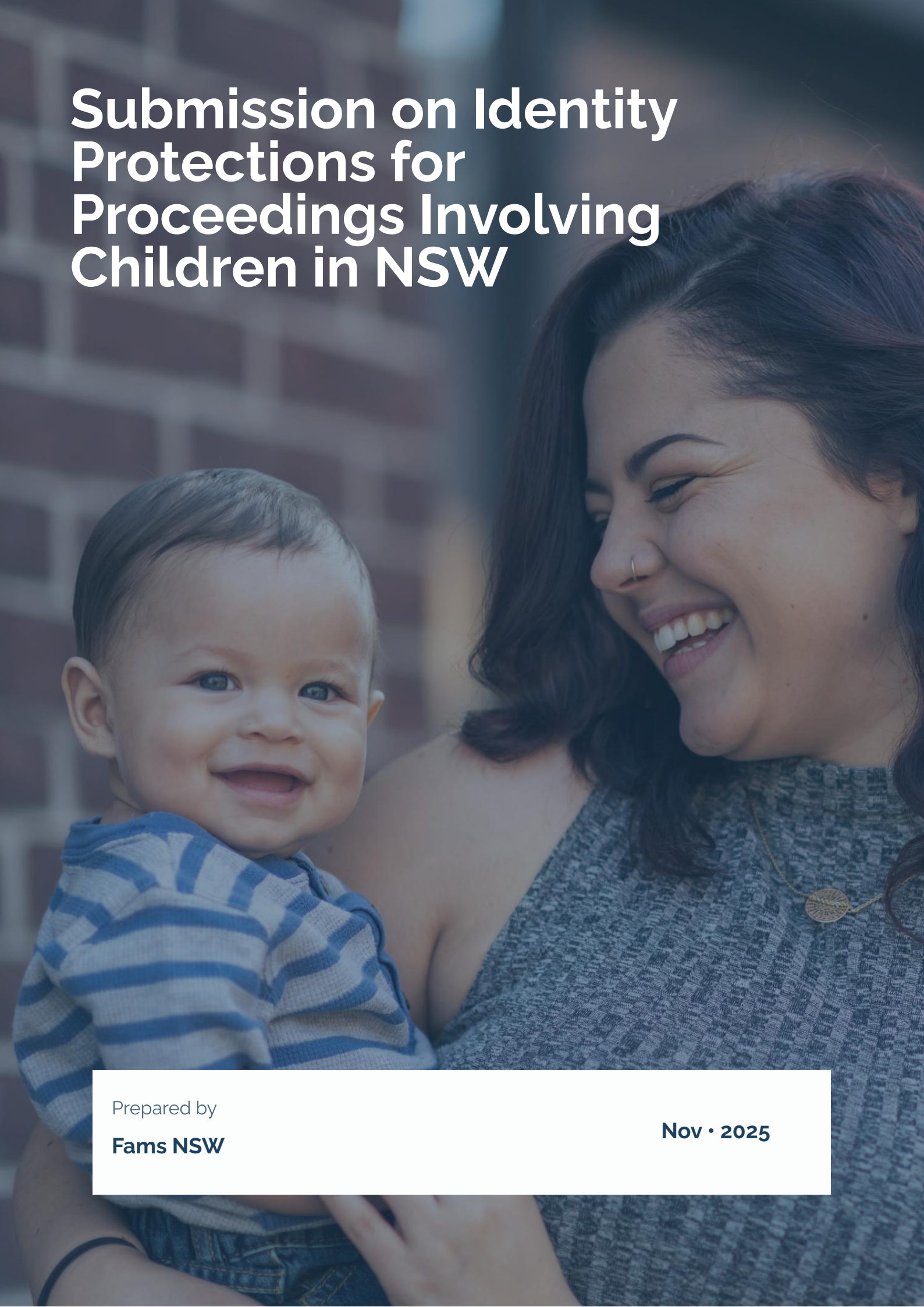
Submission on Identity Protections for Proceedings Involving Children in NSW



Prepared by

Fams NSW

Nov • 2025

Fams welcomes the opportunity to present this submission to the NSW Legislative Council's Justice and Communities Committee to inform identity protections for proceedings involving children.

As the peak body for NSW's Early Intervention and Prevention Child Protection sector, we represent services working directly with families across NSW, many of whom have children involved in legal processes, care proceedings, youth justice, or intersecting systems.

Fams embeds child safety in all that we do and believe it is a collective responsibility for NSW to embed child safety at all levels of our society. Our position is that a child's identity is part of their safety. However, without statutory clarity, children's privacy relies too heavily on discretion and interpretation.

Courts and judicial actors should not be exempt from the principles of child safety.

Executive Summary

Children and young people involved in court proceedings have the right to the highest level of privacy and protection. Their identities must be safeguarded.

Fams supports the implementation of the Child Safe Standards and the proposed Office of the Australian Information Commissioner (OAIC) Children's Online Privacy Code as guiding principles to ensure the Act remains fit for purpose. We recommend:

- Maintaining and strengthening Section 15A of the Act to guarantee privacy protections for children in all proceedings.
- Reviewing sections 15B-15F to embed the Child Safe Standards and ensure consistency with best practice.
- Introducing stronger safeguards to manage digital risks, including the permanency of online information.
- Considering the unique circumstances of children in out-of-home care, so these protections do not cause unintended harm to them or their families.

These considerations will help to create a system that protects identity and upholds the rights of children across NSW.

Key Considerations

1) Identity Protections

Section 15A

We recommend that Section 15A of the Act, which prohibits publishing or broadcasting the names of children involved in criminal proceedings, remains non-negotiable and strongly enforced.

A disclosure of identity for a child can have longstanding negative impacts throughout their entire lifespan. The current nature of social media and the digital landscape means that identifiable information is increasingly accessible to the public.

Section 15B-15F

We recommend reviewing the exceptions under Section 15B-15F to ensure that they cannot be exploited by media, third parties, or allow for instances of unintentional disclosure.

We also strongly recommend that Section 15E 6 (b) is reviewed to consider stronger protections for children in out-of-home care where birth family may have objections to disclosure. This includes impact on siblings, extended family, and their wider community. Due to the overrepresentation of First Nations children in out of home care, this issue disproportionately affects First Nations children and risks further subjecting them to disadvantage and prejudice. Protections should also consider cultural naming practices and avoid indirect identification through community references.

Child Centred Considerations

The current Act does not adequately consider the needs and best interests of children to participate in the decision-making process or adequately consider the needs of a child. We recommend a child-first text where any exception to the Act must demonstrate that disclosure is in the child's best interests in accordance with Standard 2 of the Child Safe Standards: Children participate in decisions affecting them and are taken seriously.

It is our recommendation that this is done through allowing a child to have a say in this decision where this is appropriate to do so. To enable this, we recommend that the Act provides effective supports for a child in this instance, such as legal representatives and child advocates.

2) Digital Risks and Digital Permanency

To safeguard children's identities in NSW, there must be clear rules for social media and online platforms, including enforceable penalties for sharing identifying content and proactive monitoring by regulators. The risks posed by permanent digital archives of court-related material, rapid dissemination across social media, automated scraping of publicly available information, and the growing use of algorithmic decision-making tools in child protection assessments mean that once identifying information is exposed, it can follow a child into adulthood.

We strongly recommend the integration of the OAIC's Australian Privacy Principles (APP) Guidelines[1], especially APP 11-13 in this regard. We recommend amending the Act to allow for the integration of the proposed OAIC Children's Online Privacy Code which is due to be in place on 10 December 2026[2].

These modern harms were not envisioned when many NSW statutes were drafted, as most research has focused on data deliberately provided, with limited recognition of the privacy implications of data traces and inferred data. International standards reinforce the urgency of reform. Both the United Nations Convention on the Rights of the Child (CROC) and the Beijing Rules emphasise a young person's right to privacy at all stages of juvenile justice proceedings, with Rule 8.1 specifically warning against harm caused by undue publicity or labelling. Article 40 of the CROC further requires that children alleged or accused of offences be treated in a manner that upholds dignity and privacy. Growing increases in cyber security risks in Australia [3] compound the need for stronger protections to prevent children's digital identities from being permanently compromised.

Closing Summary

Protecting the identity of children is the cornerstone of genuine rehabilitation and restorative justice. Strengthening the Act will fulfil the need for greater protections to reduce the stigma experienced by a child involved in the justice system[4].

We have a collective responsibility to ensure our justice system is designed to genuinely protect children and set up for them to thrive.

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[1] Australian Privacy Principles Guidelines – Privacy Act 1988
[2] Children's Online Privacy Code | OAIC
[3] Annual Cyber Threat Report 2024-2025 | Cyber.gov.au
[4] 'Help way earlier!' How Australia can transform child justice to improve safety and wellbeing | Australian Human Rights Commission

Contact Information

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About Fams

Fams is the peak body in New South Wales that supports the early intervention and prevention child protection sector. This sector provides critical services for children, young people, families, and communities.

We advocate for improved policies and resources for children, young people, families, communities and services. Children and family's safety, health and wellbeing are at the heart of all our work. Fams is committed to children and families receiving the support they need, evidence-informed and outcomes-based service delivery, government and sector accountability and influencing policy outcomes.