AUSTRALIAN RESEARCH COUNCIL
Centre of Excellence for the Digital Child.

15 September 2025

Submission to the Productivity Commission
Harnessing Data and Digital Technology

By the Australian Research Council Centre of Excellence for the Digital Child

With thanks to Rebecca Ng, Tiffani Apps, Karley Beckman, Claire Rogerson, Amanda Cipriani, Tama Leaver, Susanne Srdarov, Catherine Smith, Kristy Corser, Simon Smith and Chris Zomer

About the Digital Child

The ARC Centre of Excellence for the Digital Child ('Digital Child') is charged with leading national and global research, policy and practice to ensure that all Australian children are healthy, educated and connected in a rapidly expanding digital world.

The Digital Child is shaping an environment with children, families, and communities so they can navigate their own digital worlds. We know that children's lived experiences are rapidly changing, and that every childhood is now fundamentally digital. Our mission is to create positive digital childhoods for every child in Australia.

We do this by focusing on:

- Healthy digital lives, understanding how digital technology intersects children's lived experiences and providing guidance to families, educators, and policymakers as they navigate this space.
- Educational empowerment, equipping children with the skills they need to live their best digital lives.
- Safe digital spaces, making online engagement safer while promoting healthy digital relationships.

This submission provides a brief response to the inquiry. We would be pleased to provide further information, including an oral submission.

Contact information

Rebecca Ng
nrebecca@uow.edu.au

Position Statement

The ARC Centre of Excellence for the Digital Child welcomes the opportunity to respond to the five pillar productivity inquiries proposed by the Productivity Commission. This submission specifically focuses on the report, *Harnessing Data and Digital Technology*.

The Productivity Commission's mission is to provide the Australian Government with "independent research and advisory body on economic, social and environmental issues affecting the welfare of Australians"[1]. We recognise, through this report, the potential economic growth of AI technologies, standardised digital reporting and better data accessibility for individuals and businesses. However, as is the mission of the Productivity Commission, it is necessary to consider the social and environmental impacts of these decisions on the welfare of Australians and in particular, the welfare of **children who will be the future citizens and economic contributors of the nation**.

We strongly recommend that the Commission consider the cost of not protecting children's privacy and rights over the technical and administrative difficulties, and cost businesses may encounter/incur in trying to meet current and future legislative requirements. We remind the Commission that Australia, as quoted from the Department of Foreign Affairs and Trade website, is a "founding member of the United Nations and an original signatory to the Universal Declaration of Human Rights in 1948"[2]. It is also a signatory to the UN Convention on the Rights of the Child and hence is obligated to ensure that individuals and children have a right to privacy unless it concerns their safety or in matters of justice.

In our response, we emphasise **the critical need for a rights-based approach to meaningful and measurable productivity reform,** with consideration to, and compliance with, the United Nations Convention on the Rights of the Child (UNCRC)[3] and General Comment No. 25 on Children's Rights in relation to the Digital Environment[4]. These principles can provide the trust and certainty that the Commission has identified as necessary grounds for Australia to harness data and digital technology and drive innovation. Children are rights-holders with evolving capacities under the UNCRC; policy, procurement and redress should therefore be designed for rights-exercise, not merely for end-user consent or consumer choice. For this submission, a 'child' is defined as any person under the age of 18 years as per Article 1 of the UNCRC. A child's 'best interest' should be a "primary consideration" in "all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies" as per Article 3.1 of the UNCRC.

[1] https://www.pc.gov.au/about

[2] https://www.dfat.gov.au/international-relations/themes/human-rights

[3] https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

[4] https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation

Broad comments

Through a rights-based approach with a focus on children and extensive extant research in the area, we provide the following recommendations to ensure Australia's productivity reform agenda is proportionate and rights based.

General

- Productivity growth should not come at the expense of human or children rights, which include rights to privacy and protection from commercial exploitation, education, freedom of expression, non-discrimination, access to information and freedom of thought.
- Children should be consulted and considered central stakeholders of the productivity reform agenda whose rights and wellbeing shape the future of society.
- Extensive evidence illustrates the ongoing harms of exploitative commercial data practices and AI technologies highlighting the inherent risks and social cost of the PC's recommended technology neutral, industry-led, outcomes-focused, and risk-based reforms. These reactive approaches to the regulation of emerging technologies will not provide the stable environment required for innovation.
- A rights-based approach to harnessing data and digital technology can build public trust and provide industry with the stable environment needed for innovation.

Enabling AI

- AI-specific regulation and mandatory guardrails are necessary to:
    - prevent and reduce documented harms and risks to children and individuals
    - facilitate the trust and certainty the PC identifies as necessary for innovation.
- All AI systems interacting with children should be considered high-risk.
- A new fair dealing exemption should not be created on the basis that it devalues cultural and creative work, and disincentivises the existence of an Australian creative industry.

Data Access

- Business and individual access to data need to be treated separately.
- Better data access for individuals can support better understanding of consumer choices and build trust.
- Expanded data access should be carefully considered, especially for businesses which involve human information pertaining to children and vulnerable people (e.g. health services, education, family services).

Privacy Regulation

- The proposed alternative compliance pathway to privacy is insufficient, as the framework on "best interest obligations" can be open to interpretation and do not have clear standards for businesses to operationalise.
- A 'Right to erasure' should be legislated, especially for children in line with the OAIC's upcoming Children's Online Privacy Code.

Response to Draft recommendations and Information Requests

Recommendation 1 Artificial intelligence

Draft recommendation 1.1 - Productivity growth from AI will be built on existing legal foundations. Gap analyses of current rules need to be expanded and completed
Draft recommendation 1.2 - AI-specific regulation should be a last resort
Draft recommendation 1.3 - Pause steps to implement mandatory guardrails for high-risk AI

AI-specific regulation and mandatory guardrails are necessary to:

- prevent and reduce documented harms and risks to children and individuals
- facilitate the trust and certainty the PC identifies as necessary for innovation.

The Digital Child agrees with the PC that Australian governments have a key role in providing a stable regulatory environment to support innovation. **We emphasise that a stable environment is equally critical in supporting consumer rights and human rights, including children's rights.**

While the **proportionality framing** for regulation outlined by the PC offers a constructive way to engage, it must be balanced against the imperative to protect consumer, human children's rights from the documented human and social costs associated with the fast and profit centred development of exploitative data systems and AI technologies. For example:

- The tragic case reported by The New York Times (26 August 2025) involving a teenage boy and ChatGPT illustrates the real-world consequences of unregulated AI interactions.
- The integration of AI by default in the digital systems and services used in our education systems, highlight significant legal, ethical and pedagogical concerns[5], documented risks generated by discriminatory or commercially exploitative data practices[6] and insufficient evidence about the educational value, and long-term effects on schooling and children's lives.[7]

[5] Apps, Beckman & Ng (2024). Datafied by default: Examining the intersect between Children's Digital Rights and Education. *Computers and Education Open*. https://doi.org/10.1016/j.caeo.2024.100237

[6]Atabey, Pothong & Livingstone (2023). When are commercial practices exploitative?
Ensuring child rights prevail in a digital world.
https://digitalfuturescommission.org.uk/ on February 20, 2023

[7] Atabey, Sylwander & Livingstone (August 2025). A child's rights audit of GenAI in EdTech: Learning from five UK case studies. 5 Rights Foundation.

All AI systems interacting with children should be considered high-risk.

All AI systems interacting with children should be considered high-risk due to the lack of transparency and predictability in their outputs. The PC should classify the following as high-risk when they affect children: automated eligibility/discipline/exclusion decisions; biometric ID and exam proctoring; behavioural monitoring/emotional AI; mental-health chatbots; and any model trained on children's data. These uses require human-in-the-loop, published Child's Rights Impact Assessments, independent audits, and access to explanation and contestation.

A proportionate regulatory response to the high-level risks posed by AI on children **cannot be risk-based**. **Instead, a rights-based approach to regulatory reform would ensure a stable environment and build trust while importantly upholding children's rights.** Australia's obligations under the UNCRC and GC25 mean children are rights-holders with evolving capacities, not merely end-users. Any AI/data reform must therefore (i) treat the best interests of the child as a primary consideration, (ii) require participation of children and families in design and oversight, and (iii) guarantee effective redress tailored for children.

Information Request 1.1:

> The PC is seeking feedback on the issue of copyrighted materials being used to train AI models. Are reforms to the copyright regime (including licensing arrangements) required? If so, what are they and why?
>
> The PC is also seeking feedback on the proposal to amend the Copyright Act 1968 (Cth) to include a fair dealing exception for text and data mining. How would an exception covering text and data mining affect the development and use of AI in Australia? What are the costs, benefits and risks of a text and data mining exception likely to be?[8]

We oppose new fair dealing exemption being created on the basis that it devalues cultural and creative work, and disincentivises the existence of an Australian creative industry.

Consideration of copyright and AI must be undertaken through a children's rights perspective, given the impact AI systems have on young people's data, privacy, and cultural participation.

[8] Interim report - Harnessing data and digital technology p.28

The legal and ethical challenges surrounding copyright in relation to AI arise at both the input and output stages. By overlooking the risks embedded in inputs, Australia risks missing some of the most critical issues in copyright regulation. International debates and legislation in the EU[9], UK[10], and USA[11], underscore copyright infringements that occur during the training phase of large language models and generative AI systems, when images, artworks, or creative texts are mined without consent or attribution.

We submit that copyright reform in the context of AI is needed, but it must strengthen protections for creators by ensuring their economic rights through fair recognition and compensation for the human labour that has been absorbed into the large-continuous data collection[12]. Specifically, we oppose the introduction of a new fair dealing exception for text and data mining (TDM). Such a broad exception would undermine the value of cultural and creative work as inputs, while also exploiting and disincentivising Australian creative industries through its derivative outputs. Imitations of original expressions weaken the viability of creative industries, including the future of children as emerging creators.

There is a particular risk for children and young people whose creative works and personal data are already vulnerable online. Unlike adults, children cannot always provide informed consent or effectively enforce their intellectual property rights. Further, children and young people are also at risk of AI outputs that expose them to harmful or manipulative content. Australia is obligated to safeguard children's rights to privacy, protection, and participation under the UN Convention on the Rights of the Child (UNCRC)[13], particularly Article 3 (the best interest of the child is a primary consideration), Article 13 (freedom of expression), Article 16 (protection of privacy), and Article 31 (participation in cultural life), reinforced by General Comment No. 25[14] on children's rights in the digital environment. Similarly, UNICEF's Policy Guidance on AI for Children[15] calls for transparency, accountability, and special protections for children's data in AI systems. A broad TDM exemption would weaken these protections and contravene Australia's international commitment.

We advocate for rights-based regulation that supports careful and curated data use, for developing smaller, more responsible AI systems in Australia. This approach aligns with an aspirational vision for a digital economy adoption that balances "economic resilience and future competitiveness" with a "responsibility to deal with risk" and "protect people's privacy"[16].

---

[9] Regulation - EU - 2024/1689 - EN - EUR-Lex
[10] Data (Use and Access) Act 2025
[11] Copyright and Artificial Intelligence Reference Group (CAIRG) | Attorney-General's Department
[12] Leaver, T., & Srdarov, S. (2025). Children and Generative AI (GenAI) in Australia: The Big Challenges. *Australian Research Council Centre of Excellence for the Digital Child, Queensland University of Technology.* Children and Generative Artificial Intelligence (GenAI) in Australia: The Big Challenges by Digital Child - Issuu
[13] Convention on the Rights of the Child | OHCHR
[14] General comment No. 25 (2021) on children's rights in relation to the digital environment | OHCHR
[15] Policy guidance on AI for children | Innocenti Global Office of Research and Foresight
[16] Keynote to the AFR AI Summit | Ministers for the Department of Industry, Science and Resources

We recommend that explicit provisions be made for the consideration and protection of children concerning copyright and AI, with regulations that include how children shape and experience the digital world[17] and protect student-created works (school platforms, portfolios) from AI training/ scraping by default; require opt-in licensing, clear attribution, and DO NOT SCRAPE metadata compliance. This may be incorporated in licensing arrangements or embedded within existing legislative frameworks, such as the Online Safety Act[18] and the Copyright Act[19]. Alternatively, this could be achieved through the development of sui generis legislation, following the model of the EU[20], or the forthcoming Australian laws to protect Aboriginal and Torres Strait Islander traditional knowledge and cultural expressions through the 'Indigenous Cultural and Intellectual Property' or 'ICIP'[21]. **A rights-based approach would balance innovation with ethical responsibility, ensuring productivity does not come at the expense of vulnerable groups such as children.**

In response to the PC's information request, we recommend:

1. The PC **reject support for a broad TDM exception** and instead suggest the exploration of licensing frameworks or regulations that compensate creators and rights holders, including children.
2. **Mandate transparency in AI datasets or provide an opt-out mechanism** to ensure that parents and children can request the exclusion of personal or creative data, consistent with children's rights as articulated in the UNCRC[6] and General Comment No.25[7].
3. **Conduct Child Rights Impact Assessment (CRIA)[22]** (developed by the Australian Human Rights Commission) before implementing any copyright reforms in the context of AI.

[17] Dezuanni, M., Rodriguez, A., Sefton-Green, J., Leaver, T., Bunn, A., Potter, A., Farthing, R., Hourigan, A., Pangrazio, L., Mannell, K., Corser, K., Bennett, S., Levido, A., Zhao, X., Ng, R., Healy, G., & Willett, R. (2023). *Digital Child Working Paper 2023-11, Manifesto for a Better Children's Internet. Australian Research Council Centre of Excellence for the Digital Child, Queensland University of Technology*. Manifesto for a Better Children's Internet by Digital Child - Issuu

[18] Online Safety Act 2021 - Federal Register of Legislation

[19] Copyright Act 1968 - Federal Register of Legislation

[20] Regulation - EU - 2024/1689 - EN - EUR-Lex

[21] Protecting Indigenous Cultural and Intellectual Property | Office for the Arts

[22] Safeguarding Children: A child rights impact assessment tool | Australian Human Rights Commission

Draft recommendation 2 Data Access

> **Draft recommendation 2.1** - Establish lower-cost and more flexible regulatory pathways to expand basic data access for individuals and businesses

The PC outlines benefits of data access for individuals and businesses, collectively in draft recommendation 2.1. Yet, **the potential benefits and implications of data access for individuals is distinct from business access to data and thus must be treated separately.**

Better data access for individuals can support better understandings of consumer choices and build trust.

We welcome the recommendation to expand individuals' access to their own data. Increased transparency and agency to access and use your own data as an individual is a positive and welcomed inclusion. This will empower individuals to better understand the data held about them, how it used by business and to enact consumer rights including redress. **We note that this recommendation will support individuals and businesses to facilitate and enact rights to erasure.**

In terms of inferred data, we recommend that inferred data relating to children (risk scores, behaviour profiles, "readiness", "safety" scores) is in the control of the child and carer for correction and contestation.

Expanded data access for businesses should be carefully considered, especially for businesses which involve human information.

The expansion of data access for businesses should be **carefully considered for businesses which involve human information** (e.g. health, education and family services). It is necessary to better articulate businesses' needs for data (e.g. curated cultural data). We refer to the PC's example regarding the use of individuals' shopping or loyalty member data[23] to highlight the existing research about business's misuse of such data[7-9]. International studies have outlined uses of consumer data that serve the economic interests of the business, demonstrating a direct conflict in respecting the best interests of the individual. Misuses of consumer shopping or loyalty member data include:

- Predatory pricing such as inflating prices to deceive customers based on their purchasing history and habits[24] ;

[23] Interim report - Harnessing data and digital technology p.46
[24] https://www.ethicalconsumer.org/retailers/ethics-loyalty-cards#:~:text=tracked%20the%20price%20of%20various,?'s%20methodology%20was%20flawed

- Targeted marketing and psychological manipulation where companies can use data to create highly targeted ads and offers that exploit psychological triggers[25];
- Aggregation of data to compile detailed personal consumer profiles that amplify that potential for manipulation of customers.

These considerations are even more critical for children's data. Data relating to children is frequently used for business's economic gain. For example, the significant growth of children's debit cards (including Spriggy, ZAAP, FLX and Kit) evidences the expansion of data driven insights about children's shopping history and preferences.[26]

The Centre highlights **specific concerns around allied health, education and family data being used to boost productivity**. The commercialisation of these types of personal and sensitive information poses unique risks to children and young people. For example, the use of government-funded health information could be shared with employers, potentially affecting children in the future. The misuse of children's educational data was evidenced in a report by the Human Rights Watch in 2022, where education technology businesses shared children's data[27].

Given the PC's acknowledgement that enhanced data access aligns with existing initiatives (e.g., Consumer Data Rights), it is not onerous to expect these recommendations to explicitly uphold and align to children's rights including privacy, safety, agency, and age-appropriate consent. We encourage further initiatives developed to protect children's rights to be upheld, in particular the Child Rights Impact Assessments (CRIA)[19] when businesses collect or use children's data.

We **recommend that in relation to business access to data, greater productivity may be gained from smaller curated data sets** compared to access to larger data sets of personal information that may not be aligned with business needs. The business needs should be clearly articulated, with a focus on curated cultural data rather than personal data. Pre-sorted, clean datasets are essential but must be scrutinised for bias.

In terms of access pathways, the report outlined that "pathways could allow the regulatory obligations on data holders to vary according to the sensitivity of the data they hold and complexity of its potential use cases". Acknowledgement of varied data value and sensitivity is fundamental to upholding individuals' right to data privacy[28] and more specifically children's rights[11]. We recommend the Commissioner advocate for continued government regulation and oversight as a path to innovation that balances risks with opportunities particularly for children's data which should be considered as sensitive and of high value.

[25] Li, X., & Li, K. J. (2022). Beating the Algorithm: Consumer Manipulation, Personalized Pricing, and Big Data Management. *Manufacturing & Service Operations Management*, *25*(1). https://doi.org/10.1287/msom.2022.1153
[26] https://www.choice.com.au/money/banking/everyday-banking/articles/kids-banking-apps
[27] https://www.hrw.org/report/2022/05/25/how-dare-they-peep-my-private-life/childrens-rights-violations-governments
[28] https://www.legislation.gov.au/C2004A03712/latest/versions

Draft recommendation 3 Privacy Regulation

Draft recommendation 3.1 - An alternative compliance pathway for privacy
Draft recommendation 3.2 - Do not implement a right to erasure

We oppose the recommendations of an alternative compliance pathway for privacy as these will remove mechanisms to ensure children's privacy.

Children's right to privacy is enshrined in Article 16 of the UNCRC and is critical to ensuring their dignity, autonomy and safety from exploitation. This has been recognised as an important right by the Australian Government with the establishment of the Children's Online Privacy Code which was mentioned in the report. **We do not support the recommendations of the Productivity Commission which proposed (1) an alternative compliance pathway for privacy, and (2) to not implement a right to erasure as these will remove mechanisms necessary for businesses to ensure children's privacy and may have long term impacts for children who leave behind a trail of data that they did not consent to or no longer represent them**.

The report recommends an outcomes-based approach to privacy regulation over a controls-based approach, arguing that current mechanisms such as seeking consent from users do not guarantee positive privacy protections and "place the onus on the individual to manage and protect their own data". We commend the Commission for recognising that privacy should not be solely managed by individuals and rather, should be the responsibility of businesses. While an outcomes-based approach, which in this context suggests that businesses must protect the privacy of individuals through their own means, may in principle provide good protections for individuals, it lacks evidence and clarity which can lead to unintended consequences, especially for children. In the report, the PC recommends a "best interest obligation" approach as a framework for regulating the alternative compliance pathway. However, it fails to clarify how "best interest" or "duty of care" may be defined and by whom. As children's rights experts write:

> *"Our concern is that [the best interest] principle is being misunderstood or even misused. It sometimes seems that reference to the "best interests of the child" is used as a substitute or shorthand for the full range of children's rights, possibly obscuring these from proper consideration. Or it may seem to legitimate a "one-size-fits-all" approach, notwithstanding children's diverse individual, social, and cultural circumstances."*[29]

As such, where businesses are allowed to "choose the procedures or controls that are best suited to their business context", we must assume that they will define the term "best interest" to benefit their enterprise rather than to protect the privacy of individuals or

[29] Livingstone, S. & Ozkul, D. (2024). Identifying the best interests of the child in relation to the digital environment https://blogs.lse.ac.uk/medialse/2024/02/06/identifying-the-best-interests-of-the-child-in-relation-to-the-digital-environment/

children. And whilst current consent, notification and disclosure mechanisms may be onerous for individuals and require better guidelines, they are still important for individuals to be able to exercise their own rights. Additionally, we recommend that privacy regulation should be consulted with and directed by the Office of the Australian Information Commissioner (OAIC) who is more well-placed to protect and consider Australians' privacy, particularly those of children in line with the Children's Online Privacy Code. A joint protocol across OAIC/eSafety/ACCC/PC and state privacy regulators may be helpful in providing a common understanding and agreement on how best to enact children's right to privacy.

The right to erasure must be legislated to protect the long-term privacy and interests of children.

The right to erasure must be legislated, particularly given the evolving nature of children's consent and participation. Children are increasingly active participants in digital environments and the economy (e.g. employee from age 14). Yet, they often lack agency and struggle to access or control their own data. Personal and sensitive information about them is frequently shared without their consent. As they grow up, they may also recognise that information previously shared may no longer represent them or their interests. One such example is the recent investigation of a child protection worker who used ChatGPT when drafting a Protection Application Report which included the unauthorised disclosure of highly sensitive information about a child and his/her family (e.g. sexual offences), as well as the production of inaccurate personal information[30]. In this instance, children and their families should have the right to remove such information where further disclosure may impact the child in the long term.

Businesses argue that implementing erasure is costly. However, the long-term risks and the cost of not implementing a right to erasure —including legal liabilities around the use and disclosure of data in the future —have not been considered and may be more costly in the long run. Other countries such as the UK[31], Ireland[32] and the EU more broadly under the GDPR have successfully implemented such rights (i.e. right to erasure or right to be forgotten), demonstrating feasibility. Furthermore, better data access improving portability and interoperability as laid out in 2.1 should also make erasure more achievable.

[30] https://ovic.vic.gov.au/wp-content/uploads/2024/11/DFFH-ChatGPT-investigation-report-20240924-Re-upload.pdf
[31] https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/individual-rights/right-to-erasure/
[32] https://dataprotection.ie/en/individuals/know-your-rights/right-erasure-articles-17-19-gdpr