	Risk appetite (what is the ideal rating)

Practical steps that can be taken:

- › Map how the affordances of your service align with children’s right to seek and receive information and access diverse, age-appropriate media.
- › Ensure the implications for vulnerable groups of children, including children from marginalised communities and children with a disability, are reviewed in service development and updates.
- › Encourage staff involved in decision-making regarding targeting to consider children’s right to access information.
- › Account for the best interests of the child as a primary consideration in case of any conflicts.

PROTECTION FROM HARM

Risk statement: Targeting practices and processes may fail to identify and provide the necessary support and protection, resulting in harm to a child.

Risk assessment:	Mitigation strategies	Risk rating (initial)	Residual risk rating (following mitigation)	Risk appetite (what is the ideal rating)

Practical steps that can be taken:

- › Ensure that the best interests and safety of children are primary considerations in the development and deployment of targeting.
- › Review the implications for vulnerable groups of children, including those from marginalised communities and children with disabilities, in service development and updates.
- › Conduct a documented consideration of how to protect and support child users of your service when they are targeted.
- › Prioritise the best interests of the child when conflicts arise.
- › Limit the use of non-essential cookies used to advance commercial interests, particularly where prior consent is not obtained or when the interests of the child are affected.

PLAY & LEISURE

Risk statement: Targeting practices and processes may hinder a child's ability to play and engage in leisure pursuits.

Risk assessment:	Mitigation strategies	Risk rating (initial)	Residual risk rating (following mitigation)	Risk appetite (what is the ideal rating)

Practical steps that can be taken:

- › Map how the features of your service align with children's right to play and leisure.
- › Ensure that the best interests and safety of children are primary considerations in the development of new services.
- › Prioritise the best interests of the child when conflicts arise.

FREEDOMS

Risk statement: A child's freedom of thought and freedom from discrimination is harmed by targeting practices and processes.

Risk assessment:	Mitigation strategies	Risk rating (initial)	Residual risk rating (following mitigation)	Risk appetite (what is the ideal rating)

Practical steps that can be taken:

- › Conduct an algorithmic impact assessment to explore the potential for risky filter bubbles.
 - › Perform algorithmic impact assessments to investigate potential gender and ethnic biases.
 - › Ensure that children's best interests and safety are primary considerations in developing and refining targeting processes.
 - › Prioritise the best interests of the child when conflicts arise.
-

Appendix B:

YOUNG PEOPLE'S THOUGHTS ABOUT A 'BEST INTERESTS ASSESSMENT' IN GENERAL

Given the vital role of the digital world for young people, our aim was to gauge their perspectives on the 'best interests' principle in the digital world. In December 2023, we surveyed 1,008 young individuals aged 15–17 (in collaboration with YouGov) and held focused discussions with three youths within the same age range.

Our findings revealed widespread support for stronger protections for young people in the digital world, aligning with existing policy suggestions. Notably, a best interests impact assessment was deemed a helpful idea.

Young people want stronger protections in the digital world

We asked young people in the survey if they felt 'safe and protected' in the digital world when it came to a range of online issues, including online abuse, encountering distressing content, scams and privacy. The vast majority of young people described feeling unsafe and unprotected in the digital world, with young people feeling least safe when it comes to misinformation, scams, distressing content, privacy and online abuse (see *Figure 1*).

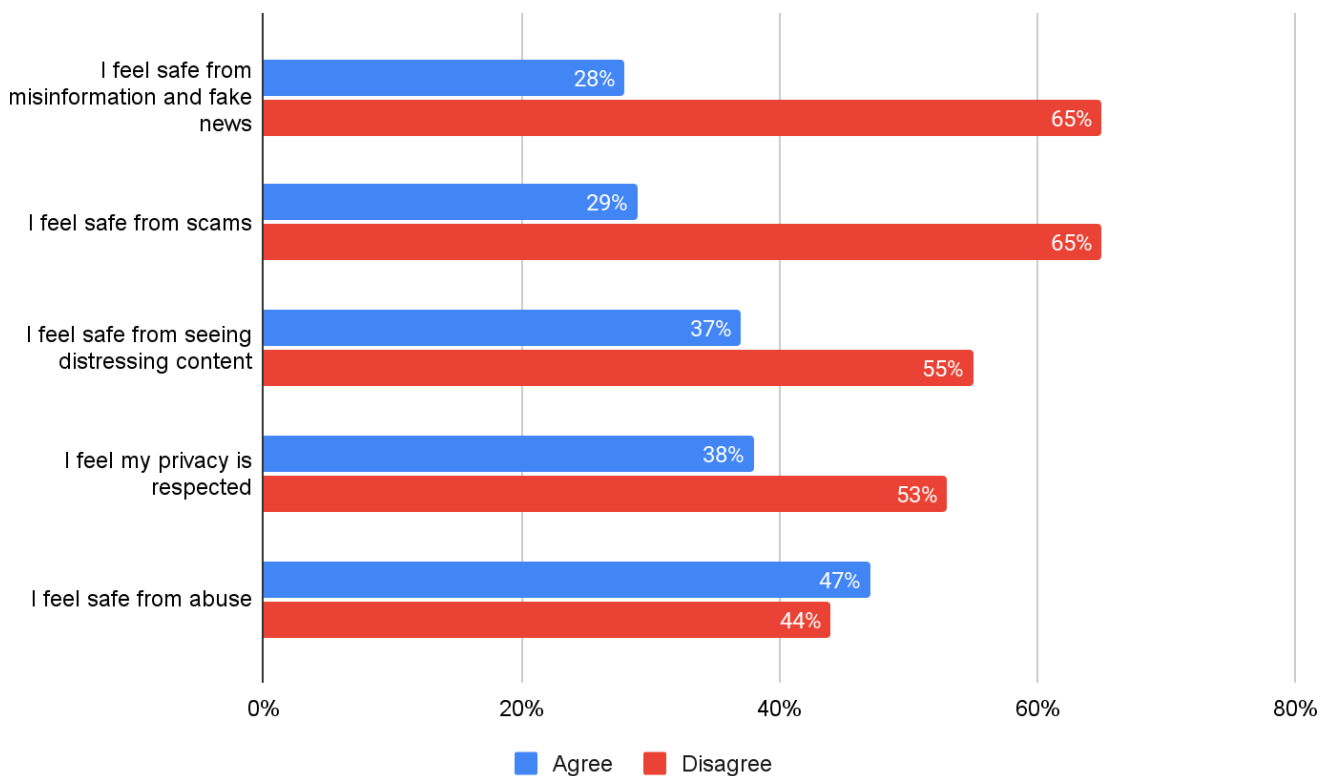


Figure 1: The percentage of young people who agreed or disagreed with various statements about how they felt in the digital world (n=1,008. 'Don't knows' not plotted)

These concerns were echoed by the young people we spoke to who talked about receiving fight content on TikTok, feeling creeped out by face scanning and just routinely facing risks in the online environment. They were keen to stress that the digital world is still a hugely beneficial part of their lives but that these sorts of risks exist.

We asked young people if they wanted action from the Government regarding these issues, and there was overwhelming support (see Figure 2).

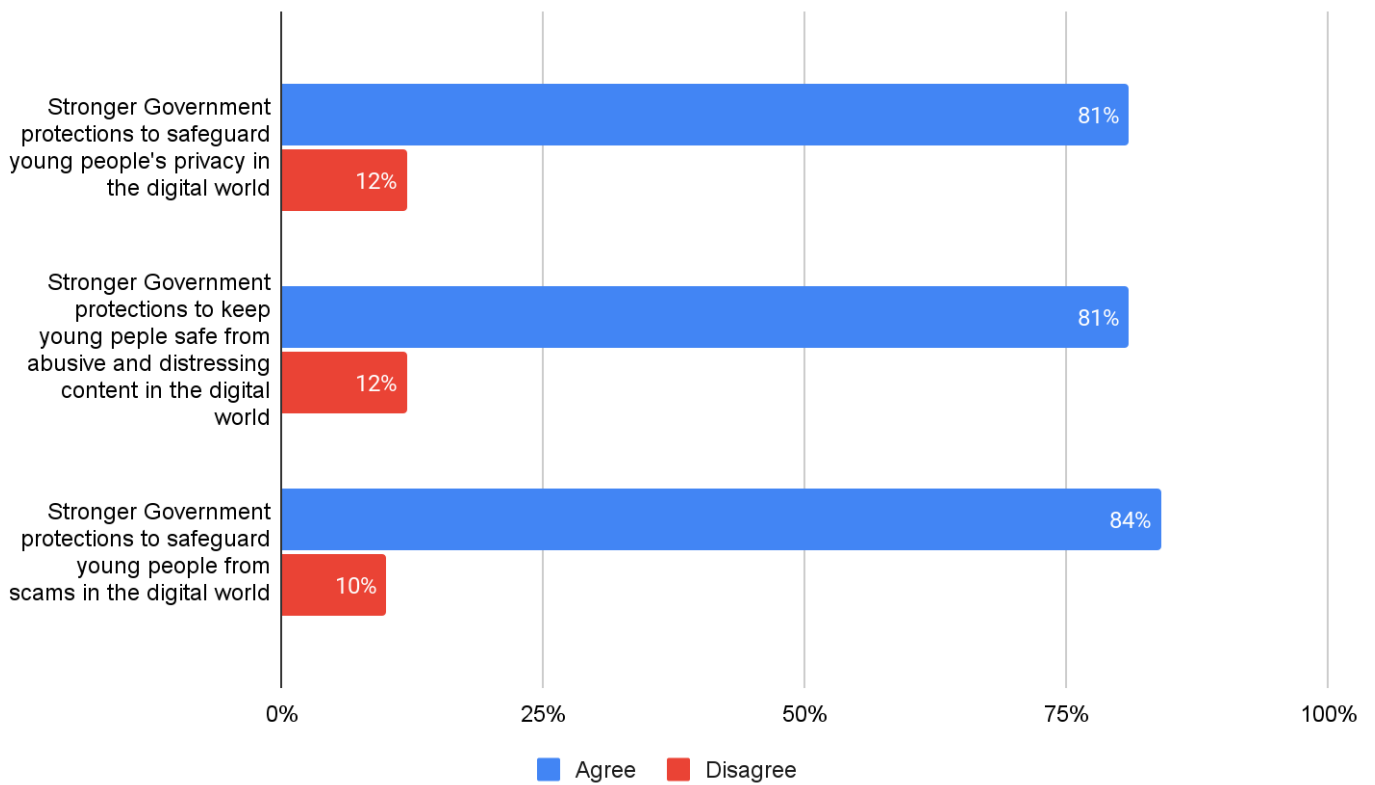


Figure 2: The percentage of young people who agreed or disagreed with various statements about believing we should have particular protections in place (n=1,008. 'Don't knows' not plotted)

Protections need to ensure their best interests are met

We asked young people about three of the proposed measures and found strong support:

- › Requirements that all targeting happens in children's best interests (described as a rule to require apps and websites to personalise products for under 18-year-olds in ways that respect young people's rights): 72% support.
- › Requirements that data collection happens in children's best interests (described as a rule to require apps and websites to collect data from under 18-year-olds in ways that respect young people's rights): 70% of respondents agreed that this was desirable.
- › A Children's Privacy Code (described as a clear set of rules about how to protect young people's privacy): 90% of respondents agreed that this was desirable (see Figure 3).

The young people we spoke to also supported these measures. They noted their desire for the digital world to act in ways that benefit young people, stating that *'taking it away from young people isn't the answer, it's filtering out the bad'*. The concept of having rules to *'dial down the bad'* and *'turn up the good'* felt like a solution to the challenges in the digital world. They emphasised the daily use and significant impact of the digital world on their lives, highlighting the potential for improving their lives by making it work in their best interests.

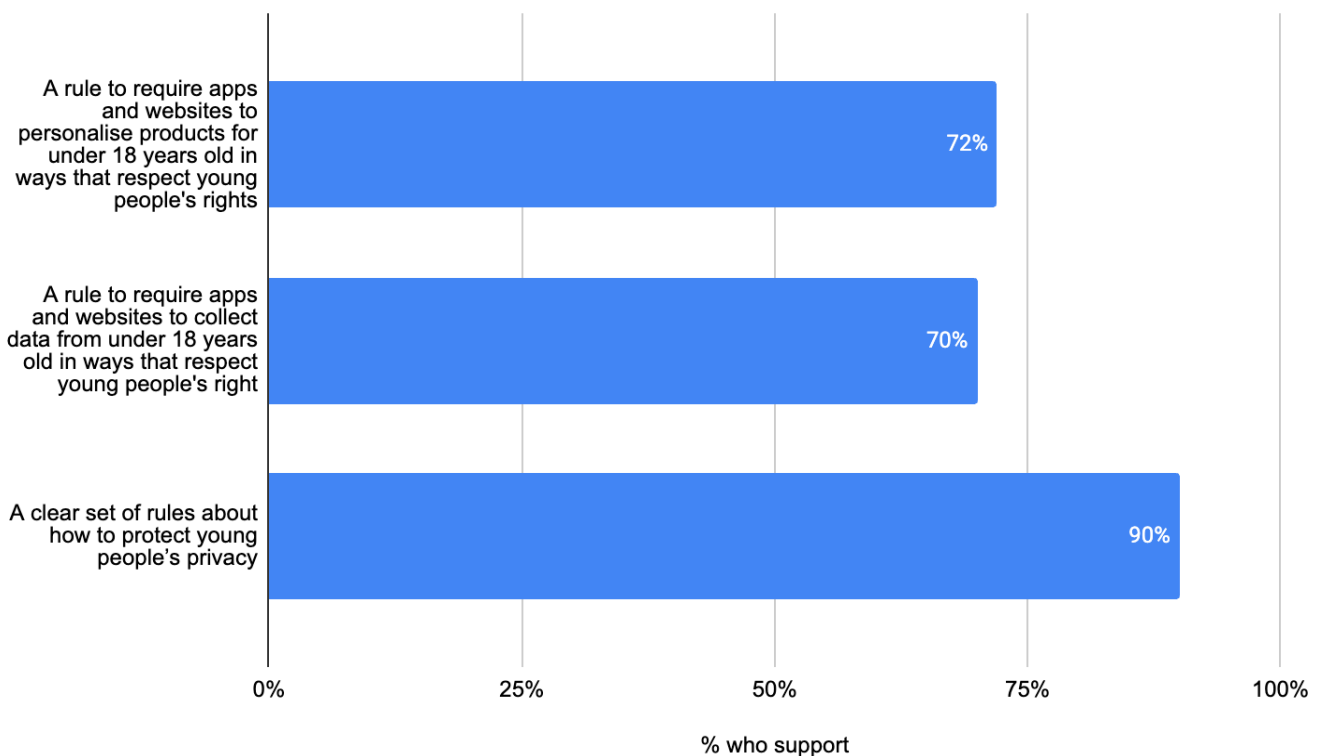


Figure 3: Percentage of young people who supported particular protections (n=1,008)

A best interests impact assessment is a welcome idea

'Context is important', said one young person at a focus group when we asked if targeting or data collection worked in young people's best interests overall. When we inquired if some form of impact assessment or a requirement for online services to consider how their product might affect young people's rights would be helpful, they described this as '10/10' a good idea.

The surveyed young people also supported this proposal. When asked if online services should have to consider and assess how they respect young people's rights in general, 88% of respondents supported it (see Figure 4).

In our focus group, participants quickly articulated insightful requirements for a best interests impact assessment:

- › The assessments should be enforced and regularly reviewed. *'The government should implement it, the social media platforms always find a loophole, everyone knows they're just looking for profit at*

the end of the day. Government should review it and look at it and make sure they're not looking for loopholes or profit to find a way out of it.'

- › The assessments need to be transparent. When asked who should have access to these assessments, they suggested that they *'should be available to their users. All the policies, obviously you don't read them, but someone should look over them to make sure they're ok'*.
- › The assessments should adopt a 'holistic' approach, considering all aspects of young people's rights. Specifically, *'they should include general overall safety and really think about what features they put in that young people could misuse, like an opportunity for it to go wrong'*.
- › The assessments should involve consultation with young people. *'I think for sure, 'cause like we're the ones using it so they should hear from us. If there is anything to add or remove, they're making money, it's just a paycheck. It doesn't affect them, but for us it's a daily part of our lives so maybe they should hear from us. It would help them a lot, if they make it a really good ad and make the best features, they will profit'*

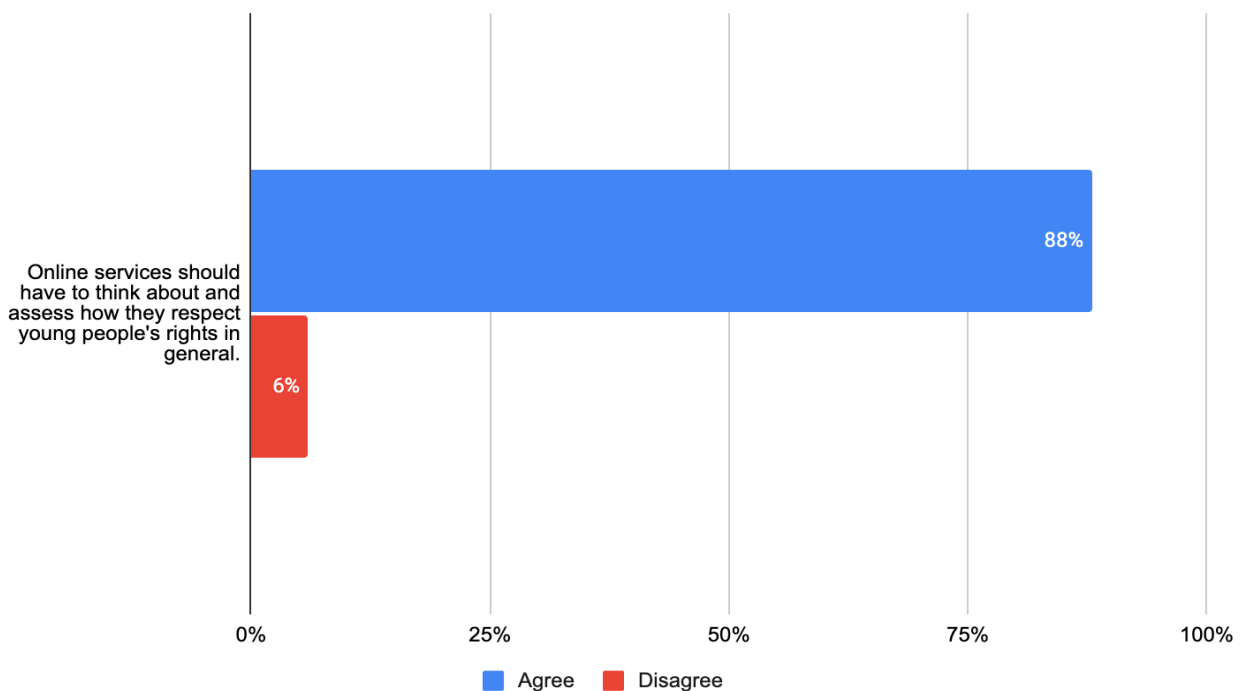


Figure 4: Percentage of young people who agree with the statement that online services used by young people should have to think about and assess how they respect young people's rights in general (n=1,008. 'Don't knows' not plotted)

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Artwork created using Midjourney in response to the prompt "imagine/dystopian, portrait, animated emoji sphere characters, crane game, arcade game, ambient night glow."